

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS,)	
)	
Respondent,)	Case No. 81-CE-131-D
)	
and)	
)	
UNITED FARM WORKERS)	8 ALRB No. 79
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER

On May 17, 1982, Administrative Law Officer (ALO)

William H. Steiner issued the attached Decision in this proceeding, Thereafter, General' Counsel and Respondent each timely filed exceptions and a supporting 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,^{1/} and conclusions of the ALO and to adopt his recommended Order as modified herein.

^{1/}The ALO adopted and utilized our interpretation of Wright Line (1980) 251 NLRB 1083 [105 LRRM 1169] in Martori Brothers Distributors (Mar. 1, 1982) 8 ALRB No. 15. We have since overruled our interpretation contained in that case and have adopted the interpretation of the NLRB as expressed in Zurn Industries Inc. v. NLRB (9th Cir. 1982) 680 F.2d 683 [110 LRRM 2944]. As this new interpretation does not affect the results in this case, we adopt the conclusion of the ALO.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent Giumarra Vineyards, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any agricultural employee in regard to hire or tenure of employment or any other term or condition of employment because he or she has engaged in 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 section 1152 of the Act.

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

(a) Immediately offer to Jose Antonio Rivera full reinstatement to his former job or substantially equivalent employment, without prejudice to his seniority or other employment rights or privileges.

(b) Make whole Jose Antonio Rivera for all losses of pay and other economic losses he has suffered as a result of his discharge, the makewhole amount to be computed in accordance

[ft. 1 cont.]

To the extent that the ALO's credibility resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. (Adam Dairy dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531].) We have reviewed the record and find the ALO's credibility resolutions are supported by the record as a whole.

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 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 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.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from June 17, 1981, until the date on which the said Notice is mailed.

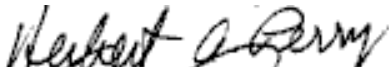
(f) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on Respondent's premises, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced,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

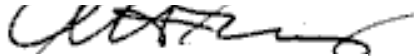
property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and/or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees 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: October 20, 1982



HERBERT A. PERRY, Acting Chairman



ALFRED H. SONG, Member



JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing in which each side had a chance to present evidence, the Board has found that we violated the Agricultural Labor Relations Act by firing Jose Antonio Rivera because he acted with or on behalf of other employees to protest a working condition. The Board has ordered us to post this Notice and to mail it to those employees who worked for us between June 17, 1981, and the present. 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 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 do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT discharge, lay off, or otherwise discriminate against any agricultural employee with respect to his or her job because he or she engages in a protest with other employees about a working condition.

WE WILL OFFER Jose Antonio Rivera his job back and reimburse him all losses of pay and other economic losses he has suffered as a result of his discharge, plus interest.

Dated:

GIUMARRA VINEYARDS

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 93215. The telephone number is (805) 725-5770.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Giumarra Vineyards
(UFW)

8 ALRB No. 79
Case No. 81-CE-131-D

ALO DECISION

The Complaint alleges that Jose Antonio Rivera was discharged for engaging in protected, concerted activity. Rivera was in a crew that was engaged in a weeding operation in Respondent's grapes. Respondent initiated a new operation whereby the crew could stand at the post at the beginning of each row to hoe, but had to kneel from the first vine forward in order to hoe to get the morning glories out. Many members of the crew did not like to kneel to hoe, claiming the ground was hard, sometimes muddy, their bodies were more exposed to the chemicals on the vines, and that it was degrading. At one point a supervisor, Stanley, asked Rivera to kneel and he refused. Stanley claims that Rivera was into the row. Rivera claims that he was standing at the post, according to instructions, when Stanley told him, "Kneel, you Puerto Rican donkey". Later, Stanley claimed that Rivera charged out of the vines with his hoe in a menacing and threatening manner, yelling, "I'm going to kill you, motherfucker." He was fired, allegedly for his "outrageous and unprotected threats of bodily injury to his supervisor". Rivera denied the incident and the threat.

The ALO credited Rivera's version of the events and his denial of the threat and found Rivera was discharged for protesting a new working condition, offensive to his entire crew.

BOARD DECISION

The Board affirmed the rulings, findings, and conclusions of the ALO, noting that they utilized the standard of proof and burden rules as expressed by the NLRB in *Zurn Industries Inc. v. NLRB* (9th Cir. 1982) 680 F.2d 683 [110 LRRM 2944].

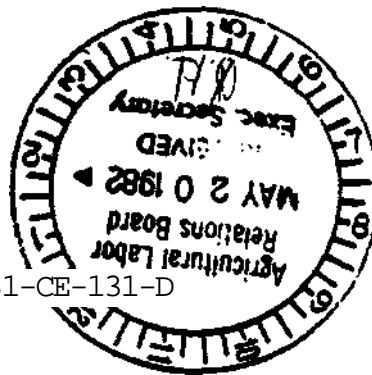
* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD



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

Case No. 81-CE-131-D

DECISION

Appearances:

For the General Counsel:

HEBERTO A. SALA
627 Main Street
Delano, California 93215

627 Main Street Delano, California 93215

For the Respondent
GIUMARRA VINEYARDS:

MARY R.L. SCHWARTZ Dressier,
Quesenbery, Laws & Barsamian
200 New Stine Road, Suite 228
Bakersfield, California 93309

For the Charging Party/
Intervenor:

JUAN CERVANTES
United Farm Workers of America
P.O. Box 130
Delano, California 93215

WILLIAM H. STEINER, Administrative Law Officer:

STATEMENT OF THE CASE

This case was heard before this Hearing Officer in Delano, California on March 15 and 16, 1982. The Complaint issued December 21, 1980. The Charge and Complaint were each duly served upon Respondent.

At the commencement of the hearing, the General Counsel dismissed the allegation charging violation of section 1153(c) in the interest of justice. The United Farm Workers of America (hereinafter "UFW") concurred with the decision of the General Counsel. The sole issue litigated at the hearing was whether Respondent discriminatorily terminated Jose Antonio Rivera (hereinafter "Rivera") for engaging in protected, concerted activity

All parties were given a full opportunity to participate in the hearing, and after the close of the hearing the General Counsel and Respondent filed post-hearing briefs.

Upon the entire record, including this Hearing Officer's observation*of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, this Hearing Officer makes the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent, Giumarra Vineyards, is a corporation engaged in agriculture in Kern County, California, and is an agricultural employer within the meaning of Labor Code section 1140.4(c), as admitted by Respondent in its Answer.

II. The Alleged Unfair Labor Practice

Respondent is alleged to have violated

section 1153(a) of the Act by terminating Jose Antonio Rivera in retaliation for exercising his right under section 1152 to engage in concerted activity for mutual aid and protection.

In its Answer Respondent denied any violation of the Act. Respondent asserts as an affirmative defense that Rivera's termination was solely motivated by his "outrageous and unprotected threats of bodily injury to his supervisor."

III. Statement of Facts

A. Respondent's Operation

Giumarra is an agricultural grower of grapes and other products in Kern County and other parts of California.¹

B. The Terminated Employee

Jose Antonio Rivera was hired by Respondent in 1979. His primary duties were girdling, grape picking

¹General Counsel requested that administrative notice be taken of a 1979 Board decision, Giumarra Vineyards Corp., 8 ALRB No. 24, in which the Board found violations of the Act, including section 1153(a), by Respondent with the participation of Salvadore Giumarra, Respondent's superintendent in charge of field operations. The case involves election misconduct by Respondent in 1977. General Counsel offered this decision as evidence that Respondent has a "propensity" to violate the Act. Because of the lapse of time between the 1977 events and the June 18, 1981 termination, and because of the lack of evidence of a continuous course of discrimination by Respondent, I find this Board decision irrelevant to the June 18, 1981 incidents.

and working in the packing shed. The June 18, 1981 disciplinary notice received by Rivara was the only discipline he received during his employment with Respondent. Respondent has a discipline policy which permits an employee to be issued three disciplinary action slips before being terminated for poor quality work. Salvatore Giumarra (hereinafter "Giumarra"), Respondent's superintendent in charge of field operations, testified that in the case of a violent threat, an employee is indefinitely suspended or discharged (see discussion below). Respondent alleged that Rivera was terminated for threatening to kill his supervisor, Robert Stanley, which he denied. The General Counsel maintained that Rivera was terminated because he was engaged in a concerted protest concerning erroneous instructions as to the manner in which he and his co-workers were supposed to hoe weeds in a grape vineyard.

C. The Events Leading to the Termination

In mid-June, 1981 Giumarra decided to initiate a new hoeing procedure for removing weeds, principally morning glories, from the grape vines using a long-handled "hula hoe" (a farm instrument similar to a hoe with an almost rectangular metal object, about 4"x6"x1^{1/2}, at the end of a five foot wooden handle - see photographs, Exhibit D; RT Vol. I, p. 23). Morning glories had to be removed from the "berm" or mound of dirt where the vines are planted. This new procedure, demonstrated by Giumarra on June 17, 1981, required the crew to get down on their knees, working close to the vine, so as not to disturb the position of the leaves which at this time of the year protect the grapes from the sun. Each vine stands about

five feet high and is about three feet wide. The vines are planted in long rows, and are suspended on a wire which is secured at each end of the row and in the middle of the row to wooden posts. The first vine is located about one foot from the post, the vines are five or six feet apart, and the rows are about ten feet apart. Weeds must be removed from around the base of the posts as well as the vines. Giumarra instructed the workers to remain standing when they were removing weeds from the posts, and to get down on their knees when weeding the vines. Previously, this operation was done standing up. Giumarra noticed on June 17 that some workers were not following his instructions, so he ordered Manuel Navarro, crew foreman for crew 59, to give another demonstration on the morning of June 18, prior to commencing weeding. The workday began at 6:00 A.M.

There was considerable dissatisfaction among the crew with the new hoeing method. There was testimony that the ground sometimes was too muddy or too hard for the employees to work on their knees, and there apparently was a problem with thorns scratching the workers and sulphur or other chemicals dropping on them from the vines. It was felt that this work method was demeaning and that it amounted to "working as a slave". Elias Morales Sandoval testified that there was complaining about the new method among himself and his co-workers Hector Luis Caquias, Lucio Oropeza Rodrigues and Rivera.

Rivera was terminated on June 18, 1981, the same morning that the incidents occurred between him and Stanley, a part-time supervisor who had been hired on June 15, 1981 to assist Navarro. Rivera arrived at work with Rodrigues, Caquias and Sandoval. Rivera entered the vineyards shortly after the others because he forgot his eyeglasses and cap in the car. Caquias, Sandoval and Rodrigues were about three or four vines ahead of Rivera when he started work. Rivera's co-workers were working in the three rows of vines adjacent to the row in which he was working, each one in a separate row. Caquias testified that just as Rivera began working at the post, he heard Stanley call to him to get down on his knees. Caquias, Sandoval and Rodrigues were disturbed at Stanley's instruction because it was contrary to what Giumarra had told them the day before, and they stopped working to listen to the exchange between Stanley and Rivera.²

Rivera maintains that he was working at the post when Stanley instructed him to kneel down. Stanley insists

²It appears that all of the witnesses understood a little English, and that a mixture of English and Spanish was used in most, if not all, of the critical incidents. For example, it was undisputed that Caquias spoke on Rivera's behalf to Giumarra in English and Giumarra answered in Spanish. It is unclear if primarily English or Spanish was used in the initial conversation between Rivera and Stanley, but a resolution of this question is not crucial to the ultimate issues presented. And Rivera's silence on certain occasions, under the circumstances, cannot be construed as an admission, particularly in light of his statement to Leroy Kuntz, a supervisor, indicating total disagreement with Stanley - Rivera told Kuntz in Spanish, "They're crazy" or "He's crazy".

that Rivera was working at one of the vines, about five vines in from the post. Sandoval, Caquias and Rodrigues agreed with Rivera, and there were no other witnesses to this incident. In the absence of other testimony by Stanley and Navarro, it would have been extremely difficult to resolve this factual conflict. However, this Hearing Officer's observation of their demeanor and the inconsistencies, ambiguities and apparent exaggerations in their testimony lead this Hearing Officer to credit Rivera's version of both the initial encounter with Stanley and the purported threat.

As for the purported threat, Stanley testified that at the time Rivera made the threat, Stanley was standing in the avenue. A moment before, Rivera was five or six vines into the row with Navarro, according to Stanley (Rivera testified he was in the avenue with Stanley). Given the average width of a vine, about three feet, and the distance between each vine, about five feet, this would mean that Rivera was about forty feet from Stanley when Navarro left Rivera and started walking toward Stanley. Navarro testified that he left Rivera when Rivera said "something like" "Motherfucker, I'm going to kill you." Stanley testified he could not recall overhearing the conversation between Navarro and Rivera when they were in the row, although he claims to have heard the threat. Navarro stated that when Rivera "started bringing it up in a batting position",

he could not tell who he was going to swing the hoe at, and he denied that Rivera was abusive toward him. Furthermore, Navarro did not testify that Rivera followed him out of the row, or approached Stanley, yet according to Stanley's version, Rivera, "spontaneously came out with a swinging hoe yelling, 'I'm going to kill you, motherfucker.'" Stanley testified he was "frozen with shock", yet a moment later, according to Navarro, he and Stanley turned their backs to Rivera and began walking to their trucks. Stanley testified that he heard Rivera smash a hula-hoe over an irrigation pipe, and he claims to have seen the broken hoe. However, Navarro denies having seen a broken hoe in the area, and no one produced a broken hoe, despite the fact that Stanley allegedly kept the broken portion and was responsible for any missing hoes. Also, Stanley made no criminal charges against Rivera, despite his stated belief that Rivera's conduct was criminal and he intended to kill him. Rivera's three co-workers, Sandoval, Caquias and Rodrigues, denied hearing Rivera make any threat against Stanley. And the possible pro-Rivera family bias of Sandoval and Caquias is substantially offset by the family relationship between Stanley and Giumarra, and the natural pro-employer bias of Navarro, who had been a crew foreman with Giumarra for eight years.

Even assuming that the alleged threat was made, the severe disciplinary measure of termination appears to have been applied against Rivera discriminatorily

under the circumstances. Violent threats not involving protected, concerted activity were treated with indulgence on at least two prior occasions in which neither a termination nor a suspension was ordered. One incident involved Rivera (RT Vol. II, p. 93, denied by him) and in the other a threat to kill a supervisor made by another employee resulted in discipline only after he returned to work with a pistol (RT Vol. II, p. 45). This is contrary to the company's stated policy as explained by Giumarra - once it was determined that a threat was made, there would be an "indefinite suspension or discharge". No examples of an indefinite suspension or discharge were given for merely making a violent threat (RT Vol. II, p. 131-132). Under the circumstances, it is probable that the severe penalty of termination would not have been applied except for the fact that Rivera was engaged in a concerted protest against a work condition considered extremely important by Respondent.

ANALYSIS AND CONCLUSIONS

I. The Applicable Legal Standards

This case presents a "dual-motive" situation in which the employer's action against the employee may have had either a lawful or an unlawful basis. As recently explained by the Board in Martori Brothers Distributors, 8 ALRB No. 15 (1982).

"[I]f the General Counsel establishes that protected activity was a motivating factor in the employer's decision, the burden then shifts to the employer to show that it would have reached the same decision absent the protected activity. The burden referred to in this formula is the burden of going forward with evidence (or 'burden of production'), not the burden of proof, which always remains with the General Counsel. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089 (1981)."

8 ALRB No. 15, pp. 2-3. See Merrill Farms, 8 ALRB No. 4 (1981); Miranda Mushroom Farm, Inc., 6 ALRB No. 22 (1980).

In Burdine, *supra*, the Supreme Court further explains the procedure to be followed in this type of case, once a prima facie case has been made shifting the burden of production to the employer: if the employer produces evidence of business justification, the complainant will prevail if he proves by a preponderance of the evidence that the employer's explanation is a mere pretext for unlawful discrimination. The complainant will succeed in this,

"[E]ither directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's preferred explanation is unworthy of credence."

Burdine, *supra*, p. 1095. In Merrill Farms, *supra*, the Board adopted the standard that the General Counsel must prove the employer would not have taken the adverse action against the employee "but for" the employee's protected activity. 8 ALRB No. 4, p. 4 (see Wright Line, 251 NLRB No. 150, 105 LRRM 1169 (1980)).

II. The Prima Facie Case of Discrimination

Initially, the evidence established that Rivera was engaged in a protected, concerted activity of which Respondent had knowledge. Rivera's protest to Stanley about the erroneous hoeing instruction echoed the immediate and active concern of the crew. The crew's general opposition to the kneeling hoeing method, the work stoppage and the protest to Giumarra immediately after the Stanley-Rivera encounter support a finding that Rivera's activity was concerted. And it is apparent from the testimony, as discussed above, that such activity by Rivera was at least a motivating factor in Respondent's decision to terminate him. This evidence was sufficient to establish a prima facie violation of section 1153(a). Respondent's reliance upon two Ninth Circuit decisions is misplaced. N.L.R.B. v. Big Horn Beverage, 614 F.2d 1242, 1238 (9th Cir. 1980) and Aro, Inc v. N.L.R.B., 596 F.2d 713 (9th Cir. 1979) involve significantly different factual settings than the facts here, and there are ALRB precedents more directly on point. Bill Adam Farms, 7 ALRB No. 46 (1981) and Jack Brothers & McBurney, 6 ALRB No. 12 (1980) both deal with protests by employees against the imposition of new work conditions. In Bill Adam Farms the employee was a broccoli cutter who complained about a new record keeping system for monitoring the workers' productivity. While the employee was speaking to his foreman, five members of his crew stopped working and listened. The Board found that the

terminated employee's activity was protected, concerted activity under the Act, citing Foster Poultry Farms, 6 ALRB No. 15 (1980):

"In Foster Poultry Farms, 6 ALRB No. 15 (1980), the Board, citing Alleluia Cushion Co., 221 NLRB 999, 91 LRRM 1131 (1975), stated that '[a]n individual's actions are protected, and concerted in nature, if they relate to conditions of employment that are matters of mutual concern to all affected employees.'"

7 ALRB No. 46, p. 11. In Bill Adam Farms the employer alleged that the employee was terminated for insubordination and poor work. In Jack Brothers & McBurney three employees who loaded, unloaded and laid sprinkler pipes, complained about a new work assignment requiring them to accompany the tractor driver to unhitch the empty trailers after the pipes were laid and hitch other trailers loaded with more pipes. This new assignment interfered with the crew's rest period and was considered to be dangerous. The employer's termination of the three employee's allegedly for refusing to perform a task was found to be in retaliation for their protected, concerted activity - complaining about the new work assignment.

The Board's decision noted,

"The protections accorded employees under the Act are not dependent upon the merit or lack of merit of the concerted activity in which they engage, even though such activity embraces the disobedience of an order of management. (Cases cited) Even if the action taken would be later judged unwise, such 'unwisdom' after the fact does not defeat the basic right

of employees to act concertedly regarding work conditions. (Cases cited) Furthermore, even a 'miniscule controversy' may give rise to protected concerted activity. St. Regis Paper Co., 192 NLRB 661 (1971)."

6 ALRB No. 12, p. 14.

In Miranda Mushroom Farms, Inc., supra, an employee's individual complaint to the Agricultural Commission about suspected violations of pesticide regulations raised the issue of possible unlawful retaliation for protected activity - there is no requirement that the activity be union related.

III. The Employer's Evidence of Business Justification and its Insufficiency

Respondent met its burden of production by offering testimony that Rivera was terminated for a valid reason a violent threat against his supervisor, Stanley. There is no question that such a threat, if proved, could support the termination of any employee absent extenuating circumstances. Such extenuating circumstances could include the discriminatory application of a discipline policy in retaliation for an employee's exercise of his right to engage in protected, concerted activity. Jack Brothers & McBurney, supra; Bill Adam Farms, supra. As discussed above, a preponderance of the evidence indicated that Respondent's decision to terminate Rivera was discriminatorily motivated.

Secondly, as explained in Burdine, the employer's explanation may fail if the "preferred explanation" is unworthy of credence. In the present case considerable attention was given to the demeanor and inconsistent testimony of Stanley and Navarro. These witnesses and Giumarra on several occasions also appeared to engage in overstatements or exaggerations in an apparent attempt to buttress their version of the events which transpired on June 18, 1981. Viewing the testimony as a whole and in light of these considerations, this Hearing Officer finds that no threat to kill was made by Rivera and credits the General Counsel's version of the Stanley-Rivera encounter in the field and the purported threat. This Hearing Officer finds the General Counsel's version of these incidents to be supported by a preponderance of the evidence, and Respondent's version unworthy of credence. This Hearing Officer further finds that Rivera would not have been terminated except for the fact that he was engaged' in protected, concerted activity involving his complaint about erroneous hoeing instructions.

THE REMEDY

Having found that Respondent terminated Jose Antonio Rivera for engaging in protected, concerted activity, in violation of section 1153(a) of the Act, this Hearing Officer recommends that it cease and desist from like violations and take certain affirmative action designed to effectuate the policies of the Act. Specifically, it is recommended that

Respondent be ordered to offer Jose Antonio Rivera reinstatement to his former job, without loss of seniority, and to make him whole for any loss of pay or other economic losses he has suffered as a result of Respondent's unfair labor practices.

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to section 1160.3 of the Act, this Hearing Officer hereby issued the following recommended:

ORDER

Respondent, Giumarra Vineyards, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from discharging any employee for engaging in protected concerted activities, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by section 1152 of the Act.

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

a. Immediately offer Jose Antonio Rivera reinstatement to his former position or a substantially equivalent position, without prejudice to seniority or other rights and privileges to which he is entitled, and make him whole for any loss of pay and other economic losses he has suffered as a result of Respondent's discharge, plus interest thereon at a rate of 7% per annum,

b. Preserve and, upon request, make available to agents of this Board, for examination and copying, all payroll and other records relevant and necessary to an analysis of the back pay and reinstatement rights due under the terms of this order.

c. Immediately sign the attached Notice to Employees and, upon its translation by a Board agent into all appropriate languages, reproduce sufficient copies in all languages for the purposes set forth hereinafter.

d. Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places on its premises, the time and places of posting to be determined by the Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

e. Within 30 days of the date of issuance of this order, mail copies of the attached Notice, in all appropriate languages, to all employees employed at any time during the 1981 grape season.

f. Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees assembled on Company time and property, at times and places to be determined by the Regional Director; following each reading a 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 employees' rights under the Act; the Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and question-and-answer period.

g. Notify the Regional Director in writing, within 30 days of the date of issuance of this Order, of the steps taken to comply with it, and continue to make periodic reports as requested by the Regional Director until full compliance is achieved.

Dated: May 17, 1982

A handwritten signature in cursive script, reading "William H. Steiner", is written over a solid horizontal line.

WILLIAM H. STEINER
Administrative Law Officer

NOTICE TO EMPLOYEES

After charges were made against this employer, Giumarra Vineyards, by the United Farm Workers of America, AFL-CIO, and a hearing was held where each side had an opportunity to present evidence, the Agricultural Labor Relations Board has found that Giumarra Vineyards interfered with the rights of our workers by terminating Jose Antonio Rivera. The Board has ordered us to distribute and post this Notice, and to do the things listed below.

Giumarra Vineyards will do what the Board has ordered, and also tell you that the Agricultural Labor Relations Act is a law that gives all farm workers these rights:

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

Because you have these rights, Giumarra Vineyards promises you that:

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

WE WILL NOT terminate any worker because that person has done any of the things listed above.

WE WILL offer Jose Antonio Rivera his old job back if he wants it, and we will pay him any money he has lost because we fired him, plus 7% interest.

Dated:

GIUMARRA VINEYARDS

By. _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS BOARD, AN AGENCY OF THE STATE OF CALIFORNIA, AND IS NOT TO BE DESTROYED, DISFIGURED OR DEFACED IN ANY WAY.