Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ANTON CARATAN & SONS, Respondent, and ESTER CASTILLO, ET AL., Charging Parties.	Case Nos. 80-CE-150-D 80-CE-151-D 80-CE-183-D 81-CE-40-D 8 ALRB No. 83

DECISION AND ORDER

On December 3, 1981, Administrative Law Officer (ALO) Alex Reisman issued the attached Decision in this proceeding. Thereafter, General Counsel and the United Farm Workers of America, AFL-CIO (UFW), each timely filed exceptions to the ALO's Decision and a supporting brief.

Pursuant to the provisions of Labor Code section 1146,[1/] 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 ALO's Decision in light of the exceptions and briefs of the parties and has decided to affirm the ALO's rulings, findings,[2/] and

[1/] Except where otherwise stated, all section references are to the California Labor Code.

[2/] The General Counsel's exceptions to the ALO's findings regarding Respondent's refusal to rehire Jesus Hernandez and Eloida Bermudez Hernandez question the ALO's credibility resolutions. To the extent that such resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant

[Fn. 2 cont. on p. 2]

conclusions, as modified herein, and to issue the attached Order.

Although the ALO found that Manuel Uranday engaged in union activity at Respondent's operations during the 1980 harvest and that Respondent demonstrated anti-union animus in the course of its no-union campaign, he found insufficient direct or circumstantial evidence of any causal connection between Uranday's union activity and his subsequent transfer to a different work site. We affirm those findings and the ALO's conclusion that General Counsel did not establish that Respondent transferred Uranday because of his union activity.

We also affirm the ALO's findings and conclusions as to Uranday's family members, who were transferred along with him. Although an employer's discrimination against an employee because he or she has a familial relationship with a union activist may violate the Agricultural Labor Relations Act (Act), the lack of proof that Respondent transferred Uranday for discriminatory reasons forecloses a finding that the transfer of his relatives was unlawful. (See, e.g., Champion Pager, Inc. v. NLRB (6th Cir. 1968) 393 F.2d 388 [68 LRRM 2014]; Lawrence Scarrone (June 17, 1981) 7 ALRB No. 13.)

The General Counsel has excepted to the ALO's finding

[Fn. 2 cont.]

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. Accordingly, we affirm the ALO's conclusion that the General Counsel failed to prove by a preponderance of the evidence that Respondent violated- the Act by failing or refusing to rehire those two workers. (Anton Caratan (Dec. 21, 1978) 4 ALRB No. 103.)

that the conduct of Ester Castillo and Rita Rubio on September 15, 1980, was insubordinate and therefore unprotected by the Act. We find merit in this exception.

According to the credited[3/] testimony of foreman Isidro Navarro, he ordered the two women to cease their protest regarding working conditions (they were protesting the alleged failure of Respondent to provide them with male assistance in the lifting and carrying of crates of harvested grapes) and told them he would remedy the situation. When the two employees chose to continue their protest by carrying it to higher management, Navarro suspended them. Although we affirm the ALO's conclusion that General Counsel has not established that Respondent thereby violated section 1153(c) of the Act, we reverse his finding that the protests of Castillo and Rubio were not concerted protected activities within the meaning of section 1152 of the Act.

The credited testimony in the record supports our finding that Rubio and Castillo were engaged in protected concerted activity on September 15, 1980, when together they complained to foreman Navarro about not having male assistance in their work group. It is uncontroverted that their activities were protected

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[3/] As to General Counsel's exceptions based on the credibility resolutions of the ALO, we have reviewed the record and find those resolutions supported by the record as a whole. (See fn. 2, supra.) To the extent that the ALO relied on the business records of Respondent to determine that the working condition protested did not in fact exist, the ALO was incorrect. The evidence in this matter demonstrates that Castillo and Rubio worked unassisted on September 8, 12, and 13, 1980, and with only temporary assistance on September 9, 1980. However, even assuming that the protested condition did not exist, Respondent cannot suspend or otherwise discipline employees for engaging in a lawful work stoppage without violating the Act. (Venus Ranches (Aug. 31, 1982) 8 ALRB No. 60.)

up to the moment in time Navarro instructed them to return to work. The issue then becomes whether the sisters acted in such a way that their concerted protected activities became unprotected.

Despite foreman Navarro's order to return to work, Rubio and Castillo together left their work area to present their grievance to higher management. What Navarro interpreted as insubordination was their walking toward the office to present to the office manager their complaint about a working condition, i.e., the absence of a man in their group. Such conduct clearly constitutes a protected concerted activity. (Vie Tanny Intern, Inc. v. NLRB (6th Cir. 1980) 622 F.2d 237 [104 LRRM 2395].)

It is well established that an employer violates section 1153(a) of the Act by suspending or otherwise discrimininating against employees because they walked off their jobs to protest a working condition. (NLRB v. Washington Aluminum Co. (1962) 370 U.S. 9 [50 LRRM 2235].)[4/] In Washington Aluminum it was held irrelevant to finding a violation of the National Labor Relations Act (NLRA) that the employer was making its best effort to remedy the condition which was the source of the employees' complaint. The court found that even if the employees' conduct in the face of the not-yet-realized improvements was unreasonable, such unreasonableness is irrelevant to a determination of whether the employees' conduct was protected in nature.

Here, the effect of Navarro's ordering the employees to return to work was to force the women to discontinue, or defer,

[4/] Section 1148 of the Act mandates that applicable National Labor Relations Act (NLRA) precedent be followed in interpreting the Act.

their protected concerted activity and thereby violated section 1153(a) of the Act. There were lawful alternatives available to Respondent: it could have lawfully refused to pay the employees for the time they spent away from work presenting their grievance to management, or it could have hired replacements for the sisters while they were off the job engaged in an economic strike or work-stoppage. But the Act prohibits Respondent from suspending, or otherwise discriminating against, Rubio and Castillo in whole or in part, because they engaged in a protected concerted activity or on conditioning continued employment on the relinquishment of statutory rights. (Suburban AMC/Jeep, Inc. (1974) 211 NLRB 454 [87 LRRM 454] enforced (8th Cir. 1975) 513 F.2d 637 [90 LRRM 2891].)

Respondent later refused to rehire Castillo and Rubio to work in the 1981 harvest. As they had been previously stripped of their seniority and preferential rehire rights because of their failure to return on time from a leave of absence, Respondent included their applications with those of new applicants. Anton Caratan testified that he alone was responsible for hiring decisions as to new field workers for the 1981 harvest season. He stated that he did not rehire the sisters because of: (1) their insubordination and their resulting suspension on September 15, 1980; and (2) their failure to return to work on time after an allotted two weeks leave of absence. He admitted that a major factor in not rehiring the sisters was their suspension for insubordination on September 15, 1980.

To establish a prima facie case of discriminatory refusal

to rehire, the General Counsel must show by a preponderance of the evidence that the employees were engaged in a protected concerted activity, that Respondent had knowledge of such activity, and that there was some connection or causal relationship between the protected activity and the subsequent failure or refusal to rehire. (Jackson and Perkins Rose Company (Mar. 19, 1979) 5 ALRB No. 20.)

Where the alleged discrimination consists of a refusal to rehire, the General Counsel must generally establish that the alleged discriminatee applied for work at a time when work was available, and that the employer's policy was to rehire former employees. (Prohoroff Poultry Farms (Feb. 7, 1979) 5 ALRB No. 9.)

If the General Counsel establishes a prima facie case that protected activity was a basis for the employer's refusal to rehire workers, the burden shifts to the employer to prove that it would have refused rehire even if the employee(s) had not engaged in the protected activity. (Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169]; Nishi Greenhouse (Aug. 5, 1981) 7 ALRB No. 18.)

As the General Counsel has established that a basis for Respondent's refusal to rehire Castillo and Rubio was their protected activity of September 15, 1980, in addition to the lawful basis represented by their unauthorized late return to work following a leave of absence, the Wright Line test for assessing mixed-motive discharges is applicable in this matter. In accordance with Royal Packing Company (Oct. 8, 1982)

8 ALRB No. 74 and Zurn Industries v. NLRB (9th Cir. 1982) 680 F.2d 683 [110 LRRM 2944], Respondent must prove by a preponderance of the evidence that it would have refused Castillo and Rubio rehire to the 1981 harvest even absent their protected activity. We conclude, in light of Anton Caratan's aforementioned testimonial admission, that Respondent violated section 1153(a) by its failure and refusal to rehire Castillo and Rubio to work in the 1981 harvest. As we affirm the ALO's finding that no evidence supports the section 1153(d) allegation in the complaint, we hereby dismiss that allegation.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Anton Caratan & Sons, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Suspending, failing or refusing to rehire or hire, or otherwise discriminating against any agricultural employee in regard to hire or tenure of employment because he or she has engaged in union activity or other concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

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

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

(a) Offer to Ester Castillo and Rita Rubio immediate and full reinstatement to their former positions or to substantailly equivalent positions, without prejudice to their seniority or other employment rights or privileges.

(b) Make whole Ester Castillo and Rita Rubio for all losses of pay and other economic losses they have suffered as a result of the discrimination against them, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 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 periods and the amounts of backpay and interest due under the terras 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 grape harvesting seasons of 1980 and 1981, approximately August 1980-December 1980 and August 1981-December 1981.

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

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved. Dated: November 8, 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 (Board) issued a complaint which alleged that we, Anton Caratan & Sons 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 suspending and then refusing to rehire two workers because they protested about their working conditions. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

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

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

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

WE WILL NO? suspend or refuse to rehire any employees for engaging in protests over working conditions.

WE WILL offer to rehire Ester Castillo and Rita Rubio to their former jobs and will reimburse them for all losses of pay and other economic losses they have suffered as a result of our discriminating against them, plus interest.

Dated: ANTON CARATAN & SONS

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 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

Anton Caratan & Sons
(Ester Castillo, et al.)

8 ALRB No. 83
Case Nos. 80-CE-150-D, et al.

ALO DECISION

In his Decision, ALO Alex Reisman recommended that the complaint against Respondent be dismissed. He concluded that the preponderance of the evidence did not support a finding that Respondent discriminated against Manuel Uranday by transferring him to another crew. Although the ALO noted that Respondent had anti-union animus, and that Respondent had knowledge of Uranday's union activities, he found no discriminatory basis for Respondent's transfer of Uranday. The ALO further concluded that Respondent did not violate the Act by its transfer of Uranday's relatives.

The ALO concluded that Respondent suspended employees Rita Rubio and Ester Castillo for insubordination and not because of their protected concerted activity. He found that the employees' refusal to abandon their protest about working conditions and to return to work constituted insubordination which justified their suspension. He also concluded that Respondent did not violate the Act by refusing to rehire the two employees for the next season, partially because of their insubordination and partially because they failed to return to work on time following a leave of absence.

The ALO further concluded that Respondent did not violate the Act by its failure or refusal to rehire Jesus Alfaro Hernandez and Eloida Bermudez Hernandez, based on his findings that the General Counsel had failed to prove that Ms. Hernandez had applied for rehire for the 1980 harvest and that Respondent refused to rehire Mr. Hernandez for lawful reasons.

BOARD DECISION

The Board affirmed the rulings, findings, and conclusions of the ALO as to Respondent's transfer of Uranday and his relatives and as to its failure to rehire the Hernandezes. However, the Board reversed the ALO's findings and conclusions with respect to Rita Rubio and Ester Castillo and found that Respondent suspended them for engaging in a concerted protest over working conditions in violation of section 1153(a) of the Act. The Board found that by suspending the two employees because they elected to continue their protest rather than returning to work, Respondent was conditioning their employment on the waiving of their statutory rights. The Board noted that Respondent could have lawfully replaced the workers while they were engaged in a protected work stoppage and subsequently dealt with their application for rehire in a non-discriminatory fashion.

Although Respondent refused to rehire Rubio and Castillo for two reasons, one discriminatory (their work stoppage) and the other

lawful (returning late from leave), the Board found that Respondent had failed to prove by a preponderance of the evidence that it would have refused to rehire them even absent their protected concerted activity, based on the testimony of Anton Caratan that their concerted work stoppage was a major reason Respondent refused to rehire them. Accordingly, the Board ordered Respondent to reinstate Rita Rubio and Ester Castillo and to reimburse them for all wage losses and other economic losses, plus interest.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the matter of ANTON CARATAN & SONS, Employer-Respondent, and ESTER CASTILLO, RITA RUBI0, MANUEL URANDAY, ROSIE URAN-DAY, JOHNNY URANDAY, HECTOR BACA ZAMORA, JESUS HERNANDEZ and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner-Charging Parties.	Case Nos. 80-CE-150-D 80-CE-151-D 80-CE-183-D 81-CE-40-D ADMINISTRATIVE LAW OFFICER'S DECISION

Kenwood C. Youmans, Esq., Seyfarth, Shaw, Fairweather & Geraldson, of Los Angeles, California, for Employer-Respondent.

Nicholas F. Reyes and Juan Arambula, Agricultural Labor Relations Board, Delano, California, for Petitioners-Charging Parties and General Counsel.

STATEMENT OF THE CASE

ALEX REISMAN, Administrative Law Officer: This case was heard by me on August 25, 26, 27 and 28, 1981 in Delano, California. On September 15, 1980, in Case No. 80-CE-150-D, Ester Castilloi and Rita Rubio and the United Farm Workers of America, AFL-CIO (hereinafter "UFW") filed an unfair labor practice charge against Anton Caratan & Sons hereinafter "respondent" or "employer") alleging that respondent had unlawfully suspended Ester Castillo and Rita Rubio because of their support for the UFW.

Also on September 15, 1980, in Case No. 80-CE-151-D, Manuel Uranday and the UFW filed an unfair labor practice charge against respondent alleging that respondent discriminatorily transferred Manuel Uranday and others to prevent them from talking to co-

workers about the UFW.

On October 8, 1980, in Case No. 80-CE-183-D, Jesus Alfaro Hernandez filed an unfair labor practice charge against respondent alleging that respondent refused to rehire Jesus Alfaro Hernandez and Eloida H. Bermudez due to the known UFW membership of Jesus Alfaro Hernandez.

On April 28, 1981, in Case No. 81-CE-40-D, the UFW filed an unfair labor practice charge against respondent alleging that since April 8, 1981, respondent refused to hire Rita Rubio and Ester Castillo because of their support for the UFW and because of the previous charge filed by the two women against respondent in 1980.

On July 15, 1981, Case Nos. 80-CE-150-D and 80-CE-151-D were consolidated and a complaint was issued alleging that on or about September 15, 1980, respondent 1) through its agents Richard Evetts and Ysidro Ramos, discriminatorily suspended Ester Castillo and Rita Rubio because of their support for the UFW, and 2) through its agents Ysidro Ramos, George Caratan and Anton Caratan, discriminatorily changed the terms and conditions of the employment of Manuel Uranday, Rosie Uranday, Johnny Uranday and Hector Baca Zamora, because of their support of and activities on behalf of the UFW, in violation of Section 1153 (a) and (c) of the Agricultural Labor Relations Act (hereinafter "ALRA"). Respondent filed its answer to this complaint on July 24, 1981., denying all allegations of unfair labor practices.

On July 30, 1981, Case Nos. 80-CE-150-D, 80-CE-151-D, 80-CE-183-D and 81-CE-40-D were consolidated and the above-mentioned complaint was amended to include the following additional allega-

tions of violations of Section 1153 (a) and (c) of the ALRA: 1) that on or about August, 1980, respondent, through its agents Manual Diaz and Williadene Wray, discriminatorily refused to rehire Jesus Hernandez because of his support of and activities on behalf of the UFW, 2) that on or about August, 1980, respondent through its agents Manual Diaz and Williadene Wray, discriminatorily refused to rehire Eloida Hernandez Bermudez, because of Jesus Hernandez' support of and activities on behalf of the UFW, and 3) that on or about April 8, 1981, respondent, through its agents Anton Caratan and George Caratan, refused to rehire Rita Rubio and Ester Castillo because of their support of and activities on behalf of the UFW.

Respondent filed its answer to the amended complaint on August 10, 1981, denying all allegations of unfair labor practices.

On September 11, 1981, following the hearing in this matter, the complaint was further amended to include the following additional allegations: 1) that respondent's refusal to rehire Jesus Hernandez and Eloida Hernandez Bermudez on or about August, 1980, was also based on charges filed and testimony given by Jesus Hernandez before the Agricultural Labor Relations Board (hereinafter "ALRB") in violation of Section 1153(d) of the ALRA, and 2) that respondent's refusal to rehire Rita Rubio and Ester Castillo on or about April 8, 1981 was also based on their previous filing of unfair labor practices charges against respondent with the ALRB, in violation of Section 1153(d) of the ALRA.

All parties were given a full opportunity to participate in the hearing. After the close of the hearing, both respondent and the general counsel filed post-hearing briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the arguments of the parties and the briefs submitted, I find as follows:

FINDINGS OF FACT

I. JURISDICTION

Respondent, Anton Caratan & Sons, is engaged in agriculture in the Delano, California area and was at all times material herein, an agricultural employer within the meaning of Section 1140.4 (c) of the ALRA.

At all times material herein, all of the alleged discriminatees listed in the complaint were agricultural employees within the meaning of Section 1140.4(b) of the ALRA.

The UFW is now, and has been at all times material herein, a labor organization within the meaning of Section 1140.4 (f) of the ALRA.

At all times material herein, the following named persons were supervisors and agents of respondent acting on its behalf within the meaning of Section 1140.4(j) of the ALRA: Ysidro Navarro, George Caratan, Anton Caratan, Richard Evett, Williadene Wray, and Manuel Diaz.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint, as amended, alleges:

A. That on or about September 15, 1980, respondent through its agents, Richard Evett and Ysidro Navarro, discriminatorily suspended Ester Castillo and Rita Rubio from their employment because of their concerted activity and support for the UFW:

B. That on or about September 1, 1980, respondent through

its agents Ysidro Navarro, George Caratan, and Anton Caratan, discriminatorily changed the terms and conditions of the employment of Manuel Uranday, Rosie Uranday, Johnny Uranday and Hector Baca Zamora, because of their support of and activities on behalf of the UFW;

C. That on or about August, 1980, respondent, through its agents Manuel Diaz and Williadene Wray, discriminatorily refused to rehire Jesus Hernandez because of his support of and activities on behalf of the UFW and because he filed charges and gave testimony before the ALRB;

D. That on or about August, 1980, respondent, through its agents Manuel Diaz and Williadene Wray, discriminatorily refused to rehire Eloida Hernandez Bermudez because of Jesus Hernandez' support for and activities on behalf of the UFW and because of his prior lawful resort to ALRB processes; and

E. That on or about April 8, 1981, respondent through its agents Anton Caratan and George Caratan, have refused to rehire Rita Rubio and Ester Castillo because of their support of and activities on behalf of the UFW, and because they filed unfair labor practice charges against respondent with the ALRB.

Respondent denies all of the above-stated allegations.

III. BACKGROUND OF RESPONDENT'S OPERATIONS

At all times relevant hereto, Anton Caratan & Sons was a partnership principally engaged in the growing, harvesting, shipping and selling of table, juice and wine grapes grown on land in the Delano, California area. George Caratan is one of the partners of Anton Caratan & Sons. Anton Caratan, George Caratan's son, was responsible for the harvesting crews in 1980,

and as of August 28, 1981, was the president of the partnership.

Respondent's grape growing operations involve several pre-harvest processes including pruning, tieing, daubing, suckering, girdling, tipping and deleafing. The number of workers respondent employs varies with each process, however, all of these pre-harvest processes require the employment of only a portion of the peak harvest workforce.

During the harvest, which generally lasts from early August to November, respondent generally hires three crews of approximately 100 workers each. These crews are divided into numerous work groups, each composed on three of four people responsible for the picking, packing and cleaning of the grapes. Each work group has one packing stand. Harvest workers are paid an hourly wage and each work group is paid a certain amount of money for each box of grapes, known as an incentive, which is evenly divided amongst the work group members.

At the time of the hearing in this case, and at all times relevant hereto, respondent's employees were not represented by any union. At the start of the 1980 harvest, the UFW filed a Notice of Intent to Take Access with respect to respondent. A union drive followed which included the gathering of signatures on union authorization cards. However, the effort to obtain signatures on union cards ended at the end of September, 1980.

IV. RESPONDENT'S HIRING AND SENIORITY POLICIES.

Before beginning work or prior to re-employment, all employees, both old and new, are required by respondent to fill out employment applications. Since 1980 employment applications are available only at respondent's office, although prior to 1980,

crew foremen and supervisors could also give out applications to be filled out by the workers and returned to the office. In addition, starting in 1981, each employee is required by respondent to read the employee handbook and be aware of its contents before filling out an application for employment.

A. Seniority

Respondent's policy is to re-hire employees for pre-harvest operations in the order of their seniority. The seniority of each worker employed by respondent is based on the number of hours worked in the previous year, plus the number of hours worked during the present year.

This seniority-based hiring is done as a matter of course by respondent's office staff prior to each new operation. Workers either contact respondent to see if there is work, or the office staff notifies them of available work.

B. New Employees

After all employees with seniority have been called back, respondent then begins to hire new employees and past employees who have lost their seniority. (An employee who was previously fired, who quit or left work without an explanation would lose his or her seniority and be considered for re-employment purposes as if he or she were a new employee.) These employees are hired according to the date on which they applied for work, on a first come, first served basis.

Prior to 1981, Williadene Wray, respondent's office manager, was in charge of hiring and Anton Caratan was only consulted when Mrs. Wray had a question. As of 1981, Anton Caratan took over responsibility for hiring decisions.

V. EMPLOYMENT HISTORIES OF MANUEL URANDAY, JOHNNY URANDAY, ROSIE URANDAY AND HECTQR BACA ZAMORA

Manuel Uranday began his affiliation with the UFW in 1965. From that

year until 1976, Mr. Uranday worked for the UFW in strikes, boycott activities, as a picket captain, organizer, contract administrator in the Delano area, and also as Cesar Chavez' personal bodyguard.

M. Uranday began working for spondent in 1976 and was still in respondent's employ at the time of the hearing herein. Between 1976 and the time of the hearing in the instant matter, he worked in each operation at Anton Caratan & Sons except pruning. During the harvest, he has worked primarily as a packer of table grapes. Until the year 1980, Manuel Uranday never attempted to organize on behalf of the UFW at Anton Caraton & Sons.

In the harvest of 1979 and that of 1980, Manuel Uranday worked for respondent in crew #2. The foreman of this crew both -years was Ysidro Navarro. On April 16, 1980, Manuel Uranday and the UFW filed an unfair labor practice charge, Case No. 80-CE-52-D, against respondent with the ALRB. There is no evidence in the record regarding the substance or outcome of this charge. On August 18, 1980, the UFW filed a Notice of Intent to Take Access to the employees of respondent, with the ALRB. This was at the start of the grape harvest at Anton Caratan & Sons, and Manuel Uranday was picking Thompson grapes with crew #2, which had 90 to 100 workers.

Following the filing of the above-mentioned Notice of Intent to Take Access, a drive began to organize respondent's employees into the UFW. Manuel Uranday was in charge of this organizing

drive. He began talking to the workers about the UFW during breaks and at lunch time, held meetings with the workers at the central UFW officer and, at the beginning of September, 1980, began gathering signatures from co-workers on union authorization cards. This union drive ended in late September, 1980.

Although Manuel Uranday testified that his brother Johnny Uranday helped him in this union drive, Johnny Uranday also testified at the hearing herein, and he made no mention of any union involvement on his part. This failure to corroborate on Johnny Uranday's part throws doubt onto this portion of Manuel Uranday's testimony.

There is no evidence in the record that either Rosie Uranday or Hector Baca Zamore was involved in the union drive on behalf of the UFW.

On September 4, 1980, Manuel Uranday, Johnny Uranday, Johnny's wife Rosie Uranday, Hector Baca Zamora and some Filipino workers were moved from their regular crew, crew #2, and assigned by Anton Caratan to pick and pack muscatel or Italia grapes at Parks Ranch. Only two work groups of three or four people each were assigned to the Italias. Thesetwo work groups continued to work in the Italias until October 6, 1980, at which time they rejoined the others in crew #2.

At the hearing in this matter, Manuel Uranday testified that Anton Caratan moved these two work groups to the Italias and kept them there through the second picking of Italias, in response to union activity during the first weeks of the 1980 harvest. According to Manuel Uranday, A. Caratan moved the crews because, while in the Italias, they would be isolated from their regular crew

which would make union organizing more difficult, and they would make less money than those picking Thompson grapes.

A. Caratan, the man who made the decision to assign these two crews to the Italias, testified that he was not aware of any union activity on Manuel Uranday's part during the 1980 harvest, nor did he draw any connection between M. Uranday and the UFW. A. Caratan stated that he chose the Urandays to pick Italias because he assumed they rode together and lived in the same place, and because their regular crew, crew #2, was picking near the Italias. He also testified that there was no way of knowing whethei those picking Italias would make more or less money than those picking Thompsons. (It is uncontradicted that respondent paid $4.15 per hour and a $.28 per box incentive during the 1980 harvest for both Thompsons and Italias.)

There is significant evidence in the record which, in addition to his demeanor as a witness, compels me to discredit Anton Caratan's testimony. When questioned at the hearing herein regarding respondent's position on a union at Anton Caratan & Sons, A. Caratan stated that the company had no position one way or the other; that it was strictly up to the workforce and the company was neutral on the issue. He stated that he told that to the workers in the harvest of 1980.

General Counsel's Exhibits #14-17 demonstrate the falsity of A. Caratan's testimony. Each of these four exhibits is a paycheck stub issued by respondent in September of 1980. At the bottom of each stub is printed in capital letters the following "IF YOU DON'T WANT A UNION DON'T SIGN AUTHORIZATION CARD NO DUES"

Based on these exhibits, the conclusion is inescapable that

respondent was using its paychecks as a means of advertising and advocating against unionization of its workforce. In the face of this evidence, A. Caratan's assertion of respondent's neutrality on the issue of unionization can only be seen as self-serving, and a deliberate deception on an issue crucial to this case.

In addition, I find that the reasons given by A. Caratan for selecting the Urandays, et.al. to pick Italias (that they lived and drove to work together) is unsupported by the evidence in the record. The record demonstrates that Rosie and Johnny Uranday were the only members of the two groups who lived and drove to work together. The record also demonstrates that respondent stressed the importance of having current information in its files about the addresses and telephone numbers of their employees. This information would certainly have been readily available to A. Caratan. I find that the falsity and deceptiveness of A. Caratan's testimony in this regard provides a further reason to discredit his testimony at the hearing herein.

However, the discrediting of A. Caratan's testimony alone does not necessarily resolve all crucial factual issues in this case in Manuel Uranday's favor. The evidence in the record raises significant problems in M. Uranday's assertions.

A. Respondent's knowledge of M. Uranday's union activities

Initially, M. Uranday asserts that the two groups were moved to the Italias in response to his union activity. However, M. Uranday could only point to the following incident to support the allegation that respondent was aware of his union activities prior to the move to the Italias:

Manuel Uranday testified that a few days after he began picking

Thompson grapes, he was speaking to some of the workers in crew #3 who were helping him obtain signatures on the union cards. M. Uranday tated that he had twenty to twenty-five cards sticking out of his shirt pocket and he gave these cards to the men.

According to M. Uranday, during this exchange with the crew #3 workers, A.Caratan was twenty-five to thirty feet away, across the street leaning on his pickup truck. M. Uranday stated that A. Caratan was trying to look busy, but he seemed like he was not doing anything but listening. However, M. Uranday also testified that there was alot of noise in the area, and that A. Caratan did not look at the workers, who were talking in normal coversational tones.

The only other evidence in the record regarding respondent's knowledge of M. Uranday's union activity prior to moving the Uranday's et.al. to the Italias is as follows: Rita Rubio testified that Ysidro Navarro, the crew #2 foreman would come close by and act like he was checking the boxes when Manuel Uranday came to talk to her about the union drive.

Neither of these incidents establishes knowledge on respondent's part of M. Uranday's union activities prior to the move to the Italias. From M. Uranday's testimony, one can only speculate about A. Caratan's ability to hear the conversation between the crew #3 workers and M. Uranday, and M. Uranday himself testified that A. Caratan did not look at them. Further, Ms. Rubio's testimony is at best speculative, and any inference of surveillance on the part of Ysidro Navarro is rebutted by the fact that Ms. Rubio does not speak English and spoke to M. Uranday in

in Spanish. Mr. Navarro testified that he does not speak of understand Spanish, and his testimony in this regard is unimpeached.

The only other alleged incidents of surveillance of M. Uranday's union activities by respondent's supervisors occurred during the time the Uranday's et.al. were picking Italias.

M. Uranday testified that on September 12, 1980, on a break, he was going over to crew#6, the nearest crew to him, to try to get the workers to sign union cards. He stated that George Caratan blocked his path and asked where he was going. According to M. Uranday, G. Caratan looked angry. M. Uranday replied that it was break time and he was going to visit a friend. G. Caratan said "oh", stepped aside, and asked M. Uranday where his friend was, but the friend had already gone back to work.

G. Caratan testified that at the time of the above-described incident, he was checking on the work of crew #6 and was merely commenting to M. Uranday because it did not seem right that M. Uranday was away from his crew. G. Caratan denied asking M. Uranday where his friend was.

M. Uranday also testified that during lunch break on September 15, 1980, after the two work groups had been assigned to the second picking of Italias, he was talking to workers in crew #2 about union authorization cards and distributing cards to the irrigators. At this time, Ysidro Navarro was nearby and G. Caratan was standing approximately 150 feet away looking at M. Uranday and the workers.

All of respondent's supervisors who testified denied any knowledge of Mr. Uranday's union activities.

B. Effect on the working conditions of the Uranday's, et.al. of the move to the Italias

M. Uranday, Johnny Urandy, Rosie Uranday and Hector Baca Zainora all testified that they had never picked Italias for table grapes prior to the 1980 harvest. It is noteworthy that respondent's business records show that all four of these workers picked Italias for table grapes on September 13 and 14, 1979, and Manuel Uranday also picked Italias on September 15, 1979. While this discrepency is not necessarily fatal to the Uranday's implied claim that it was not a normal practice for respondent to assign them to the Italias for an extended period of time, there no evidence in the record regarding who, if anyone, was normally assigned to pick the Italias, Nor is there any evidence regarding the basis on which workers would be chosen for this particular task.

Since the fact that the Uranday's work groups were assigned to the Italias is not, in and of itself, of any probative value, it is necessary to examine whether the record demonstrates that the actual working conditions in the Italias support M. Uranday's claim that they were sent there because they would be isolated and make less money.

1. Locations of the crews

Manuel Uranday testified that the distance between him and crew #2 during the time he picked Italias ranged from a mile or two for the first couple of weeks, to a half mile at the time of the second picking of the Italias. He stated that this made it more difficult to talk to other workers and organize for the union. He also stated that crew #6, a special crew with fewer

workers than crew #2, was the closest crew to his packing table while he worked in the Italias. This was the only testimony elicited by the General Counsel in this regard.

Richard Evett, a supervisor for crew #2 testified that during the time Manuel Uranday was assigned to the Italias, crew #2 was always one quarter mile away from the location of his packing table. A. Caratan also testified that crew #2 was picking a Thompsons near the Italias for the duration of the time the Uranday's, et. al. worked there.

A review of the block assignments for crew #2 and the Uranday 's work groups from September 4 to October 6, 1980 (Respondent's exhibits #3 and #6) seem to indicate that the truth lies somewhere in between M. Uranday's testimony and that of respondent's witnesses. On September 4 through 14, 1980, the Uranday's packing tables were located in block On September 4, 1980, crew #2 was in block 14 picking Thompson grapes, and from September 8 through 14, crew #2 was located in blocks 25 and 26. On September 14, 1980, the Uranday's tables were moved to block 23and remainedthere each working day through October 6, 1980. Crew f2 worked in blocks 23 and 24 from September 16 through September 23, 1980. Between September 25 and October 6, 1980, crew #2 worked in blocks 5, 16, 19, 22, 24, 32 and 41. During this last period of time, additional members of crew #2 were also assigned to pick Italias in block 23.

what the above-stated data seems to indicate is that for approximately the first week and one half the Uranday's tables were moved to the Italias, they were not working next to crew #2. From September 16, 1980 until October 6, 1980 (the last day

the Uranday's et. al. picked Italias), all or part of crew #2 appear to have been working close by the Italias.

However, it is important to note that, although documents marked Respondent's Exhibits #3 and #6 were available to the parties herein at the time of the hearing, neither the general counsel nor respondent elicited testimony regarding the size of the various blocks and/or their spacial relationships to one another. Nor were any documents introduced regarding the relevant locations of crew #6.

2. Wages

There are two factual issues presented regarding the comparative wages earned by the workers in crew 12 and those earned by the Uranday's et. al. while picking Italias: 1) whether, as M. Uranday claims, those who remained in crew #2 did, in fact, make more money; and, if so 2) whether it was foreseeable to respondent that this would be the case.

In attempting to answer the first inquiry stated above, I computed the total wages earned for weeks 36 through 41(which encompass all the days the Uranday's et.al. picked Italias in 1980) by the 69 workers in crew #2 who worked during each of those weeks. (See the attached wage table); The computations are based on the figures provided in the documents labelled Respondent' Exhibit #5. (It should be noted that the figures in these-documents do not reflect the particular days and hours worked by each employee, however such calculations would be extremely time consuming and the figures in Respondent's Exhibit #5 adequately provide a general picture of overall crew #2 earnings for the relevant time period.)

For weeks 36 through 41 of 1980, the total wages of six crew #2 workers who worked in the Italias are as follows:

1) Johnny Uranday $1,203.23
2) Hector Baca Zamora $1,183.98
3) Rosie Uranday $1,142.86
4) Manual Uranday $1,281.52
5) Geronimo Aure $1,343.87
6) Delphin Balabis $1,291.62

According to ray calculations, eighteen of those considered earned wages within the same range as the six workers cited above, two workers earned wages below this range, and 43 earned wages above this range.

Although the above-stated figures demonstrate that those who worked in the Italias earned wages on the lower end of the crew $2 spectrum, the fact that twenty other workers in crew *2 earned lower or comparable salaries render them inconclusive. As to the foreseeability of lower yield and therefore lower pay from the first and second pick of the Italias as compared to Thompsons, Richard Evett, Ysidro Navarro and Anton Caratan all testified that this would be impossible to predict prior to the actual harvest. This assertion is unimpeached in the record, although Manuel Uranday did testify that the Italia grapes were in bad condition.

VI. EMPLOYMENT HISTORIES OF RITA RUBIO AND ESTER CASTILLO

Rita Rubio began working for respondent in 1977. Her sister, Ester Castillo, began working for respondent in 1975. In 1980, they both worked in crew #2 at the same packing table or work group. Ysidro Navarro was their foreman.

During the harvest each work group of three or four people is generally assigned at least one man to transport the grapes from the field to the packing table. A man is designated to do this job because the wheel barrow carrying the grapes is heavy.

Rita Rubio testified that she and Ester Castillo were both involved in the 1980 union drive in favor of the UFW. The only evidence in the record regarding any knowledge on respondent's part of this union involvement is Ms. Rubio's testimony that Ysidro Navarro came close by when she talked to M. Uranday about the union drive. However, as stated above in Section V, supra at pp. 12 and 13, this evidence is speculative and is also weakened by the fact that the conversations Ms. Rubio had with Manuel Uranday were in Spanish, a language Mr. Navarro did not speak or understand.

A. September 15, 1980 suspension

On September 15, 1980, Rita Rubio and Ester Castillo were suspended from work for three days by Ysidro Navarro. There is significant conflict in the record concerning the circumstances preceding and directly precipitating this suspension.

At the hearing herein, Rita Rubio testified that after M. Uranday was taken away from crew #2, respondent's supervisors took the man away from her work group. She stated that the cart for carrying the grapes was too heavy for her and her sister, who was pregnant, and they would lag behind. She stated that on several days, perhaps as many as ten, they had no man working with them. She also testified that they never had problems with or complained about the men who did work with them.

Ms. Rubio testified that she complained to Ben Pulgencio,

the assistant foreman almost daily, asking him to assign a man to them, but Ben Fulgencio said that Ysidro was the boss, not him. Ms. Rubio stated that she then told him that if there was a union, the company would not do this.

On September 14, 1980, a Sunday, Ms. Rubio and Ms. Castillo worked at respondent's request. Ms. Rubio testified that on this day, respondent assigned two men to their table but assigned Ms. Rubio to work elsewhere. On September 15, 1980, Ms. Castillo and Ms. Rubio came to work at 7:00 a.m.. According to Ms. Rubio's testimony, at this time Ysidro Navarro took the men away from their group. Ms. Rubio testified that she asked Ysidro why he was doing this and he said "I'm the boss here." She then told Ysidro that if there was a union this would not be. During this conversation, Ester Castillo acted as interpreter between her sister and Ysidro Navarro. Ms. Rubio testified that Ysidro just left without saying anything to them; that he did not tell them to go back to work or that he would get them a man. She and Ms. Castillo then went to the office to talk to Mrs. Wray.

At the office, the two women had a conversation with Richard Evett, their crew supervisor. This conversation took place through an interpreter named Joe, respondent's gardener. The gist of this conversation was that the women explained to Mr. Evett their problem of having no man in their group and he told them that since Ysidro Navarro had suspended them for three days. they should leave.

The above-summarized testimony of Ms. Rubio is significantly impeached by her own declaration which is dated September 15, 1980 (Respondent's Exhibit #1). It reads as follows:

> "I, Esther Castillo 466-82-5523 and I, Rita Rubio, declare that we reside at 618 Clinton St. in Delano, Calif. On Monday September 15, 1980 at about 7:10 the foreman at A. Caratan, Isidro laid us off for three days. We are working together and we have no men to help us so he puts men in our crew and then takes them away. He has done this about five times already. He puts filipino men to work with us and then puts them in other crews. We want someone to be put there and that will stay there or to work by ourselves. We asked him why didn't he just leave us by ourselves. And he said we couldn't work by ourselves moving the cart. Sunday we had to work and a lot •' of people didn't show up so he took my sister from picking in my crew and put her to pack for some men. Today I asked him if he was going to put a man to work with us and he yelled at me to going to work, go to my table, that he was the foreman there. He would put a man to work with us and *I* asked him when and then he told us he was going to give us a paper. Then I told him that I was going to the office. At the office Richard, the supervisor told us that Isidro had told him that we were laid off for three days. And that he was going to talk to George and would call us. We feel that we are being harrassed and intimidated because they see us talking to someone that they suspect is organizing for the Union. And so they think we are supporters of the union."

Ms. Rubio is further impeached by the business records contained in Respondent's Exhibits £3 and 6. These records indicate that on each day Ms. Rubio and Ms. Castillo worked between August 28, 1980 and September 15, 1980, a man was working in their group the entire day except for September 9, 1980, when they were without a man for three and one half hours. This evidence corroborates the testimony of Richard Evett and Ysidro Navarro in this regard.

Because of the inconsistencies between Ms. Rubio's testimony and her declaration of September 15, 1980, because her testimony is impeached by business records received into evidence at the hearing herein, and because of her demeanor as a witness, I

discredit her testimony regarding the September 15, 1980 suspension.

Ysidro Navarro, the foreman of crew #2, testified that prior to September 15, 1980, Ms. Rubio and Ms. Castillo never had to work without a man. He stated that shortly after 7:00 a.m. on September 15, 1980, Ben Fulgencio, the assistant foreman told him that the two women were complaining because they had no man in their group. Ysidro Navarro testified that he told the women to start picking and he would find a man for them. He stated that when the man in a group was absent, he would find a group with two men and switch one to the group without a man.

According to Ysidro Navarro, the women ignored his order to begin work and walked away. He testified that he told them they were suspended for three days and they then went to the office.

I credit the above-summarized testimony of Mr. Navarro because of his demeanor as a witness, and because it is corroborated in part by other credible evidence and contradicted only by the discredited testimony of Rita Rubio.

B. November 6, 1980 leave of absence

Following the three day suspension, Ms. Rubio and Ms. Castillo returned to work and continued in the harvest without apparent incident until November 6, 1980. On that date they obtained a two week leave of absence to go visit their ailing mother in Mexico.

Lupe Esparza was an office worker for respondent from May 15, 1980 through June 19, 1981. She testified credibly at the hearing herein that when Ester Castillo came to the office on November 6, 1980 to request the leave for herself and Ms. Rubio,

she followed Mrs. Wray's instructions by giving them two weeks leave and telling them that if they were not back within two weeks, they would be put down as a quit and lose their seniority. This testimony was corroborated by the testimony of Mrs. Wray, and stands unimpeached.

Rita Rubio testified that she returned from Mexico a few days after November 20, 1980. She never requested an extension of her leave. Upon returning, she heard from members of her crew that the harvest was finished. Mrs. Wray testified that the harvest ended on November 25 and 26, 1980.

The next contact Rita Rubio had with respondent was when she picked up her last check on December 9, 1980. Lupe Esparza told her that she had lost her seniority when she failed to return within the allotted two weeks leave of absence. This decision to treat Ms. Rubio and Ms. Castillo as quits was made by Mrs. Wray. Because they had lost their seniority, and because not many women were hired for the next operation, daubing (painting the cuts on the vine), Lupe Esparza did not give Ms. Rubio and Ms. Castillo applications for work at this time, but told them to come back for the tipping in April.

On March 25, 1981, Ms. Castillo and Ms. Rubio filled out applications for tipping with respondent. (See General Counsel's Exhibit #11). Mrs. Wray testified credibly that no non-seniority workers were hired for this operation and therefore their applications were not considered and they were not called back to work for the 1981 tipping season.

In July 1981, Ms. Rubio and Ms. Castillo filled out new applications for work in the harvest with respondent. A. Caratan

testified that he reviewed these applications in late July, 1981, prior to the commencement of the harvest, and decided not to hire them even though new employees were being hired at that time. He stated that he did not consult with anyone in making this decision. According to A. Caratan, his decision not to hire Rita Rubio and Ester Castillo was based on the fact that they had been suspended for insubordination on September 15, 1980, and the fact that they had quit by going to Mexico and never calling to say they would not be back on time.

VII. EMPLOYMENT HISTORIES OF JESUS ALFARQ HERNANDEZ AND ELOIDA BERMUDEZ HERNANDEZ

Jesus Alfaro Hernandez was employed by respondent as a girdler from late May, 1980 through June 12, 1980. His wife, Eloida Bermudez Hernandez, was employed by respondent from June 3, 1980 through June 12, 1980.

According to Jesus Hernandez, prior to his employment with respondent he had been fired from his job with Jack Radovich because he had testified against his employer and was involved in union matters. There is evidence in the record that Jesus Hernandez had been subpoenaed to testify before the ALRB in Delano, California on July 13, 1979 (see General Counsel's Exhibit #12). However, Jesus Hernandez' assertion that he was fired as a result of testimony given is uncorroborated.

There is absolutely no evidence in the record regarding the circumstances of Eloida Bermudez Hernandez' employment.

There is, however, significant conflicting evidence regarding the circumstances of Jesus Hernandez' employment with respondent. In this regard, I discredit the testimony Of Jesus Hernandez

because of his demeanor as a witness, and because his testimony is directly contradicted by credible testimony of other witnesses.

Jesus Hernandez testified that the decision to hire him was made by Manuel Diaz, Hernandez' supervisor during his employment with respondent. Both Diaz and Mrs. Wray testified credibly that at the time Hernandez was hired, Diaz had no authority to make hiring decisions and that these decisions were made by the office staff, in particular, Mrs. Wray. Hernander also testified that on the day he was laid off, Diaz told him that he (Diaz) would call Hernandez and his wife back to work for the harvest, although the record supports Diaz' assertion that he had no authority to make such a promise and in fact did not do so. Mr. Hernandez also testified that when he came back to seek employment during the 1980 harvest, the office workers told him to talk to Diaz. Again, this testimony is contradicted by credible testimony regarding respondent's delegation of authority to make hiring decisions.

I credit the testimony of Manuel Diaz cited immediately below because of his demeanor as a witness and because it is contradicted in part only by the discredited testimony of Jesus Hernandez.

Manuel Diaz testified that Jesus Hernandez started working as a girdler in June or late May of 1980. When Hernandez first came to respondent's ranch, Diaz helped him fill out the application form, but Hernandez' employment had to be approved by Mrs. Wray before he could begin work. Diaz noticed from Hernandez' application that he lived in Porterville, and Diaz asked Hernandez why he wanted to work so far from home. According to Diaz,

Hernandez replied that he wanted to move his family to the area of respondent's ranch. Contrary to Hernandez' testimony, Diaz testified that Hernandez never told him that he had been fired from his previous employment at the Radovich Ranch or that he had testified in court against Radovich. Diaz also denied telling Hernandez that there were many rebellious employees at the Radovich Ranch. Diaz denied any knowledge of the labor situation at the Radovich Ranch.

Diaz testified that for the first few days Hernandez worked under him, he had no problems with Hernandez. Then, after Hernandez got friendly with the people in his crew, he began telling people he was a Jehovah's Witness and disrupting work by talking about religion with Diaz and the other workers during working hours. Diaz would tell Hernandez to do his work and keep his thoughts to himself. During the entire time Hernandez worked for respondent, he was a probationary employee, according to the thirty day probation policy followed by respondent,

Following Hernandez' June 12, 1980 layoff, Diaz spoke to Mrs. Wray about Hernandez. He told her that Hernandez talked about religion and disrupted the workers, and that he (Diaz) did not want Hernandez in his crew. When Hernandez spoke to Diaz about being rehired for the harvest, Diaz told him to check with the office and that he would be called when he was needed.

Diaz did not tell Hernandez about his talk with Mrs. Wray. According to Diaz, this was the last time he saw Hernandez. Diaz denied ever telling Hernandez that the supervisor could no longer hire because of rumors of a union drive or that respondent was only going to hire large families who would not make trouble.

Again, Diaz' testimony in this regard is supported by the credible testimony of Mrs. Wray that Diaz had no authority to hire and that she knew of no hiring policy favoring large families. Lupe Esparza also testified that she knew of no policy to hire only large families.

Diaz testified that he did not know whether Hernandez had filled out an application following his layoff or whether he was ever rehired by respondent.

Williadene Wray testified that Jesus Hernandez had been working for respondent for one and one half to two weeks when she received a call from Chris White, a former supervisor for respondent who was then working at the Radovich Ranch. White told Mrs. Wray that Hernandez was a trouble maker and had given him lots of U problems during his employment at Radovich. Mrs. Wray did not ask what kind of trouble White had had with Hernandez, but merely thanked White for the information. She testified that she assumed White had had trouble with Hernandez in the fields. At 13 this point Mrs. Wray had not heard any other reports about Hernandez.

Mrs. Wray testified that at harvest time in 1980, she talked to Manuel Diaz about Hernandez. Diaz told her that Hernandez was a Jehovah's Witness who disrupted work by talking about religion and the he (Diaz) did not want Hernandez in his crew.

According to Mrs. Wray, Hernandez did make an application for work in the 1980 harvest. Mrs. Wray testified that she decided not to rehire him because he preached religion on the job and because he was still a probationary employee.

Mrs. Wray testified credibly that she could not find an

application form for Eloida Bermudez Hernandez for the 1980 harvest, although Jesus Hernandez testified that his wife had filled out an application on July 25, 1980. Mrs. Wray stated that to her knowledge, Eloida Bermudez Hernandez never applied for work after the June, 1980 layoff, and that had she applied for work, Mrs. Wray would have been involved in deciding whether she was eligible for work. Eloida Hernandez Bermudez did not testify at the hearing in this matter.

ANALYSIS AND CONCLUSIONS

I.

APPLICABLE PROVISIONS OF THE ALRA AND GENERAL LEGAL PRINCIPLES

Section 1152 of the ALRA states:

> "Employees shall have the right to self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of col lective bargaining or other mutual aid or protection."

Section 1153 of the ALRA states in pertinent part:

> "It shall be an unfair labor practice for an agricultural employer to to any of the following: (a) To interfere with, restrain or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152 . . . (c) By 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 . . . (d) To discharge or otherwise discriminate against an agricul tural employee because he has filed charges or given testimony under this part."

Section 1160.3 of the ALRA states that the General Counsel has the burden of proving by a preponderance of the evidence that

an unfair labor practice, as defined by Section 1153, has been committed.

In order to establish a prima facie case of discriminatory discharge or discrimination with respect to hire, tenure or working conditions in violation of Section 1153 (a), (c) and (d), the general counsel must show by a preponderance of the evidence that the employee was engaged in protected activity, that the employer had knowledge of such activity, and that there was some connection or causal relationship between the protected activity and the discharge or other discrimination. Verde Produce Company, 7 ALRB No.27 (1981); Lawrence Scarrone, 7 ALRB No.13 (1981); Jackson & Perkins Rose Co., 5 ALRB No.20 (1979); Bacchus Farms, 4 ALRB No.26 (1978).

In order to prove a Section 1153(c) violation, the general counsel must establish three elements for a prima facie case: (1) anti-union animus, (2) knowledge of an employee's union or concerted activities, and (3) discriminatory motivation to discourage union activity. Del Mar Mushrooms, Inc. 7 ALRB No.41 (1981).

When it appears that an employee was dismissed or otherwise discriminated against because of combined valid business reasons and union or other protected activity, the question becomes whether the discharge or other discrimination would not have occurred "but for" the union or other protected activity. Martori Brothers Distributers v. ALRB (1981) 29 Cal.3d 721; Wright Line, Inc., 251 NLRB No. 150 (1980).

Section 1148 of the ALRA states that the ALRB shall follow applicable precedents of the National Labor Relations Board

(hereinafter "NLRB").

II.

THE GENERAL COUNSEL FAILED TO SUSTAIN ITS URDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT VIOLATED SECTION 1153(a) AND (c) OF THE ALRA BY DISCRIMINATOR-ILY CHANGING THE TERMS AND CONDITIONS OF THE EMPLOYMENT OF MANUEL URANDAY, JOHNNY URANDAY, ROSIE URANDAY AND HECTOR BACA ZAMORA.

At the outset it is important to note that there is no evidence in the record that Rosie Uranday or Hector Baca Zamora engaged in any union or other protected activity at any time material hereto.

Manuel Uranday did testify that his brother, Johnny Uranday, helped him with the union drive, however, he did not describe the nature or extent of his brother's involvement, and the general counsel failed to elicit any testimony from Johnny Uranday about his own union involvement. Johnny Uranday's failure to corroborate his brother's testimony and to testify about his own alleged protected activity throws considerable doubt on this portion of Manuel Uranday's testimony (California Evidence Code Section 412), and causes me to conclude that the general counsel has not met its burden of proving that Johnny Uranday engaged in any union or other protected activity at any time material hereto. Thus, if respondent committed' any violations of Section 1153; regarding Johnny and Rosie Uranday and Hector Baca Zamora, it could only have done so in response to the union activity of Manuel Uranday. (See McConally Enterprises, Inc., 3 ALRB No. 82 (1977), the discharge of a husband due to the union activities of his wife is a violation of Section 1153(a) because such an action would tend to have an intimidating effect on other employees.)

The only relevant evidence of any protected activity on M. Uranday's part concerns his participation in the 1980 harvest union drive at Anton Caratan & Sons. Both the 1153 (c) and (a) allegations herein are based on this union activity (§1153(c)), which is a form of protected concerted activity (§1153(a)). Therefore, in order to determine whether the general counsel has established a prima facie case, anti-union animus, respondent's knowledge of union activities and discriminatory motive to discourage such activity must be proved by a preponderance of the

evidence. Del Mar Mushrooms, Inc., supra.

A. RESPONDENT'S ANTI-UNION ANIMUS

Respondent's position regarding the UFW, or any union, is made clear by general counsel's Exhibits #14-17, four check stubs issued by respondent to its employees in September of 1980. At the bottom of each of these check stubs in all sapital letters is printed "IF YOU DON't WANT A UNION DON'T SIGN AUTHORIZATION CARD NO DUES".

Clearly, respondent was expressing to its employees its own position against the union at a time soon after the UFW filed a Notice of Intent to Take Access and encouraging its employees not to bring a union in at A. Caratan & Sons. Therefore, I find that the general counsel has met its burden of proving respondent's anti-union animus by a preponderance of the evidence.

B. RESPONDENT'S KNOWLEDGE OF M. URANDAY'S UNION ACTIVITIES

It is undisputed in the record that M. Uranday did engage in union activity at A. Caratan & Sons during the 1980 harvest. This included talking to co-workers about the union at breaks, holding meetings at the UFW office and distributing union author-

ization cards. However, respondent's witnesses denied any knowledge of this union activity on M. Uranday's part and there is little evidence in the record to substantiate the general counsel's claim that respondent was aware of these activities.

M. Uranday testified that a few days after he began picking Thompson grapes, A. Caratan was standing 25 to 30 feet away while M. Urandy talked to some workers in crew #3 and gave them union authorization cards. However, M. Uranday testified that it was noisy and that A. Caratan was not watching them.

Rita Rubio testified that Ysidro Navarro came close by when she was discussing the union drive with M. Uranday. However, she also testified that this conversation was in Spanish, a language Mr. Navarro does not understand.

The above-stated incidents are the only evidence of respondent's knowledge of M. Uranday's union activities prior to September 4, 1980, the date that the Uranday's et.al. were moved to the Italias. Neither incident establishes by a preponderance of the evidence the requisite knowledge on respondent's part.

M. Uranday also testified that on September 12, 1980, George Caratan stopped him and asked him where he was going. When M. Uranday replied that it was break time and he was going to visit a friend, G. Caratan asked him where the friend was. G. Caratan testified that it was not unusual for him to comment to a worker who was away from his crew. The testimony regarding this incident is, in and of itself, inconclusive.

The only other testimony regarding respondent's knowledge of M. Uranday's union activities was in regards to an incident which m occurred after the Uranday's et. al. were assigned to the

second picking of Italias. M. Uranday testified that on September 15, 1980 while he was distributing union authorization cards, Ysidro Navarro was nearby and G. Caratan was watching from approximately 150 feet away. However, any inference of knowledge of union activity on respondent's part which might be drawn from this incident is of little relevance since it occurred after respondent made its decision to assign the Uranday's to the second picking of Italias.

The above-summarized incidents fail to establish the requisite employer knowledge of M. Uranday's union activities. Although employer knowledge of union activity must often be inferred from circumstantial evidence (see Kitayama Bros. Nursery, 4 ALRB No.85 (1978); Kuramura, Inc., 3 ALRB No.49 (1977)), the circumstances in evidence herein do not warrant such an inference. Respondent's operation is a large one, employing approximately 300 people during the 1980 harvest. There is no evidence regarding the intensity or frequency of M. Uranday's organizing efforts or the magnitude of the union drive. There is also no evidence in the record from which to conclude that the anti-union phrase on respondent's paychecks was a response to the 1980 union drive. Thus, it is impossible to draw an inference from the evidence that respondent would more than likely be aware of M. Uranday's union activity.

In addition, although respondent's anti-union animus has been established, "evidence of animus is not an adequate substitute for independent evidence from which a finding, or an inference of knowledge may be drawn." Anton Caratan & Sons 4 ALRB No. 103 (1978).

Therefore I conclude that the general counsel has not proven be a preponderance of the evidence that respondent was aware of M. Uranday's union activities at the time he was assigned to pick Italias.

C. RESPONDENT'S DISCRIMINATORY MOTIVE TO DISCOURAGE UNION ACTIVITY

The above-stated conclusion that respondent's knowledge of M.Uranday's Union activity is not established by a preponderance of the evidence herein 'Ls- fatal to the general counsel's prima facie case. However, even if such knowledge were established, the record presents significant questions regarding whether respondent's assignment of the Uranday's et. al. to pick Italias was discriminatory.

> "At the outset we note that an employer has a fundamental right to assign duties and ar range work schedules in accordance with its best judgment. Absent contractual restrictions, the time, place, and manner of employment are employer decisions. Macy's, Missouri-Kansas Div. y. NLRB, 389 F.2d 83'5, 67 LRRM 2563 (8th Cir.1968}. It is not within our province to disturb such employer decisions absent proof that the assignment was intended to inhibit the exercise of §1152 rights or that the adverse effect of the change on employee rights outweighed the employer's business justifications. NLRB. v. Great Dane Trailers, Inc., supra."

Rod McClellan Company, 3 ALRB No. 17 (1977).

The general counsel claims that because M. Uranday was a union organizer, respondent assigned him and his family to 'pick Italias where they would be isolated from their crew and make less money. A.Caratan testified that he decided to assign the Uranday's to the Italias because he assumed they lived and rode to work together and this would help avoid absenteeism. It is uncontradicted that the only people in the Uranday's groups who

lived and rode together were Rosie and Johnny Uranday. It is also uncontradicted that respondent kept current records of their employees' addresses. However, simply finding respondent's explanation implausible does not in itself carry the general counsel's burden of proving that the work assignment was discriminatory. Del Mar Mushrooms, Inc., supra.

The evidence in the record regarding the location of the Uranday's et. al. while picking Italias, in relationship to crew #2 and crew 16 is extremely unclear. M. Uranday testified that he was nearest to crew #6 and, for the first couple of weeks a mile or two, then a half mile from crew #2. Richard Evett and A. Caratan testified that crew #2 was picking near the Italias during the entire time the Uranday's were assigned there. Respondent's records of work group block assignments do not seem to support either claim (see discussion pp. 14-16, supra). What the records indicate (although there is insufficient evidence to conclusively determine the spacial relationships between the various blocks into which respondent's vineyards are divided) is that for the first week and a half that they worked in the Italias, the Uranday's et.al. were not close by crew #2 and for the last approximately three weeks, they were close by all or part of crew #2.

What we are left with in the face of this inconclusive evidence is M. Uranday's uncorrobarated assertion that it was more difficult for him to organize while working in the Italias. (It should be noted that the general counsel failed to elicit any testimony from either Johnny or Rosie Uranday or Hector Baca Zamora regarding the effects and circumstances of the move to the

Italias although all three testified at the hearing herein.) However, the extent and effects of this difficulty remains unknown, and the evidence indicates that M. Uranday did continue with his organizing efforts.

An analysis of the relationship of the wages earned by the Uranday's et.al. while picking Italias to the wages earned by the rest of crew #2 is equally inconclusive. (See discussion, supra, at pp.16-17) Further, Richard Evett, Ysidro Navarro and Anton Caratan's testimony that there was no way to predict how much money workers will make in each crop, was not impeached or contradicted in the record.

While respondent's anti-union animus does raise a suspicion regarding its motivation in moving the Uranday's to the Italias at the time of a union drive, a suspicion alone is insufficient to establish a violation of Section 1153 of the ALRA. Tex-Cal Land Management, Inc., 5 ALRB No.29 (1979); Borin Packing Co., Inc., 208 NLRB 280 (1974).

I conclude that in the instant case, the general counsel failed to prove by a preponderance of the evidence that respondent changed the terms and conditions of the employment of Manuel Uranday and consequently Johnny Uranday, Rosie Uranday and Hector Baca Zamora, in order to discourage union activity. Neither respondent's knowledge of M. Uranday 's union activities nor the fact that the move to the Italias had a discriminatory effect was established by the requisite quantum of proof. Thus, the general counsel has not established a prima facie case of violations of Sections 1153 (a) and (c).

III.

THE GENERAL COUNSEL FAILED TO PROVE BY A PRE PONDERANCE OF THE EVIDENCE THAT RESPONDENT'S THREE DAY SUSPENSION OF AND REFUSAL TO REHIRE RITA RUBIO AND ESTER CASTILLO VIOLATED SECTION 1153 (a)(c) OR (d) OF THE ALRA~

A. Section 1153(c)

As stated above, one element necessary to establishing a prima facie case of a violation of Section 1153 (c) of the ALRA is proof by a preponderance of the evidence that respondent knew of the alleged discriminatees' union activities. Del Mar Mushrooms, Inc., supra. In the instant case, Rita Rubio testified that she and Ester Castillo were UFW supporters and active in the 1980 union drive at Anton Caratan & Sons. However, the only evidence that respondent had any knowledge of this union activity is Ms. Rubio's testimony that Ysidro Navarro was closeby when she and Manuel Uranday talked in Spanish about the union.

I find that this testimony by Ms. Rubio does not establish respondent's knowledge of her and Ms. Castillo's union activities by a preponderance of the evidence because it raises only a weak inference that Mr. Navarro- heard the contents of the conversations, and, even if he did, Mr. Navarro testified credibly that he does not speak or understand Spanish. Additionally, it is important to note that the general counsel failed to elicit testimony from M. Uranday to corroborate this allegation by Ms. Rubio. I therefore find that the general counsel failed to establish any Section 1153'(c) violation in regards to Rita Rubio and Ester Castillo

However, the above finding does not resolve the question of whether respondent suspended and/or failed to rehire Ms. Rubio and Ms. Castillo because they engaged in other protected activity.

The evidence in the record points to two possible instances of such protected activity: 1) protests by Ms. Rubio and Ms. Castillo about the lack of a man in their work group, and 2) the filing of an unfair labor practice charge against respondent on April 28, 1981 (see General Counsel's Exhibit #l(d)). (It should be noted that it is uncontradicted in the record that Ms. Rubio and Ms. Castillo lost their seniority because they failed to return to work following their two week leave of absence, or to contact respondent to request an extension of the leave. It is also uncontradicted that this loss of seniority was in accordance with respondent's normal hiring policies. Additionally, the credible testimony of Lupe Esparza and Williadene Wray establishes that Ms. Rubio and Ms. Castillo were aware that they would lose their seniority if they failed to return to work after two weeks. Thus, respondent's refusal to rehire Ms. Rubio and Ms. Castillo for the 1981 tipping, when no non-seniority employees were hired, cannot be viewed as an unfair labor practice.)

B. Section 1153(a)

A. Caratan testified that one of the two reasons for his decision not to rehire Ms. Rubio and Ms. Castillo for the 1981 harvest was that they had been suspended for insubordination on September 15, 1980. The general counsel contends that this suspension occurred because Ms. Rubio and Ms. Castillo engaged in protected activity when they protested to respondent's management about the lack of a man in their work group. According to the general counsel, this suspension, in and of itself forms the basis of a Section 1153(a) violation and, in addition, the refusal to rehire based on the suspension constitutes another 1153(a)

violation.

Protests about working conditions, including health and safety issues, are considered to be protected activity. Foster Farms Poultry, 6 ALRB No.15 (1980); Golden Valley Farming, 6 ALRB No.8 (1980). In the instant case it is uncontradicted that it was necessary to have a man in each work group to do the heavy work of carting the grapes from the field. While protests about the lack of a man in a work group might well come within the definition of protected concerted activity, the evidence in the record fails to establish that such protests were the cause of the September 15, 1980 suspension of Ms. Rubio and Ms. Castillo.

At the hearing herein, Ms. Rubio testified that on as many as ten occasions between September 4, 1980 (the day M. Uranday was moved from crew #2) and September 15, 1980, she and Ms. Castillo had no man working with them. She testified that on September 15, 1980 Ysidro Navarro again took the men from their work group and when she and Ms. Castillo protested to him and then went to talk to Mrs. Wray at the office, they were suspended' for three days. She testified that Ysidro Navarro never told them he would get them a man and to begin work. She also testified that she never complained or had trouble with the men assigned to work in her group. Ms. Castillo did not testify at the hearing herein, although, according to Ms. Rubio, Ms. Castillo served as the interpreter between herself and Mr. Navarro and Richard Evett on September 15, 1980.

Ms. Rubio's testimony is impeached both by respondent's business records, which indicate that Ms. Rubio and Ms. Castillo always had a man working with them with the exception of three and

one half hours on September 9, 1980, and by her own declaration under penalty of perjury given on September 15, 1980. In this declaration, Ms. Rubio stated that the problem prior to September 15, 1980 was that Ysidro Navarro would change the men in their work group and that she and Ms. Castillo asked him to give them a permanent man or leave them to work alone. According to the declaration, Mr. Navarro told the women that he could not do that because they needed a man to move the cart. Another contradiction presented by the declaration is that, contrary to her hearing testimony, Ms. Rubio stated in the declaration that on September) 15, 1980, Ysidro Navarro had told her and Ms. Castillo that he would get them a man and theyshould begin work.

Due to the above-summarized impeachment, I have discredited MS. Rubio's testimony regarding the events of September 15, 1980. Ysidro Navarro testified credibly that on September 15, 1980, Ms. Rubio and Ms. Castillo complained because they did not have a man in their group. He stated that he told the women to begin picking and he would get them a man. He testified that they ignored his order and walked off the job, and that it was this failure to follow an order that was the cause of the three day suspension.

Such a refusal to follow an order, in the face of Mr. Navarro's promise to remedy the situation by providing a man for Ms. Rubio and Ms. Castillo's work group, cannot be seen as protected concerted activity.

As stated above, in order to establish a prima facie violation of Section 1153(a) of the ALRA, the general counsel must first establish by a preponderance of the evidence that the

employees involved were engaged in protected concerted activity. Jackson & Perkins Rose Company, supra. In the instant case, the general counsel has failed to meet this burden in regards to Ms. Rubio and Ms. Castillo and I therefore find that respondent did not violate Section 1153 (a) of the ALRA by suspending and refusing to rehire these two women for the 1981 harvest.

C. Section 1153(d)

It is uncontradicted in the record that on April 28, 1981, Rita Rubio and Ester Castillo filed an unfair labor practice charge against respondent, and that respondent was served with a copy of said charge. Thus, protected activity and respondent's knowledge thereof has been clearly established. However, in order to establish a prima facie case of a violation of 1153(d) in the instant case, the general counsel also has the burden of proving that there was some causal connection between the failure to rehire Ms. Rubio and Ms. Castillo and the filing of the charge. Bacchus Farms, supra.

Respondent asserts that Ms. Rubio and Ms. Castillo were not rehired after they applied for work in the 1981 harvest because of their poor work record based on their September 15, 1980 suspension and their failure to return on time from their two week leave of absence in November of 1980. There is no evidence in the record that there were any other factors responsible for respondent's decision except for the mere fact that respondent knew an unfair labor practice charge was filed.

Even if one considers the fact that an unfair labor practice charge was filed enough to establish an inference that a causal connection exists between the charge and the failure to rehire,

respondent has put forth Ms. Rubio and Ms. Castillo's poor work record as a legitimate business justification for its decision I not to rehire them. It them becomes the general counsel's burden to prove that these women would have been rehired "but for" the fact that they had engaged in protected activity by filing the unfair labor practice charge against respondent. Martori Brothers Distributors v. ALRB, supra.

In light of respondent's substantial business justification for its failure to rehire Ms. Rubio and Ms. Castillo, and the relatively weak inference that the mere presence of the charge caused the refusal to rehire, I conclude that the general counselhas failed to establish by a preponderance of the evidence a violation of Section 1153(d) of the ALRA in regards to Ms. Rubio and Ms. Castillo.

IV.

THE GENERAL COUNSEL HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT VIOLATED SECTION 1153(a), (c) OR (d) OF THE ALRA BY ITS REFUSAL TO REHIRE JESUS ALFARQ HERNANDE2 AND ELOIDA BERMUDEZ HERNANDEZ.

A. Eloida Bermudez Hernandez

In order to establish an unfair labor practice based on a discriminatory refusal to rehire an employee, it is first necessary to prove that the employee applied for work at a time when work was available. Prohoroff Poultry Farms, 5 ALRB No.9 (1979)

In the instant case, the general counsel has failed to establish that Eloida Bermudez Hernandez applied for work with respondent for the 1980 harvest. The only evidence which supports the general counsel's claim that Eloida Bermudez Hernandez applied

for work is the testimony of her husband, Jesus Hernandez, which I have discredited. Mrs. Hernandez did not testify. Further, Mrs. Wray testified credibly that she could find no application on file for Eloida Bermudez Hernandez and that she (Mrs. Wray) would have considered such an application had it been made.

On the basis of the foregoing, I conclude that respondent did not commit any violation of Section 1153 of the ALRA with respect to Eloida Bermudez Hernandez.

B. Jesus Alfaro Hernandez

Jesus Hernandez testified that he was a UFW supporter and that he was fired from his job and the Radovich Ranch because he testified against his former employer before the ALRB. However, as stated above, in order to establish that respondent failed to re-hire Jesus Hernandez (who did apply for work in the 1980 harvest) in violation of Section 1153(a), (c) or (d), the general counsel must prove by a preponderance of the evidence that respondent knew of Mr. Hernandez' protected activities.

Initially, there is no evidence in the record that Mr. Hernandez engaged in any protected activity during the weeks he was employed by respondent. I have discredited Mr. Hernandez' testimony that he told respondent's supervisor, Manuel Diaz, of his testimony against the Radovich Ranch, because of his demeanor as a witness and because a material part of his testimony regarding respondent's hiring procedures is contradicted by the testimony of other credible witnesses. Further, Manuel Diaz testified credibly that Mr. Hernandez never told him that he (Hernandez) had been fired from the Radovich Ranch or that he had testified against Radovich.

The only other evidence which in any way tends to establish any knowledge on respondent's part of Mr. Hernandez' activities at the Radovich Ranch is Mrs. Wray's credible testimony that while Mr. Hernandez was employed by respondent as a girdler, she received a call from Chris White, a former supervisor for respondent, who was them working at the Radovich Ranch. Mrs. Wray testified that Mr. White told her that he had had alot of problems with Mr. Hernandez when Hernandez had worked at Radovich. According to Mrs. Wray, Chris White did not tell her what kind of trouble, but she assumed that he had had trouble with Mr. Hernandez in the field.

I conclude that the testimony regarding this phone call does not prove by a preponderance of the evidence that respondent was aware of any activity on Mr. Hernandez' part which is protected by the ALRA. In addition, respondent was under no obligation to rehire Mr. Hernandez. He was a probationary employee and, as Manuel Diaz credibly testified, he had created problems in the field by preaching religion during working hours.

Therefore, I conclude that the general counsel has failed to establish a prima facie violation by respondent of Section 1153 (a), (c) or (d) in regards to Jesus Alfaro Hernandez.

CONCLUSION

For all of the above-stated reasons, I find that respondent did not violate Section 1153 (a), (c) or (d) or the ALRA in regards to any of the alleged discriminatees herein, and I therefore recommend that the ALRB issue the following Order:

ORDER

Having found that respondent did not violate Section 1153 (a), (c) or (d) or the ALRA, the complaint is dismissed in its

entirety.

DATED: December 3, 1981

ALEX REISMAN
Administrative Law Officer

TOTAL WAGES FOR WEEKS 36-41 OF 1980 FOR THOSE IN CREW #2 WHO WORKED DURING EACH OF THOSE WEEKS

Employee Number	Amount Earned
10326	$1140.86
10022	$1331.11
10683	$1420.29
10707	$1267.93
12559	$1872.59
10123	$1474.83
10627	$1481.05
12659	$1383.68
13964	$1152.57
Johnny Uranday	$1203.23
Hector Baca Zamora	$1183.98
Rosie Uranday	$1142.86
Manual Uranday	$1281.52
10474	$1190.65
12618	$1570.11
12914	$1420.20
10037	$1473.41
10694	$1398.63
10697	$1469.68
12513	$1450.50
10233	$1190.06
10296	$1488.96
10433	$1317.93
12659	$1383.68
10189	$1407.71
14093	$1542.55

Employee Number	Amount Earned
13474	$1575.27
13907	$1492.77
12983	$1227.08
11391	$1427.01
13754	$1286.00
12226	$1377.01
10684	$1425.61
10674	$1272.82
10624	$1537.24
10435	$1438.59
10081	$1526.00
13441	$1455.40
10434	$1410.73
12323	$1262.79
10386	$1411.39
10295	$1111.93
13515	$1216.43
10451	$1331.53
10252	$1147.27
10228	$1187.78
12951	$1567.08
10352	$1493.51
10138	$1510.69
10294	$1402.27
10188	$1433.44
13473	$1526.16
12699	$1523.03

Employee Number	Amount Earned
10628	$1571.16
10103	$1283.66
12759	$1202.04
10681	$1481.36
13606	$1534.16
14033	$1530.42
10226	$1486.22
10626	$1483.64
Geronimo B. Aure	$1343.87
Delphin Balabis	$1291.62
10511	$1290.71
10512	$1349.66
10331	$1368.03
13400	$1350.07
12701	$1355.25
13389	$1273.78