Bakersfield, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
TEJON AGRICULTURAL PARTNERS,	)	Case Nos. 80-CE-13-D 80-CE-29-D
Respondent,	)	
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	8 ALRB No. 92
Charging Party.	)	

DECISION AND ORDER

On July 15, 1981, Administrative Law Officer (ALO) Leonard Tillem issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions with a supporting brief.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board (Board or ALRB) 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 brief, and has decided to affirm the rulings, findings, and conclusions of the ALO as modified herein.

The complaint alleges that Respondent violated section 1153 (c) and (a) of the Agricultural Labor Relations Act (Act or ALRA) by threatening to terminate and by suspending, laying off, and continuing in layoff status, employees Lorenzo Galvan, Juana Manriquez, Samuel Manriquez, Maria Isabel Rodriguez, Martha

Rodriguez, Tomas Rodriguez, Daniel Soto, and Maria Socorro Soto.[1/]

Findings of Fact

Respondent's Agricultural Operations. Tejon Agricultural Partners (Respondent) is a partnership which is in the business of growing and selling thirteen varieties of wine grapes, as well as walnuts, pistachios, and almonds. Respondent has approximately 17,000 planted acres in the Bakersfield, Arvin, and Lament areas of Kern County.

Perry Aminian, head of Respondent's grape department, is responsible for supervising grape production and layoff of personnel. John Wood is the farm manager and general overseer of the farm. Robin Cartwright, the personnel manager, is responsible for authorizing wage increases and conducting layoffs, and he participates in deciding which employees are to be laid off.

Respondent's peak employment occurs during the pruning and harvesting season. During the 1979-80 grape pruning season, Respondent was at peak with more than 300 employees.

The 1979-80 pruning season began on December 3, 1979, and ended approximately March 10, 1980. Workers were divided into crews of approximately 25 people per crew. During that season, there were nine crews pruning grapes and three crews pruning trees. Each crew was headed by a foreperson responsible for overseeing the day-to-day work of the employees.

[1/] Although the complaint named only eight employees as alleged discriminatees, the original charge, the testimony of foreperson Marcelina Mendez, and the deficiency notices received into evidence as General Counsel Exhibit No. 7, named nine, the ninth being Felicitas Galvan.

Pruning entails cutting vines with eighteen-inch-long pruning shears having sixteen-inch handles with two-inch blades. Branches are cut leaving spurs with different numbers of spurs per vine and buds per spur. Vines are planted in rows approximately 1/4 mile long with approximately 185 vines per row. Workers are paid a piece rate per vine for pruning. The rate varies according to the type of grapevine pruned.

The Alleged Discriminatees. Most of the alleged discriminatees are long-time activists and supporters of the United Farm Workers of America, AFL-CIO (UFW). Lorenzo Galvan represented Respondent's employees at UFW conventions and helped in UFW organizing efforts at Respondent's farm. Martha Rodriguez represented Respondent's workers at UFW conventions in 1975, 1976 and 1978, and was also involved in organizing Respondent's employees. Although Samuel Manriquez also had a history of UFW activism, his union activity at Respondent's operations was limited to attempts to organize the members of his own crew. The remaining alleged discriminatees also were UFW supporters and activists. In addition, all of the alleged discriminatees, except for Felicitas Galvan, had in the past filed unfair labor practice charges against Respondent.[2/]

December 4, 1979 Orientation Speech. In November 1979, Robin Cartwright was hired as Respondent's new personnel manager. During the first week of pruning, Cartwright gave separate orientation lectures to the various crews. On December 4, 1979, he

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[2/] The filed charges resulted in a June 16, 1977, Stipulated Settlement Agreement.

delivered a speech to employees, including foreperson Marcelina Mendez' crew, in which the alleged discriminatees worked. In that speech, Cartwright informed the employees that he did not want any absenteeism or work stoppages. In addition, Cartwright warned that any employee "leaders" would have to leave Respondent's employ immediately. A heated discussion over absenteeism occurred among Cartwright, Samuel Manriquez and Lorenzo Galvan.[3/]

December 11, 1979 Work Stoppage. On December 11, 1979, the alleged discriminatees and members of three ether crews participated in a one-day work stoppage to request higher wages. A heated exchange occurred between the protesters and Cartwright. During the debate over wages, Galvan questioned Cartwright's experience with grapes. When Cartwright admitted his limited experience, Galvan accused management Of bringing Cartwright in to "perform with a whip," to ensure there would be no trouble from workers. When the protesters threatened to bring the UFW in to resolve the problem of low wages, Cartwright granted on-the-spot raises to three of the four protesting crews. Only the Mendez crew, to which all the alleged discriminatees belonged, did not receive a raise.

The three crews which received raises worked on Barbera grapes, while the Mendez crew worked on Grenache grapes. Cartwright claimed that after the December 11 work stoppage, he made a survey

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[3/] The only conflicting evidence on this point was the testimony of Robin Cartwright, whom the ALO found less than credible. We find the ALO's credibility resolution to be supported by the record and, therefore, will not disturb it. (See Montebello Rose Co. v. Agricultural Labor Relations Bd. (1981) 119 Cal.App.3d 1; Sun Harvest, Inc. (Jan. 21, 1980) 6 ALRB No. 4.)

of the prevailing wages in the immediate area. That survey served as justification for later granting pay raises in 11 of 13 grape varieties. Those who worked on Grenache and Emerald Riesling grapes, including the Mendez crew, did not receive raises. Cartwright maintained that the subsequent survey justified his not having granted a raise to the Mendez crew. The results of the claimed survey were introduced into evidence.

Suspensions for Violating the One-Person-One-Row Rule.

The Mendez crew pruned grapevines. All the alleged discriminatees customarily worked in pairs or helped out family members while pruning the rows of grapevines. Apparently, working in teams allowed the employees to work faster and to earn more money. More importantly, working in teams allowed family members to help one another.

On January 28, 1980, during the middle of the pruning season, Cartwright circulated to all forepersons a memo instructing them to enforce a one-person-one-row rule. Although the rule was promulgated in 1974-75, it had not previously been enforced. In addition, the Janaury 28 memo stressed that employees should wear their safety goggles while pruning. Respondent stated that the rule was being enforced for quality, quantity and safety reasons. The Mendez crew was notified of the new enforcement policy on or about Saturday, February 2, 1980.

Martha Rodriguez, one of the alleged discriminatees, often assisted her parents in pruning the vines. On February 2, she attempted to discuss the one-person-one-row rule with Cartwright. She did not speak specifically about the rule, but

stressed to Cartwright the need for him to be fair to both management and the workers. She informed Cartwright that if he continued being unfair, he could have troubles with both the Union and the ALRB. Cartwright simply shrugged his shoulders, told her to change the subject, and then ended the conversation.

The other alleged discriminatees also objected to the enforcement of the rule. After discussing their mutual dissatisfaction, they chose Samuel Manriquez as their spokesperson to contact Mendez and arrange a meeting with John Wood and Robin Cartwright to discuss the rule.

Manriquez telephoned Mendez on Sunday evening, February 3. He informed her that he was speaking for half of the employees in the crew, and that they wanted to meet with Wood and Cartwright Monday morning. Mendez told him that it was impossible to schedule the requested meeting early in the morning. After further discussion, she ended the conversation, explaining that she was too busy to speak. Monday morning before work, Manriquez again asked Mendez to send for Wood and Cartwright. Mendez again refused, but she told Manriquez that he could go wait for them at the office. Manriquez, angry over her lack of cooperation, stated that he would then break all the rules. Since Mendez would not cooperate, the alleged discriminatees all began working that Monday in violation of the rule. Mendez then sent for Cartwright.

After speaking with Mendez, Cartwright walked toward Manriquez and stopped a short distance from him. Whether Cartwright said "buenos dias" to Manriquez is in dispute, but both testified that they had no conversation or discussion about the

rule. Although all the alleged discriminatees were violating the rule, and although they had asked Mendez for a meeting with him, Cartwright did not attempt to discuss the problem. Instead, he left and informed Mendez to begin issuing deficiency notices to all the alleged discriminatees.

On Tuesday morning, Mendez issued written deficiency notices to the protesters for their violations of the rule on Monday. According to Mendez, after three warnings, one oral and two written, Respondent had the right to fire an employee.

Despite receiving the first written notices, the employees continued working two to a row. On Wednesday, two additional notices, for Tuesday and Wednesday violations, were given to the protesters. After the third notices were distributed, Cartwright met with the alleged discriminatees, who tried to explain to Cartwright why they believed the rule was unfair and discriminatory. An argument ensued and Cartwright warned the employees that they would incur punishment, but not be fired, if they continued to disobey the rule.

The following morning, Thursday, February 7, Cartwright gave three-day suspensions to eight members of Mendez' crew for violating the one-person-one-row rule. Martha Rodriguez was also given a third warning, but she was not suspended. On the same day, Cartwright was called to Antonio Munoz' crew. The Hernandezes, a couple who worked in Munoz' crew, were also refusing to abide by the one-person-one-row rule. They had violated the rule ever since the January 28 memo was issued and read to the crews, and Munoz had given them at least two oral warnings, which they ignored.

Cartwright approached the couple and, in a friendly and congenial manner, discussed their objections to the rule. The record testimony shows that Cartwright resolved the problem by informing the husband that, upon finishing his row, he could help his wife. The couple stopped working as a pair and received one written deficiency notice.

The Layoffs. After the three-day suspension, the alleged discriminatees returned to work. A few weeks later, they were informed that many of the crews were to be laid off. Cartwright informed all the crews that, since it was the end of the season, only two crews, those with more seniority, would remain to do cleanup work, and that the other crews would be called back according to the seniority list. On February 25, 150 employees were laid off, including the alleged discriminatees. Only one seniority crew was formed at that time.

The employees who were highest on Respondent's seniority list received transfers to the seniority crew, which continued working after February 25. Other employees were thereafter recalled to work according to seniority.

Analysis and Conclusions

Implementation of the One-Person-One-Row Rule. The Board has recognized the right of employers to make decisions and take actions affecting employees' hire, tenure of employment, and other working conditions. Absent a showing that the employer's action or decision was based on the employees' participation in union activity or other protected concerted activity, or that it tended to interfere with their exercise of section 1152 rights, or that the

adverse effect on employee rights of the action or decision outweighed the employer's business justification, the Board will not disturb an employer's decision in such management-rights areas. (Rod McLellan Co. (Aug. 30, 1977) 3 ALRB No. 71.)

We reject the ALO's finding that Respondent's previously unenforced one-person-one-row rule was implemented solely to harass union activists and/or to retaliate against employees because of their December 11 work stoppage. The record reflects that the rule was imposed on all crews, and it appears that all forepersons were requested to publicize and enforce it. Moreover, there is no evidence that the implementation of the rule was based on the union activity or other protected activity of any employee(s). In addition, there is no evidence that pro-union employees tended to work in pairs more than nonunion or anti-union employees.

Suspensions for Violating the Rule. To establish that an employer engaged in unlawful discrimination against employees, the General Counsel must prove, by a preponderance of the evidence, that the employees were engaged in union activity or other protected concerted activity, that the employer had knowledge of that activity, and that there was a causal relationship between the activity and the act of discrimination. (Merrill Farms (Jan. 22, 1982) 8 ALRB No. 4, citing Jackson and Perkins Rose Co. (Mar. 19, 1979) 5 ALRB No. 20.) Once it is shown that the protected activity was a basis for the employer's action, the burden then shifts to the employer to show that it would have taken that action even absent the protected activity. (Nishi Greenhouse (Aug. 5, 1981) 7 ALRB No. 18, citing Wright Line, Inc. (1980)

251 NLRB 1083 [105 LRRM 1169].)

The alleged discriminatees have long histories of UFW activism at Respondent's ranch. In 1977, all of them filed against Respondent unfair labor practice charges which were subsequently resolved by a formal settlement agreement. During Cartwright's orientation speech, he spoke against work stoppages and his comments about absenteeism induced an argument with Lorenzo Galvan and Samuel Manriquez, two of the alleged discriminatees. On December 11, the alleged discriminatees, along with employees in three other crews, participated in a work stoppage and confronted Cartwright with a request for higher wages. Work stoppages in support of such economic demands are recognized as protected concerted activity under the Act. (Merrill Farms, supra, 8 ALRB No. 4, citing Tenneco West, Inc. (Sept. 12, 1980) 6 ALRB No. 53.) The alleged discriminatees engaged in another protected concerted activity when they selected Manriquez as their representative to speak with foreperson Mendez about arranging a meeting with Wood and Cartwright to discuss their objections to the one-person-one-row rule. (See Giumarra Vineyards, Inc. (Apr. 3, 1981) 7 ALRB No. 7.) On the basis of the above facts, we find that the alleged discriminatees had engaged in protected concerted activities and, as they had confronted both Cartwright and Mendez with respect to their grievance, we find that Respondent had knowledge of their activities.

In cases arising under both the ALRA and the National Labor Relations Act (NLRA), it is often difficult or impossible to prove by direct evidence that unlawful discrimination was the basis

for a suspension or a discharge. (See S. Kuramura, Inc. (June 21, 1977) 3 ALRB No. 49.) However, it is well established that discrimination in violation of NLRA section 8(a)(3) or 8(a)(l) (section 1153(c) or (a) under the ALRA) may be found where the record evidence, as a whole, establishes a pattern of discrimination. (Irwin County Electric Membership Cooperative (1980) 247 NLRB 1357 [103 LRRM 1362].)

In the present case, a memo implementing the one-person-one-row rule was circulated on January 28. On February 2, Martha Rodriguez, a member of the Mendez crew which included the UFW supporters and activists who had earlier confronted Cartwright, informed Cartwright that he could have trouble with the Union and the ALRB if he was not fair to the workers as well as the company. On February 4, Samuel Manriquez, spokesperson for the alleged discriminatees, informed Mendez that he represented half the employees in her crew and that they wanted to meet with Cartwright in order to register their opposition to enforcement of the one-person-one-row rule. Cartwright failed to discuss the rule or even meet with the alleged discriminatees until after three written disciplinary notices had been issued and the employees who had received the notices were subject to suspension or other disciplinary action.

Employees Christina and Gregorio Hernandez, who worked under foreperson Antonio Munoz, had also violated the rule, by working two to a row after the issuance of the January 28 memo. After they had done so for several days, and after they had received at least two oral warnings, foreperson Munoz brought Cartwright in

to speak with them. Unlike his treatment of the alleged discriminatees and his failure to discuss their grievance until after three written notices had been issued, Cartwright met with the Hernandez couple, discussed the rule and exceptions, and conducted the meeting in a friendly, congenial manner in order to resolve the grievance before any written notices were issued.

The manner in which the Hernandezes' rule violations were handled paralleled the procedure outlined in Respondent's Employee Handbook.[4/] When the foreperson was unable to resolve the problem, Cartwright was brought in to discuss and to attempt to resolve the problem. Cartwright's conciliatory manner with the Hernandezes was in sharp contrast to his attitude toward the alleged discriminatees. Respondent's handling of the Hernandezes' grievance, compared with his failure to discuss the problem with the alleged discriminatees, constitutes discriminatory treatment.

After unsuccessful attempts to get Mendez to contact grape supervisor John Wood and Robin Cartwright to discuss their grievance, the alleged discriminatees continued to violate the rule. Mendez knew that Manriquez was the spokesperson for the group and spoke to Cartwright about the problem with her crew. Martha Rodriguez testified that the usual procedure for a group discussion was to call the crew together at the end of the row. Although Cartwright had discussed the problem with Mendez, knew

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[4/] Respondent's Employee Handbook (General Counsel Exhibit No. 5) outlined a four-step grievance procedure. Respondent contended that the grievance procedure section of the handbook was not in effect. There was no evidence of a substitute or new procedure and employees were not kept informed as to which portions of the handbook were in effect.

the alleged discriminatees wanted to speak with him, and was present when all the alleged discriminatees were violating the rule, he neither called the group together nor attempted to discuss their grievance. Instead, Cartwright returned to Mendez and instructed her to issue deficiency notices for every day the employees worked two to a row.

The situation was different with the Hernandez couple. When Cartwright learned of their violation, he discussed the matter with them and resolved the problem in a manner consistent with the procedure outlined in the Employee Handbook. On the other hand, Cartwright waited until the alleged discriminatees had been served with enough warning notices to be subject to discipline before he spoke with them regarding their grievance. In addition, for every day the discriminatees worked two to a row, they received a written deficiency notice, while the Hernandezes also violated the rule for approximately the same number of days and received only one written notice. The circumstances show a discriminatory manner of enforcing the one-person-one-row rule and of handling employees' grievances.[5/]

Respondent contends that the alleged discriminatees were insubordinate and, therefore, were suspended for a valid business reason. However, the Hernandezes were also insubordinate, since they too had violated the rule and received at least two oral

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[5/] We are not persuaded by our dissenting colleague's assertion that the Hernandezes "merely declined to work according to the new rule," while the Mendez crew was "aggressively defiant." In either case, the employees refused to follow Respondent's work rule, and we find that Respondent treated the Mendez crew differently than the Hernandezes based on the crew's protected concerted activity, rather than on some presumed difference in the manner of their failure to comply with the rule.

warnings. Respondent contends that it would have been useless to attempt to discuss the grievance with the discriminatees, since Manriguez had stated, "I will break all the rules," and since the other alleged discriminatees had informed Mendez that they would work in violation of the rule regardless of the number of notices she gave.

However, the alleged statements of the Mendez crew members were all made after their futile attempts to have Mendez arrange a meeting with Cartwright and Woods to discuss the enforcement of the rule. Respondent's failure to respond to the workers' initial requests to speak with Cartwright, and Cartwright's failure to respond to their complaints, placed the alleged discriminatees in a precarious position. They wished to protest the rule, but Cartwright ignored their request to meet and discuss their grievance. Respondent argues that the alleged discriminatees could have complied with the rule and filed a written grievance. We find that the alleged discriminatees' failure to do so was not unreasonable in light of Respondent's general lack of receptivity toward their attempts to orally protest against enforcement of the rule.[6/]

The alleged discriminatees were all UFW activists and supporters; they all worked in the Mendez crew and were, therefore,

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[6/] Respondent contends that the present case is analogous to Hansen Farms (Feb. 4, 1981) 7 ALRB No. 2, where we found a discharge to be based on insubordination, a valid business justification. We find Hansen Farms inapposite. In that case, a critical element which negated a finding of a causal connection between the activity and the discharge was the employer's general receptivity to workers complaints, which is an attitude Respondent demonstrated to the Hernandez couple but not to the alleged discriminatees.

an identifiable group; three years earlier they had asserted their rights under the Act by filing unfair labor practice charges against Respondent. Cartwright, during his orientation speech, threatened employees that any employee "leaders" would have to leave the work force, immediately following the orientation speech, Manriquez and Galvan, two members of the Mendez crew, confronted Cartwright on the issue of absenteeism. The same identifiable group participated in the December 11 work stoppage and, once again, Galvan and Cartwright got into an argument about working conditions. After the participants in the work stoppage threatened to bring the Union in, an on-the-spot raise was given to three of the four protesting crews, but not to the Mendez crew. On February 2, after the enactment of the one-person-one-row rule, Martha Rodriguez, another member of the identifiable group, warned Cartwright of possible problems with the Union and ALRB if he was not as fair to employees as he was to management. On that Saturday, the alleged discriminatees complained about enforcement of the work rule and selected one of their number to speak with management about their dissatisfaction with the rule. Despite their good faith attempts to meet and discuss the rule with management, neither Mendez nor Cartwright afforded the employees an opportunity to discuss their grievance. Although Cartwright was presumably aware that the Mendez crew employees wished to speak with him about the rule, he simply instructed Mendez to begin issuing deficiency notices. Mendez complied and issued three written notices before Cartwright finally spoke with the employees. When the Hernandezes similarly disobeyed the rule, Respondent handled and resolved their objection

thereto in a prompt and accommodating manner and merely issued a single deficiency notice, after speaking with them.

Given the above circumstances and the record as a whole, we draw the logical inference that the alleged discriminatees and their grievance would have received better treatment but for their past union activity, their concerted confrontation with management over working conditions, and other protected concerted activity. Accordingly, with respect to employees Felicitas Galvan,[7/] Lorenzo Galvan, Juana Manriquez, Samuel Hanriquez, Maria Isabel Rodriguez, Martha Rodriguez, Tomas Rodriguez, Daniel Soto, and Maria Socorro Soto, we conclude that Respondent, by its discriminatory application of its grievance procedure, violated section 1153(a) of the Act. Furthermore, we conclude that Respondent, by its suspensions of employees Felicitas Galvan,[8/] Lorenzo Galvan, Juana Manriquez, Samuel Manriquez, Maria Isabel Rodriguez, Tomas Rodriguez, Daniel

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[7/] Although the complaint failed to name Felicitas Galvan as a discriminatee, the record and testimony showed that she received three written deficiency notices along with the other discriminatees. Since the issue of Respondent's discrimination against her was fully litigated and clearly related to the allegations in the complaint, we find that the discriminatory application of Respondent's grievance procedure to Felicitas Galvan was likewise in violation of section 1153(a) of the Act. (See Prohoroff Poultry Farms (Nov. 23, 1977) 3 ALRB No. 87, enforced in pertinent part Prohoroff Poultry Farms v. Agricultural Labor Relations Bd. (1980) 107 Cal.App.3d 622.)

[8/] Although the complaint alleged that Martha Rodriguez was one of the employees Respondent discriminatorily suspended, the record and testimony showed that Felicitas Galvan, and not Martha Rodriguez, was the eighth person suspended. Since the issue of Felicitas Galvan's suspension was fully litigated at the hearing and clearly related to the allegations in the complaint, we find that her suspension, like that of the other seven employees, was a violation of section 1153(a) of the Act. (See Prohoroff Poultry Farms, supra, 3 ALRB No. 87.)

Soto, and Maria Socorro Soto, violated section 1153(a) of the Act.

The Layoffs. As mentioned above, Cartwright informed the employees near the end of the season that there would be layoffs. He also informed the workers that only two seniority crews would be retained to clean up the area, and that the other employees would be recalled to work according to their seniority.

Once General Counsel establishes a prima facie case of discriminatory layoffs, the burden shifts to the employer to establish that its treatment of the employees was justified by a valid business reason. (Nishi Greenhouse, supra, 7 ALRB No. 18.)

The record reflects that the eight discriminatees were laid off on February 25. A few days later, some of the discriminatees returned to Respondent's ranch to pick up their checks. They noticed that a number of crews were still working, and that some of the employees who were working had less seniority than they. The following day, all the discriminatees asked Respondent for work and asked why employees with less seniority were still working. Cartwright admitted that some employees with less seniority were working, but informed the discriminatees that there was no work for them.

At the hearing, Respondent showed that 150 employees were laid off on or about February 25. Selection of the crews to be laid off depended upon whether they had finished the work in their respective areas. Contrary to the ALO, we find no evidence that the discriminatees had not finished the work in their area, nor do we find that a cleanup crew worked in the Mendez crew's area. Respondent also argued that, since the crews were mixed with high

seniority and low seniority employees, layoffs based strictly on seniority were extremely difficult. Given the facts of that situation, we find that Respondent has provided a valid business justification for the layoffs. Accordingly, we hereby dismiss the allegation in the complaint that the February 25 layoffs were in violation of the Act, except for the layoff of Samuel Manriquez.

The Seniority Transfer. The layoffs, although not discriminatory, must be examined in conjunction with the seniority transfers. With respect to seniority in rehire, Respondent's Employee Handbook provided, and Cartwright's testimony confirmed, that when a group of workers was laid off, the last employee hired was the first to be laid off and the last recalled. Respondent reserved the right to determine which employees were to be laid off or recalled when special skills or qualifications were needed. In addition, Respondent gave special consideration to keeping families together.

A review of the record evidence and Cartwright's testimony shows that four crews were laid off on February 25, and seven crews were subsequently laid off between February 25 and March 10. One seniority crew was established on February 26. That crew was led by Manuel German and it consisted of individuals from Respondent's seniority list who had been laid off on February 25. Cartwright testified that those members of German's crew were not actually laid off on February 25, but received seniority transfers on that date to start work the following day on German's crew.

Although an employer is free to create a seniority system, it cannot lawfully apply the system in a manner which discriminates

against an employee because of his or her union activity or other protected concerted activity. (See John J. Elmore (Jan. 25, 1980) 6 ALRB No. 7 and Kitayama Bros. Nursery (Oct. 30, 1978) 4 ALRB No. 85.) In order to establish that Respondent discriminated in seniority transfers, General Counsel would have to prove by a preponderance of the evidence that work was available, that employees who received the seniority transfers had less seniority than the discriminatees, and that the discriminatees did not receive such transfers because of their union activity or participation in other protected concerted activity.

Comparing the names of the seniority crew members to Respondent's seniority list[9/] reveals that most of Manuel German's crew members were high on the seniority list. However, three of the seniority crew members: Guadalupe Medrano (hired December 12, 1977), Sebero Alonzo (hired November 20, 1975), and Vicente Avila (hired November 20, 1975),[10/] all had less seniority than one laid-off discriminatee, Samuel Manriquez, who was hired October 22, 1975. Moreover, all of the discriminatees who were laid off and did not receive seniority transfers had more seniority than Guadalupe Medrano.

It is clear that, even absent any discrimination by

[9/] The parties stipulated that the seniority list (General Counsel's Exhibit No. 2) was the list used in the recalls. Robin Cartwright also testified that General Counsel Exhibit No. 2 was used in recalls after February 25, 1980.

[10/] Another member of the seniority crew, Victor Munoz, was not on the seniority list; however, he possessed the same employee number as Joe Navarro who had more seniority than all the discriminatees. Therefore, he was not included along with the three listed employees.

Respondent, all of the discriminatees would not have been assigned or transferred to German's seniority crew. However, as one of the discriminatees, Samuel Manriquez, had more seniority than Medrano, Alonzo, or Avila; he should have been on that seniority crew if Respondent had actually filled the crew according to seniority. There would then be two remaining slots, which would have been taken by Alonzo and Avila, both of whom followed Samuel Manriquez on Respondent's seniority list. As there were no additional slots in German's crew, and as there was no evidence that there was a second seniority crew formed, the remaining discriminatees would not have been eligible for seniority transfers in any event. General Counsel has failed to prove that there would have been a seniority transfer available for any of the discriminatees except for Samuel Manriquez.

We find that there was work available for Manriquez, that employees with less seniority were transferred to the seniority crew instead of him, and that he was not recalled until March 20. Manriquez had engaged in protected concerted activity in the December 11 work stoppage and as the employees' spokesperson in their attempt to grieve the one-person-one-row rule. Respondent clearly had knowledge of such protected activities. We find that Respondent's failure to grant Manriquez a seniority transfer was a continuation of its discriminatory treatment of Manriquez.

The burden then shifted to Respondent to show that, even absent his protected activities, Manriquez would not have been the beneficiary of a seniority transfer. It is clear from Respondent's

own records that three of the crew members who received transfers in lieu of layoff had less seniority than Manriquez, and Respondent did not establish that any of the three fell within an exception to Respondent's seniority policy. Given Respondent's failure to prove a business justification for its failure to transfer Samuel Manriquez to German's seniority crew, we conclude that Respondent violated section 1153(a) of the Act by laying off Samuel Manriquez, rather than providing him a seniority transfer on February 25 or 26, in retaliation for his participation in protected concerted activities.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Beard (Board) hereby orders that Respondent Tejon Agricultural Partners, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discriminating in the application or enforcement of its work rules, against any agricultural employee because of his or her union activity or other protected concerted activities.

(b) Suspending or otherwise discriminating against any agricultural employee because of his or her union activity or other protected concerted activities.

(c) Failing or refusing to transfer, recall, hire, rehire, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in union activity or other concerted activity protected by section 1152 of

the Agricultural Labor Relations Act (Act).

(d) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the 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) Make whole Felicitas Galvan, Lorenzo Galvan, Juana Manriquez, Samuel Manriquez, Maria Isabel Rodriguez, Tomas Rodriguez, Daniel Soto, and Maria Socorro Soto for all losses of pay and other economic losses they have suffered as a result of their suspensions, 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.

(b) Expunge the February 5 and 6, 1980, deficiency notices from the personnel files of Felicitas Galvan, Lorenzo Galvan, Juana Manriquez, Samuel Manriquez, Maria Isabel Rodriguez, Tomas Rodriguez, Daniel Soto, and Maria Socorro Soto; and, expunge the February 6 and 7, 1980, deficiency notices from the personnel file of Martha Rodriguez.

(c) Make whole Samuel Manriquez for all losses of pay and other economic losses he has suffered as a result of Respondent's failure to grant him a seniority transfer on or about February 25, 1980, 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.

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

(e) 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.

(f) 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 February 5, 1980, to April 30, 1980.

(g) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 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.

(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached-.Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors

and management, to answer any questions the employees may have concerning the Notice 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.

(i) 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: December 21, 1982

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

MEMBER McCARTHY, Dissenting:

The majority finds that Cartwright refused to discuss the rule with the alleged discriminatees until after the written disciplinary notices had been issued and the employees who received the notices were subject to discharge or other disciplinary action. I disagree. The record clearly shows that the protesting employees failed to avail themselves of their opportunity to discuss working conditions with Cartwright, and that they had no reasonable basis for concluding that any effort to discuss the new work rule with Cartwright would be futile.

It appears that the eight crew members did not like working under Respondent's reasonable one-person, one-row rule. When the foreperson did not summon ranch manager Cartwright for a meeting quickly enough to satisfy the employees, they refused to work according to the new rule, in defiance of foreperson Mendez' direct and specific instructions. When Cartwright arrived at the field at 9:30 a.m., about three hours after the employees' second

request to meet with him, they were still working in defiance of the rule. The record is not clear as to whether Cartwright spoke to Manriquez at that time, but it is undisputed that employee Manriquez was aware that Cartwright had come to the job site and was standing within 20 or 30 feet of him. Cartwright was under no obligation to initiate a discussion, but neither Manriquez nor any of the other dissatisfied employees said anything to Cartwright.[1/] Before leaving the field, Cartwright instructed Mendez to issue disciplinary notices to the employees who were defying the work rule, a reasonable reaction since his presence had neither caused them to comply nor elicited any comments or complaints from them.

I do not agree with the majority that Respondent's treatment of the Hernandezes was sufficiently different to support a finding of unlawful discrimination against the other employees. Initially it should be noted that while the Hernandezes merely declined to work according to the new rule, the eight Mendez-crew employees were aggressively defiant. By refusing to wait for Cartwright, and by announcing that they would never follow the new rule, they were openly challenging Cartwright's authority to promulgate and enforce work rules. When the Hernandezes, who worked on a different crew, declined to work according to the new rule, they also received a warning from their foreperson for refusing to follow the work rule. The written warnings were issued to the alleged discriminatees only after Cartwright had

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[1/] I find Manriquez' explanation for not speaking even briefly, to Cartwright on behalf of himself and the other employees—that he would thereby lose wages because he was on piece rate compensation—to be unconvincing.

gone to the field to hear their complaints and observed them openly violating the new work rule. Similarly, the Hernandezes were not issued written warnings until after Cartwright observed them disobeying the work rule, at which time he issued them a written warning. In both instances, no workers were suspended until after Cartwright had met with them regarding their objections to the rule. The crucial difference is that, following Cartwright's discussion with the Mendez crew workers, the eight continued to defy the rule in the face of a suspension threat, while the Hernandezes agreed to work according to the new rule. Although Cartwright allowed the Hernandezes to continue to work together at the end of a row, foreperson Mendez testified that in her conversation with the Manriquezes, she asked them to each work a separate row, but indicated that each could help the other at the end of their respective rows. Thus, it appears that Respondent did not make a concession on enforcement of the rule to the Hernandezes which it did not make, or would not have made, to the other employees.

Based on the above, I would conclude that Respondent lawfully suspended the eight employees because of their continued insubordinate refusal to obey a reasonable work rule and not because of their concerted objections to the rule. The majority distinguishes our Decision in Hansen Farms (Feb. 4, 1981) 7 ALRB No. 2, citing the receptiveness of the employer to employee complaints in that case. Since an employer is not required to allow employees to dictate their own work rules, I consider that Cartwright, faced with open defiance of work rules and the

foreperson's authority, acted lawfully under the circumstances.

I would find no violation based on Respondent's failure to transfer Samuel Manriquez onto the German seniority crew at the time of the general layoff. Because I would find that Manriquez was not engaged in protected activity when he led the workers in their refusal to obey the one person/one row rule, any remaining connection between Manriquez' union activity and the layoff is too tenuous, in my view, to support the finding of a violation. Furthermore, I note that Manriquez was in fact recalled on March 20, only three weeks after the formation of the German seniority crew, in which the majority finds Manriquez should have been included. All other alleged discriminatees were also recalled for work in late March or early April. Thus, any failure by Respondent to keep Manriquez employed following the layoff was brief and isolated, which tends to negate any inference of prior discrimination.

Dated: December 21, 1982

JOHN P. McCARTHY, 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, Tejon Agricultural Partners, 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 the discriminatory application of our one-person-one-row rule and unlawful suspensions of Felicitas Galvan, Lorenzo Galvan, Juana Manriquez, Samuel Manriquez, Maria Isabel Rodriguez, Tomas Rodriguez, Daniel Soto, and Maria Socorro Soto, because of their protected concerted activities. The Board also found that we violated the law by failing to grant a seniority transfer to Samuel Manriquez because of his protected concerted activities. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT hereafter discriminatorily apply any work rules, suspend, make seniority transfers, or in any other way discriminate against an agricultural employee because he or she has engaged in union activity or other protected concerted activity, or otherwise utilized his or her rights under the Act.

WE WILL expunge the February 5 and 6, 1980, deficiency notices from the personnel files of Felicitas Galvan, Lorenzo Galvan, Juana Manriquez, Samuel Manriquez, Maria Isabel Rodriguez, Tomas Rodriguez, Daniel Soto, and Maria Socorro Soto; and expunge the February 6 and
7. 1980, deficiency notices from the personnel file of Martha Rodriguez.

WE WILL reimburse Felicitas Galvan, Lorenzo Galvan, Juana Manriquez, Samuel Manriquez, Maria Isabel Rodriguez, Tomas Rodriguez, Daniel Soto, and Maria Socorro Soto, for all pay and other money they have lost because we suspended them, plus interest.

WE WILL reimburse Samuel Manriquez for all pay and other money he has lost, plus interest, because we discriminatorily failed to give him a seniority transfer.

Dated: TEJON AGRICULTURAL PARTNERS

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

Tejon Agricultural Partners
(UFW)

8 ALRB No. 92
Case Nos. 80-CE-13-D
80-CE-29-D

ALO DECISION

The ALO found that Respondent violated section 1153(c) and (a) by imposing a one-person-one-row rule in the middle of its grape pruning season in order to harass union activists and to retaliate against employees because they had engaged in a work stoppage, and that Respondent created and enforced the rule to single out union adherents. The ALO also found that Respondent unlawfully suspended and laid off employees because of their union activity.

BOARD DECISION

The Board rejected the ALO's finding that Respondent's previously unenforced one-person-one-row rule was implemented to harass union activists and/or to retaliate against employees because they engaged in a work stoppage. However, the Board concluded that Respondent violated section 1153(a) of the Act by enforcing the rule in a discriminatory manner, and ordered Respondent to make whole the employees it suspended by discriminatory enforcement of the one-person-one-row rule. The Board also rejected the ALO's finding that the workers who engaged in the work stoppage were laid off because of their protected concerted activity, and instead found that all the employees, except for one, were laid off because of lack of work. That one employee, the Board held, had seniority, and should have been transferred to the seniority crew that continued working during the lay-off period. The Board concluded that Respondent violated section 1153(a) by failing to transfer that employee to the seniority crew because of his protected concerted activity.

DISSENT

Member McCarthy dissented. He would conclude that Respondent did not commit any violations. He would find that the alleged discriminatees were cited and suspended because of their continued and insubordinate refusal to obey a reasonable work rule and not because of their concerted objections to the rule. He also would find that the rule was not discriminatorily implemented, since all workers who did not obey the rule were cited; the workers who were not suspended were spared this discipline because they agreed to comply with the work rule and because Respondent offered concessions in the work rule to all who had resisted the rule if they would obey.

He would also find that, given the lawful discipline for insubordination, any remaining connection between Manriquez' protected activity and Respondent's failure to transfer him to work on a seniority crew at the time of layoff is too tenuous to support a violation.

* * *

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the matter of:

TEJON AGRICULTURAL PARTNERS,

Respondent,

Case Nos. 80-CE-13-D
80-CE-29-D

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Charging Party.

DECISION

John Moore,
For the General Counsel

Gibson, Dunn and Crutcher By
William Claster For the
Respondent

STATEMENT OF THE CASE

Leonard M. Tillem, Administrative Law Officer. This matter was heard before me in Bakersfield, California, commencing on May 29, 1980, and concluding on June 12, 1980. The charge against the employer numbered 80-CE-13-D was served by mail on TEJON AGRICULTURAL PARTNERS (hereinafter "TAP", "TEJON", or "RESPONDENT") on February 9, 1980. The additional charge against the employer numbered 80-CE-29-D was served by mail on TAP on March 5, 1980.

The Order Consolidating the Cases was issued by Edward Perez, Regional Director, Fresno Region, on April 17, 1980. This Order, the Complaint and Notice of Hearing were served by mail on TAP on April 17, 1980. The Complaint was based on the above mentioned charges, which were filed by the United Farm Workers of America, AFL-CIO (hereinafter

"UFW"), and alleged that Respondent violated Section 1153(a) and 1153 (e) of the Agricultural Labor Relations Act (hereinafter "The Act").

During the hearing, paragraph 4 of the Complaint was amended to clarify the name and spelling of Mr. Cartwright, labor coordinator and personnel manager for TAP, and to add Maria German as forewoman at TAP.

All parties were given full opportunity to participate in the hearing, and after its-close, the General Counsel and the Respondent each filed a brief in support of its position. Upon the entire record, including my observations of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

I
FINDINGS OF FACT

A. Jurisdiction

TEJON AGRICULTURAL PARTNERS is by its own admission and evidence produced at the hearing engaged in the growing and harvesting of agricultural products, including wine grapes, walnuts, pistachios and almonds, in Kern County, California. I, therefore,find TAP is an agricultural employer within the meaning of Section 1140.4(c) of The Act doing business in the State of California.

I additionally find that the employees of Employer are agricultural employees within the meaning of Section 1140.4(f) of The Act.

I further find the UFW is a labor organization within the meaning of Labor Code Section 1140.4(f) of The Act. B. Alleged Unfair Labor Practices

The alleged unfair labor practices are set forth in paragraphs 5 through 8 of the Complaint. They state that TAP has dis-

criminated against complainants in regard to the terms and conditions of their employment and interfered with their rights protected by Section 1152 of The Act in the manner herein below stated:

(1) Paragraph 5 alleges that in early February, 1980, Respondent through forewoman Marcelina Mendez instituted new company rules because of concerted activities by employees to improve the terms and conditions of their employment.

(2) Paragraph 6 alleges that on or about February 4, 5, and 6, 1980, Respondent through Marcelina Mendez threatened termination of Daniel Soto, Maria Socorro Soto, Lorenzo Galvan, Tomas Rodriquez, Maria Isabel Rodriquez, Martha Rodriquez, Samuel Manriquez and Juana Rodriquez, and issued unjustified warning notices to them because of their support for activities on behalf of the UFW.

(3) Paragraph 7 alleges that on or about February 6, 1980, Respondent through Ms. Mendez suspended complainants for three days because of their support for and activities on behalf of the UFW.

(4) Paragraph 8 was amended at the hearing to allege that on or about February 25, 1980, Respondent through Ms. Mendez laid-off, and thereafter continued to lay-off, complainants (except for Maria Isabel Rodriquez) because of their support for and activities on behalf of the UFW. (TR I, 24-25).

The Complaint alleges that the acts of Respondent as set forth in paragraphs 5 through 8 of the Amended Complaint constitute im-fair labor practices within the meaning of Section 1153(a) and 1153(c) of The Act.

TAP denies that it engaged in the unfair labor practices set forth in the Complaint as amended; asserts that the General Counsel

has not carried his burden of proof; i.e., the disputed rule was imposed non-discriminatorily and for valid business reasons; that the complainants were suspended for direct insubordination and failure to abide by company rules; that complainants were laid-off during the normal end of pruning season lay-off and were called back in accordance with their seniority; and that at all times Respondent's actions were lawful under all applicable laws.

C. Respondent's Agricultural Operations

Tejon Agricultural Partners is the general partner of a partnership formed to do farming and is in the business of growing and selling thirteen varieties of wine grapes, walnuts, pistachios and almonds. It has approximately 17,000 planted acres in the Bakersfield, Arvin, Lament area of Kern County.

The Tejon Farming Company (hereinafter "TFC") is the management branch of TAP. TFC is a division of Tejon Ranch Company, the parent company. Robin Schayler Cartwright is the Personnel Manager for TFC and has been since November 26, 1979. He handles all personnel functions of TFC and TAP, including labor relations, and maintains the companies' personnel records. Cartwright's duties include authorizing wage increases, conducting lay-offs, and determining who will be laid off. Cartwright was interviewed and hired by John Wood, the general farm manager. Juan DeLeon is the Assistant Personnel Manager for TAP and Grettel Kendall is their Employee Relations Coordinator.

TAP employs from a low of 80 to a peak of 350 to 400 agricultural workers seasonally. Its peak employment seasons are pruning and harvesting. During the grape pruning season of 1979-80, employment at TAP was at its peak.

The 1979-80 pruning season began on December 3, 1979, and ended in March, 1980. Lay-offs occurred between February 25 and mid-March, 1980. The seasonal workers are divided into crews of approximately twenty-five people. During the 1979-80 pruning season there were nine crews pruning grapes and three pruning trees. Each crew is headed by a foreperson who instructs the laborers as to the tasks and company policies, works along with the crew, and has initial disciplinary responsibility for infractions of company rules. At the beginning of the season the crews are assigned to areas designated by a Parcel Letter and Block Number by the manager of the grape department, Perry Aminian. Mr. Aminian also makes the decision when to lay off crews and how many will be laid off.

Pruning entails cutting vines with eighteen inch long pruning shears with approximately sixteen inch handles and two inch blades. Branches are cut leaving spurs with differing numbers of spurs per vine and buds per spur.

The vines are planted in rows approximately 1/4 mile long with approximately 185 vines per row. The workers are paid a piece rate per vine for pruning. The rate per vine varies according to the type of grape pruned. Those pruning Grenache grapes during the 1979-80 season, including complainants, were paid twelve cents per vine.

D. Background

A series of incidents throughout the 1979-80 grape pruning season resulted in the charges of discrimination being levied against Respondent.

The events were precipitated by the introduction of a new Personnel Manager and Labor Coordinator, Robin Cartwright, to oversee

labor relations and all personnel functions at TAP at the commencement of the 1979-80 pruning season. Hired by TAP on November 26, 1979, Mr. Cartwright was new to the Bakersfield area. He was previously from Ventura County with twenty years experience in labor relations. In preparatory discussion with John Wood, Tejon General Manager, Mr. Cartwright testified that he was told to run personnel and labor relations "firmly but justly." (TR III, 139).

TAP has not unionized. However, in the two prior years, there had been union organizing campaigns and elections at TAP. Both occurred during peak grape pruning season. During the 1979-80 pruning season, the UFW announced it would attempt to organize in the grapes. Mr. Cartwright testified that he was aware of the prior and current organizing attempts.

The complainants, all experienced agricultural laborers, veteran TAP employees and clearly ardent long time UFW supporters and activists, worked together in one crew supervised by Forewoman Marcelina Mendez. Also, Ms Mendez and all the complainants but Felicitas Galvan are participants in a 1977 settlement agreement with TAP, as the result of a charge filed with the ALRB by them and others against TAP in 1975. Martha Rodriquez and Lorenzo Galvan testified that they and other complainants participated in union organizing campaigns at TAP and represented TAP at several UFW conventions.

The disputed incidents include: an introductory speech given by Mr. Cartwright on December 4, 1979, the first day of pruning at which he is purported to have said that he doesn't want to know of a leader within the company for that person would have to leave; a work stoppage on December 11 for higher wages in which complainants partici-

pated and which resulted in raises for the other participating crews, and none for the complainant's crew; the imposition of a company rule in early February requiring workers to prune one person to a row-curtailing complainants long established custom of having friends or family members work together two or three to a row; warning notices issued which were then followed by a three-day suspension of complainants for their failure to follow the one-person-one-row rule; the February 25 lay-off of several crews including complainants while crews with some less senior workers continued to work; the order of recall of complainants which resulted in some workers with less seniority returning to work ahead of complainants.

E. December 4 Introductory Speech

Robin Cartwright gave orientation lectures to the crews in groups of three or four crews at the commencement of the 1979 pruning season on December 3, 4 and 5. On December 4, he gave this speech to Marcelina Mendez' crew and several others.

Lorenzo Galvan testified that Cartwright said certain things that the workers were unaccustomed to hearing from someone in Cartwright's position. According to Galvan, Cartwright told the workers he did not want work stoppages, people missing work or not working six days a week. Galvan quoted Cartwright as saying:

> "Neither do I want to know that there be a leader here within the Company because that one is, going to leave the Company immediately." (RT I, 102).

In addition, Galvan testified that Cartwright stated that he had come there to "fix" the company. Ibid. Additionally some heated discussion occurred between Cartwright and Samuel Manriquez over Saturday work

that was joined by others including Galvan. (RT I, 102-105).

Galvan's version of the statement by Cartwright that a leader would be fired was substantially corroborated by the testimony of Martha Rodriquez and Felicitas Galvan. (RT IV, 26 and 68).

Cartwright denied that he mentioned work stoppages and said that he did not say anything about unions in his speech. According to Cartwright his purpose was twofold: to meet the crews as the new personnel manager, and lay out the guidelines to be followed during the pruning season. He testified that he did talk about curbing absenteeism. This talk appeared to have a major impact on the workers who found Cartwright's tone and words threatening and intimating reprisals for union activity.

F. December 11 Work Stoppage

On December 11, complainants and members of other crews participated in a one-day work stoppage seeking higher wages. As a result of the protest, three of the four crews who walked out were given on-the-spot raises. Mendez's crew was not given a raise.

Lorenzo Galvan testified that members of three other crews approached Mendez's crew early on the morning of the 11th and asked if they thought the wages were sufficient. (RT I, 62-70). Galvan and other members of Mendez's crew replied in the negative and agreed to join the others in a work stoppage to request higher pay. The original three crews plus some of Mendez's crew, including complainants gathered in front of the management office. After a lengthy wait by the workers, Mr. Cartwright appeared. The workers aired their grievance about low pay and claimed they were being paid less than workers in neighboring farms. The discussion was heated and many workers asserted that they

would bring in the Union to resolve the problem. (RT I, 66).

Someone challenged Cartwright's knowledge of vineyard practices. When Cartwright admitted he was not familiar with vineyard work, Galvan claims that he accused Cartwright of being sent to them "to perform with a whip." (RT I, 62). After much discussion Cartwright agreed to grant raises to three of the crews, but not Marcelina Mendez's crew. When Mendez's crew protested such treatment they were not given an explanation.

Cartwright states that at the time of the protest he agreed to survey neighboring farms to assess comparable wages and to adjust wages accordingly. However, prior to this survey he did immediately grant raises to the three crews working in Barbera grapes. This was done, he testified, because he was aware at the time of the protest that the hourly wage for workers in Barbera grapes was low. Mendez' crew which was working in Grenache grapes was not given a raise on the date of the work stoppage or after the survey had been completed. Cartwright stated that they had been receiving the prevailing wage.

General Counsel's Exhibit Twelve, a memo listing the piece rate for pruners in each variety of grape, shows that the Barbera grape pruners had started at eleven cents per vine and was raised to twelve and one-half cents per vine, while the Grenache grape crew started at twelve cents per vine and remained there. Cartwright testified that two other crews were pruning Grenache grapes and they also did not receive a raise. Of the thirteen varieties pruned, only those pruning Grenache and Emerald Reisling did not receive raises.

Fidel Medrano, a worker in Antonio Munez' crew testified that he did not participate in the work stoppage, but that, the next

day, he was given a raise. (RT I, 151, 152). G.

One-Person-One-Row-Rule

1. Imposition of the Rule.

At the end of January 1980, Cartwright circulated a memorandum, dated January 28, 1980, to crew forepersons directing them to institute a company policy requiring workers to prune one person to a row. (G.C. Exhibit 10). About half of Marcelina Mendez's crew had been pruning in pairs or groups. Family members worked together and, Mendez stated, they were able to make more money by doing so. Among others in Mendez's crew, the Galvan's, Manriquez', and Soto's, customarily worked in couples. Martha Rodriquez testified that she often worked with her parents in the same row.

Lorenzo Galvan was concerned with the hardship imposed on the women by the rule. Working together, besides creating a more congenial working atmosphere, permitted the couples to more productively share their home and work tasks. Galvan stated that, in addition to her job for Tejon, his wife arose very early in the morning to prepare lunch for the entire family including six children and after work she would prepare dinner for the eight of them and do the wash and ironing for the school children. (RT I, 95, 96). By working in pairs, Galvan felt that he could give his wife the extra support on the job that was necessary to permit her to continue on such an arduous schedule.

There is conflicting testimony as to where and how the policy was first made known to Mendez' crew. Marcelina Mendez claims that she announced the policy to the crew enmasse on Wednesday, January 30, just before starting time. (RT II, 19, 20). She also stated that she told the workers they could go back to help their partner when one

had finished his own row. This exception was permitted by Mendez, although the memorandum announcing the rule stated that no exception would be made. (G.C. Exhibit 10).

Lorenzo Galvan and Martha Rodriquez testified that they were first made aware of the policy when it was passed along by word of mouth among the crew members and that no formal announcement was made by Marcelina Mendez. (RT I, 74, 75 and IV, 17). The first time they heard about the new policy, both stated, was Saturday, February 2, when Mendez told Martha Rodriquez' parents that they could no longer work together, and Martha told the Sotos who told the others. (RT IV, 14-20). On February 2, the first day the workers claim they heard about the rule, Martha Rodriquez testified that she confronted Mr. Cart-wright and attempted to protest the rule when he was in the fields. She reported Mr. Cartwright brushed her off and told her to change the subject when she mentioned calling in the Union. (RT IV, 15). 2. Rationale for Rule.

Cartwright and Mendez testified that the reasons for the rule were threefold: quality control, quantity control and safety. (RT II, 20; RT III, 102).

Mrs. Mendez testified that a week before the policy was announced Perry Aminian was inspecting the pruning and was not satisfied with the quality of some of the work. (RT II, 15, 16). As a result, the new policy was imposed so that she would know who had been pruning each vine and could maintain a better check on quality. On cross-examination, Mrs. Mendez admitted that she could tell exactly which workers had been cutting the vines Mr. Aminian had complained about. Thus, in that instance at least, the problem of identifying workers for quality control did not exist.

With regard to quantity control, there was no testimony of any problems identifying the number of vines cut by each worker for the purpose of piece wage or any other purpose.

Worker safety was a major reason attributed by Cartwright and Marcelina Mendez for the rule. Mendez testified that workers could cut each other with the pruning shears if they worked too closely together. However, in her experience she had never had this happen. (RT II, 13-15). Also, the exception that one partner could help the other when the former had completed his own row appears to belie all three reasons given. The real potential safety hazard expressed by Mrs. Mendez occurred when more than one worker pruned the same vine. Mrs. Mendez testified that, even when workers were permitted to work in the same row, it had always been her policy to warn them against cutting the same vine to protect themselves from snipping anothers finger or gouging an eye. She also testified that some workers, including several complainants, routinely ignore this warning and had never been punished in any way for doing so.

In addition to the rule at issue, the company issued goggles at the beginning of the pruning season for the workers to wear during pruning season to protect their eyes. The January 28 memorandum from Mr. Cartwright, in addition to announcing the one-person-one-row rule, instructs the forepeople to have their workers wear the goggles. (G.C. Exhibit 10). Apparently this rule was not enforced. Both Mendez and Antonio Munoz, another crew foreman, testified that members of their crews did not wear goggles although they had been issued them. No warning notice had been issued for this breach of company policy by the workers. Furthermore, the crew members were in

no way punished for disregarding the goggles rule. I find this selective enforcement of safety rules rather disconcerting. 3. Attempts at Resolution by Employees.

On Saturday after they learned of the one-person-one-row rule, complainants gathered in the fields to discuss their mutual dissatisfaction with the rule. Samuel Manriquez agreed to call Marcelina Mendez and ask her to have John Wood and Robin Cartwright meet them in the fields on Monday.

When Manriquez called Mendez on Sunday evening he told her to call Wood and Cartwright but did not give her the reason. In cross-examination, Mendez admitted she knew why he wanted to see the manager. She suggested he go to the office in the morning. He said no because he was speaking for half of the crew. She cut off conversation by telling him she had company. (RT II, 23).

On Monday morning Manriquez asked Mendez to call Wood and Cartwright. She replied that it was too early and they could go to the office to wait for them. The workers were concerned about losing money if they took time away from pruning, so they refused to leave. (RT IV, 44). According to Mendez, Manriquez told her that he would break the rule, even if that meant being fired. (RT II, 24). The complainants then worked in their customary manner; husbands and wives working together in the same row. Mendez sent word to Cartwright that Manriquez wanted to speak with him.

Cartwright came out to the fields later that morning. After speaking to Mrs. Mendez, Cartwright testified that he walked among the rows toward Samuel Manriquez, stopped a short distance from him, said "hi", and waited for Manriquez to speak. When Manriquez continued to work and said nothing, Cartwright walked on.

Manriquez testified that Cartwright never spoke to him. Rather, Cartwright walked past him several rows away and spoke to a boy working near Manriquez. This was corraborated by Martha Rodriquez, (RT IV, 22) and by Lorenzo Galvan. (RT I, 92, 93). In addition, Manriquez claimed that customarily when their forewoman or Mr. Cartwright wanted to talk with them during work hours, the supervisor or personnel manager would ask them to come to the end of the row. Neither Mendez nor Cartwright did so in this instance.

As a result, no actual discussion took place between the workers who disputed the rule and chose to ignore it and their supervisor or the labor coordinator prior to the time deficiency notices were distributed.

4. Company Policy Regarding Employee Grievances.

In prior years the company's policies with regard to employee relations, including grievance procedures, were set out in an Employee Handbook (G.C. Exhibit 5) that was distributed to the workers including complainants and other members of Marcelina Mendez's crew.

According to Mr. Cartwright, the Employee Handbook was undergoing revision during the 1979-80 pruning season and was not distributed that year. Mr. Cartwright further testified as to policies contained in the handbook that were or were not in effect during the 1979-80 season. He avoided responding directly to the General Counsel's persistent questioning as to what policies were in effect during 1979-80 pruning season. Cartwright stated that the workers were informed that the rules were being revised, but were never told what the new rules were. (RT I, 36-44). It does not appear the workers were made aware

of any revisions during the 1978-79 pruning season and no revisions were presented into evidence but were only vaguely alluded to by Mr. Cartwright.

Pertinent policies contained in the Handbook are: the employee grievance procedures and the disciplinary procedures for infractions of company rules.

The grievance procedures were testified to by Marcelina Mendez. (RT II, 45). She stated that for the first and second infractions of company rules by workers, the foreperson was supposed to talk to them and attempt to settle the differences. If a worker became subborn she would then issue deficiency notices. Ibid. This was the first year deficiency notices were used.

According to the Employee Handbook Complaint Procedure (G.C. Exhibit 5) the first step was for the worker to bring his or her complaint to the crew foreperson. If the problems could not be resolved immediately, the next step was to talk to the labor coordinator. If a resolution still had not been reached, the labor coordinator, area manager, and farm general manager would meet to discuss the problem.

While the workers attempted just such a resolution of their common grievance, the management did not follow the policy they had set out. Mr. Manriquez volunteered to explain the worker's complaint to their forewoman and the labor coordinator. Mrs. Mendez brushed off Mr. Manriquez when he called her on Sunday to tell her that the workers had a problem that he wished to discuss with management, nor did she inquire into the nature of the problem. When Manriquez repeated his request, for Mrs. Mendez to call the labor coordinator or the farm manager the following morning, Mrs. Mendez again denied this re-

quest. She did not call in the labor coordinator until Manriquez and the other workers who disputed the necessity or desirability of the one-person-one-row rule, challenged the rule by violating it, thereby attracting the attention they had been seeking from the management.

At this point, the forewoman and labor coordinator, rather than approaching the workers in a conciliatory attempt to discuss and resolve the complaint as the workers had originally requested, treated the workers act of refusing compliance with a rule they disputed as an infraction of company policy subjecting them to discipline.

Warning notices were issued and distributed to the complainants the following morning telling the workers they would be suspended and/or fired if they continued to violate the company rule. The workers were being told, in effect, that their complaint about the rule was not subject to discussion, and that they risked loosing their jobs if they did not acquiesce in following the challenged rule.

5. Warnings, Deficiency Notices and Suspension.

On Tuesday, February 5, deficiency notices worded by Cartwright were issued to most of the complainants by Marcelina Mendez, with a warning that their continued disobeyance of the rule could result in their dismissal. Martha Rodriquez was not issued a deficiency notice because, according to Mendez, Rodriquez had not violated the rule, although Rodriquez claimed she had. The workers continued to prune in their customary manner protesting the unfairness of the rule as they saw it.

Second and third notices were issued to the complainants on Wednesday by Mendez and then Cartwright. (RT II, 32). A discussion between Cartwright and the workers followed, during which Cart-

wright warned the crew that they would incur punishment but not be fired for disobeying the rule. (RT I, 98).

Lorenzo Galvan and Daniel Soto testified that they argued with Cartwright, telling him the rule was unfair and discriminatory. (RT I, 95-99). According to Galvan, Cartwright responded that he was the company and he made the laws. (RT I, 98).

The following morning, Thursday, Cartwright suspended complainants for three days for violation of the one-person-one-row rule. (RT I, 99). Mendez stated that Martha Rodriquez was given a third warning, but not suspended. (RT II, 34).

Testimony from Mendez and another crew supervisor, Antonio Munoz, indicate that warning notices were issued on two other occasions to crew members who had violated company policy. However, in both instances warning notices issued only after numerous oral warnings and attempted reconciliation with the workers.

The Manriquez' refused to work on Saturdays contrary to company rules. They missed five consecutive Saturdays of work and were talked to numerous times about not missing work before a warning notice was issued. (RT II, 51). They incurred no suspension or other punishment for their actions.

Christina and Georgio Hernandez, workers in Antonio Munoz's crew, violated the one-person-one-row policy. They were given several oral warnings against violating the rule from Munoz over several days before Cartwright was called. According to Munoz, Cartwright came to the fields, talked congenially with the Hernandez's and got them to agree to work separately before he wrote out and issued a warning notice to them on February 7, the day after Mendez's crew

had been suspended. They were never punished or warned further.

Fidel Medrano Mendina, a non-union worker in Munoz's crew also testified that he violated the one-person-one-row pruning rule but was never reprimanded or given a warning notice. (RT I, 153). Munoz testified that to his knowledge Medina never violated the policy.

F. Lay-off of February 25.

The complainants returned to work after their three days suspension. Shortly afterward Cartwright announced that most of the crews would be laid off except for two small clean-up crews with more seniority, and that those laid off would be called back to work according to their seniority. (RT I, 106,107). Cartwright testified that seniority call back was company policy except when special skills were required. (RT I, 31).

Mendez's crew, including complainants, were laid off on February 25 with assurances by Cartwright that they would be called back based on seniority. (RT I, 106). Several days later Lorenzo Galvan, his wife, the Manriquez's and the Soto's returned to pick up their pay checks. They noticed that more than two crews were working and some of the workers had less seniority than complainants and some were new workers. When they returned to the office and all eight complainants protested this fact to Mr. Cartwright on the following day he admitted that less senior workers were still working but said he could not stop those who were working since they had not finished their seasonal work. (RT I, 107; RT III, 120).

Galvan then requested a copy of the seniority list. (G.C. Exhibit 2). Cartwright refused him and Martha Rodriquez when she called

the next day with the same request. Cartwright testified that he told both they could look at the lists in the office. (RT III, 120).

Mr. Cartwright testified that to his knowledge customarily at the end of pruning season several clean-up crews would remain to finish up rows and blocks that were incomplete. He stated that he chose to keep whole crews together working in areas where they had previously been working and this may have resulted in some less senior workers continuing after the February 25 lay-off.

On cross-examination, Mr. Cartwright admitted that some of the clean-up crews had members from several different pruning crews and that they worked in the same block that Mendez's crew had been working in prior to the lay-off. (RT III, 136-137).

In addition, Lorenzo Galvan testified that there had been no such lay-off the previous year. When the crews completed pruning grapes, they pruned pistachios and suckered the vines until the end of May. (RT I, III}. G. Call Back.

The pruning season ended March 10, 1980. (RT III, 95). Lay-offs began on February 25. Workers were called back for clean-up, tying, preharvesting and other vineyard work between February 26 and the end of April, 1980. (RT I, 19). Mr. Cartwright explained that the TAP callback policy is to telephone the next name on the list three times. If that person still has not been reached after the third call and the Personnel Department has reason to believe that the worker is still in the area, a letter will be sent inviting him/her back to work. (RT III, 95). If the worker refuses the offer of work, his or her name remains on the seniority list. New applicants are hired only

after the seniority list is exhausted. Ibid.

Grettel Kendall, TAP Employee Relation Coordinator testified that she called back workers in March and April, 1980, except for the first week of April when she was on vacation and Juan DeLeon, the Assistant Personnel Manager, filled in for her. (RT III, 3-4). To determine who to begin calling, Kendall testified that she would compare time sheets of those presently working to the seniority list and call the next name on the list. (RT III, 12). She does not keep records of who she called unless work was refused. (RT III, 20).

Ms. Kendall testified that she called back Samuel and Juana Manriquez on March 20 to prune walnut trees. (RT III, 4-5). According to Ms. Kendall, she called them that day because they were the next on the list who were not working. Both refused. Mr. Manriquez told her he had a bad back and could not do that type of work. Mrs. Manriquez said she never did that type of work. Ms. Kendall wrote notes to herself memorializing her phone conversation with the Manriquez that were admitted into evidence without objection. (RT III, 5-6).

On March 20 or 21, (her testimony is unclear as to exact dates) Ms. Kendall called the Rodriquez', (RT III, 6-8), to join the crew pruning walnut trees forming on March 24. She spoke with Tomas Rodriquez, who asked her to give him a day to think about it. (RT III, 7). The next day, Friday, Mr. Rodriquez called Ms. Kendall back and told her that he and Martha would work, but that his wife was sick and would be unable to come to work.

Juan DeLeon testified that he called Lorenzo Galvan on April 3rd, to return to work on April 4th. (RT III, 27). According to DeLeon, Galvan told him he could not return on the 4th or 5th, but

could return on April 7th. Ibid. Then DeLeon told Galvan, he would call back later and did call Galvan's home on Sunday, April 6th. Galvan was not at home and DeLeon claims he talked with Galvan's son, who he estimated to be 11 or 12 years old, and left a message that Galvan should report to work on Monday the 7th. (RT III, 27, 30).

A memorandum written by DeLeon and dated April 7, 1980, summarizing his conversation with Galvan on April 3rd, the message left on the 6th and Galvan's failure to report to work on the 7th was admitted into evidence as Respondent's Exhibit C.

Lorenzo Galvan claims he was not called back until he received a letter on April 19th or 20th to report to work on the 22nd. (RT I, 110). Further, he denied ever receiving a phone call from De Leon or having a conversation with him about returning to work in early April. (RT IV, 101-102).

Felicitas Galvan testified that to her knowledge Juan DeLeon had not called or left a message about returning to work in early April. (RT IV, 65-67). Rafael Galvan, the Galvan's eleven year old son testified that he had never received a phone call from the company. (RT IV, 78-81).

II

ANALYSIS and CONCLUSIONS OF LAW

The complaint, as amended, alleges that TAP'S imposition of the one-person-one-row rule, the subsequent suspension of complainants for disobeying the rule, the early lay-off and failure to timely rehire complainants constitutes a violation of complainants §1153(a) and (c) rights in that these acts constituted retaliation for concerted union

activity.

General Counsel through testimony drew a picture of the relationship of the new personnel manager to complainants as it evolved over the 1979-1980 pruning season as one of increasing tension, animosity, threats and acts of reprisal for concerted activity by the personnel manager acting on behalf of the company, against complainants.

Respondent portrayed the season as attempts by a new personnel manager to acclimate himself to a new company and new workers by revising old policies and introducing new rules and methods that he thought would make the work safer and more efficient.

I found Cartwright's testimony, though articulate, to be very evasive and I did not feel he was telling the whole story. I find his testimony to be less than credible.

The element of proof to establish a prima facie case of discriminatory suspension or discharge and discriminatory refusal to re-hire in violation of §§1153(a) and (c) are basically the same. See Akimoto Nursery 3 ALRB No. 73, Ron Nunn Farms 4 ALRB No. 34, Golden Valley Farming, 4 ALRB No. 79. The burden of persuasion is on the General Counsel to prove by a preponderance of the evidence that the employee was engaged in protected activity, that the Employer had knowledge of employee's protected activity and that there was some connection or causal relation between the discharge and the protected activity. Jackson and Perkins Rose Co., 5 ALRB No. 20.

With regard to discriminatory failure to recall a laid-off employee when work became available, the General Counsel must also prove that the Respondent had a policy of rehiring former employees

as work became available. Prohoroff Poultry Farms, 5 ALRB No. 9

Once General Counsel's burden has been met, the burden of proof shifts to Respondent who must produce a valid business justification for the discharge since the "real" reason for the termination is within its exclusive knowledge. Arnaudo Bros., Inc., 3 ALRB No. 78. The existence of independent grounds for discharge does not preclude a finding of union animus, Tex-Cal Land Mgmt., 3 ALRB No. 49, as where the business justification offered is pretextual. Highland Ranch & San Clemente Ranch, Ltd., 5 ALRB No. 54. In addition, the Employer's knowledge of the employee's Union affiliation or concerted activity may be inferred from the record as a whole, i.e., the timing of events, surrounding circumstances and Employer's unconvincing justification. S. Kuramura Inc., 3 ALRB No. 49, AS-H-NE Farms, 3 ALRB No. 53.

A. Imposition of One-Person-One-Row Rule.

The complaint alleges, and General Counsel has proven that this rule was imposed in the middle of the pruning season to harass the Union activists among the workers and to retaliate for prior concerted activity, i.e., the wage protest of December 11.

The facts support this allegation. The rule had a negative effect on working conditions; increasing the burden on the women and possibly causing the workers loss of pay. From the first encounter between Robin Cartwright and Marcelina Mendez' crew there was dispute and tension with Cartwright intimating reprisals for Union activism. Cartwright's conduct on December 11, granting all the protesting crews but Mendez's crew an on the spot raise, is suspicious in itself.

Cartwright claims that he was unaware of the complainant's Union adherence until he prepared for this hearing in April, 1980. The witness's evasive demeanor and surrounding circumstances do not support his claim of ignorance. Additionally, Cartwright had extensive discussions with his employers prior to being hired.

Cartwright admitted he was aware of Union organizing attempts during the 1979-80 season. In his introductory speech on December 4, 1979, Cartwright warned that any "leaders" would be found and discharged. During his confrontation with the wage protestors on December 11, workers threatened to bring in the Union. He had long discussions with the farm general manager, John Woods, prior to the start of the season about his job duties and farm labor conditions. On February 2, Martha Rodriquez confronted Cartwright with the assertion that he would have to deal with the Union. In addition, the complainant's Unfair Labor Practice charge was filed and mailed to TAP in mid-February.

For the above reasons, the fact that the complainants were well-known Union activists and all but Felicitas Galvan, had previously filed charges with the ALRB against TAP and benefited from a settlement as a result of those charges; and Cartwright's evasive testimony characterized by crucial memory lapses, I believe that Cartwright was aware that members of Mendez' crew were Union supporters, that he harbored animosity toward the Union and that his actions in imposing the one-person-one-row rule and his treatment of complainants for their failure to comply with the rule, at least in part, were motivated by Union hostility and retaliation for complainant's agressive assertion of their rights.

The one-person-one-row rule was relied on to unlawfully discharge the employees in question to the extent, at least, that its specialized enforcement constituted unlawful discrimination. The Respondent created and enforced this rule to single out Union adherents. The safety and quality control reasons put forth for the rules' existence are a sham. Therefore I find them to be an unlawful means of retaliating against employees' protected activity. See Unimasso, Inc., 196 NLRB 400, 402-403 (1972); Wilson Manufacturing Co., 197 NLRB 322, 325-326 (1972). I believe, these rules were prepared as a means of controlling employees and giving the Respondent some "official" bases for getting rid of employees who demonstrated support for the UFW.

B. Threatened Terminations, Warning Notices, Suspensions and Lay-offs.

Discriminatory intent when discharging an employee is "normally supportable only by the circumstances and circumstantial evidence." Amalgamated Clothing Workers of America, AFL-CIO v. NLRB, 302 F.2d 186, 190 (C.A.D.C. 1962), citing NLRB v. Link-Belt Co., 311 U.S. 584, 597, 602, 61S. Ct. 358, 85 L.Ed. 368 (1941). Reasonable inferences may be drawn from the established facts in order to ascertain the employer's true motive. Even though there is evidence to support a justifiable ground for the discharge, a violation may nevertheless be found where the Union activity is the moving cause behind the discharge or where the employee would not have been fired "but for" his/her Union activities. Even where the anti-Union motive is not the dominant motive but may be so small as "the last straw which breaks the camel's

back", a violation has been established. NLRB v. Whitfield Pickle Co., 374 F.2d 576, 582, 64 LRRM 2656 (5th Cir. 1967).

The MLRB has found discharges or lay-offs to be discriminatory where: The Employer gives "shifting reasons" for the discharge, indicating "mere pretenses" for an anti-Union cause, Federal Mogul Corp., Sterling Aluminum Co. Div. v. NLRB, 391 F.2d 713, 67 LRRM 2686 (8th Cir. 1968); no reason is given at the time of discharge and no warning is given about objectionable behavior, NLRB v. Tepper, 297 F.2d 280, 49 LRRM 2258 (10th Cir. 1961); there is prior tolerance of conduct which the Employer relies on to justify the discharge after Union activity has begun, NLRB v. Princeton Inn Co., 424 F.2d 264, 73 LRRM 3002 (3rd Cir. 1970); a more experienced worker who has participated in Union activities is fired rather than a less experienced worker, Federal Mogul Corp., Steling Aluminum Co. Div. v. NLRB, supra.

The evidence bearing upon the discriminatory lay-off and continued lay-offs of the complainants is substantial. They were laid off because of "lack of work", yet other employees who were not laid off had less experience and seniority than they, in spite of the professed company policy of laying off employees with the least experience first. As previously discussed there is substantial evidence to support a conclusion that Respondent knew about the complainants Union activities.

Considering the timing of the events, and circumstances surrounding them, together with the unconvincing justifications offered by Respondents for the lay-offs, I conclude that the greater probability of trust lies with a finding that Respondent knew of the complainant's Union activities. To conclude that the suspensions and lay-offs were

not motivated, at least in substantial part, by a desire to discourage Union activity defies logic and common sense.

I find, therefore, that Respondents violated Action 1153(c) of The Act when the complainants were suspended and laid-off.

III

REMEDY

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

Having found that Respondent unlawfully institute a one-person-one-row pruning rule, I shall recommend that Respondent rescind the rule and no longer attempt to enforce this rule.

Having found that Respondent threatened termination by is-suring unjustified warning notices to Daniel Soto, Maria Socorro Soto, Lorenzo Galvan, Tomas Rodriquez, Maria Isabel Rodriquez, Martha Rodriquez, Samuel Manriquez, and Juana Manriquez because of their support and activities on behalf of the UFW and that Respondent suspended Daniel Soto, Maria Socorro Soto, Lorenzo Galvan, Tomas Rodriquez, Maria Isabel Rodriquez, Martha Rodriquez, Samuel Manriquez, and Juana Manriquez for three days because of their support and activities on behalf of the UFW and that Respondent laid off and continued to lay off Daniel Soto, Maria Socorro Soto, Lorenzo Galvan, Tomas Rodriquez, Martha Rodriquez, Samuel Manriquez and Juana Manriquez because of their support and activities on behalf of UFW, conduct which strikes at the very heart and policies of The Act, I recommend that Respondent

be ordered to cease and desist from infringing in any manner upon the rights guaranteed to employees by Section 1152 of The Act.

In order to fully remedy Respondent's unlawful conduct, I also recommend that certain affirmative steps be taken, as follows: first, Respondent must publish and make known to its employees that it has violated The Act and that it has been ordered not to engage in future violations of The Act. Attached to this Decision is a Notice of Respondent's unlawful conduct and promises for the future.

I have determined that the following notice is necessary and appropriate:

1. The Notice to Employees, translated into English and Spanish, with the approval of the Regional Director, shall be mailed to all employees of the Respondent employed in February, 1980, and the time such Notice is mailed, to such employees who are no longer employed by Respondent. The Notices are to be mailed to the employees' last known addresses, or more current addresses if made known to Respondent. The turnover in employees and the importance of fully informing farm workers of their rights make mailing the Notice an appropriate means of publication. See Valley Farms and Rose J. Farms, 2 ALRB No. 41 (1976).

2. For all current employees, and for those hired by the Respondent for six months following its initial compliance with this Decision and Order, Respondent, through one or more of its management officials, is to give by hand to such employees the attached Notice, appropriately translated into the particular employees' language. In this connection, Respondent's representative is to inform such employees that it is important to understand the Notice and to offer to

read the Notice to any employee who so desires, in the employee's desired language. This means of publication is appropriate to fully advise current and future employees of their rights, and is calculated to signify the authority of the law which protects the employees.

3. For the same six-month period, as noted above, Respondent is to post the Notice in one or more prominent places in its fields, in any area frequented by employees or where other notices are posted by Respondent. Although to some extent this posting-results in a duplication of publication, the posting will serve as a reminder to employees in regard to the Respondent's past violations and a continued assurance as to the employees' full protection.

Having found that Respondent unlawfully suspended and/or laid-off seven workers and refused to reemploy some of them, I recommend that Respondent be ordered to offer such employees immediate and full reinstatement to their former or equivalent positions. And, I further recommend that Respondent make whole such employees by payment to them of a sum of money equal to the wages they each would have earned from the dates of their respective suspensions and/or protracted lay-offs to the dates on which they were each reinstated or offered reinstatement, less their respective net earnings, together with interest thereon at the rate of 7% per annum, such back pay to be computed in accordance with the formula used in F. W. Woodworth Co., 90 NLRB 289; and Isis Plumbing and Heating Co., 133 NLRB 716.

ORDER

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

1. Cease and desist from:

(a) In any manner interfering with, restraining and coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement the type of which is authorized by Section 1153(c) of the Act.

(b) Discouraging membership of any of its employees in the UFW, or any other labor organization, by unlawfully discharging, laying off, refusing to hire, or in any other manner discriminating against individuals in regard to their hire or tenure of employment, or any term or condition of employment, except as authorized by Section 1153(c) of the Act.

c. Enforcing its invalid one-person-per-row rule, or from effectuating work rules drafted as a result of the UFW's supporters' efforts to engage in protected activity.

2. Take the following affirmative action:

(a) Offer to the complainants immediate and full reinstatement to their former or equivalent jobs, without prejudice to their seniority or other rights and privileges, and to make them whole for losses they may have suffered as a result of their suspension or continued layoff, as more fully described in the section entitled,

"The Remedy."

(b) Preserve and make available to the Board or its agents, upon request, for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and other records necessary to analyze the back pay due to the foregoing named employees.

(c) Distribute and post the attached Notice To Employees in the manner set forth in the section entitled, "The Remedy." In addition, the Respondent shall furnish the Regional Director for the Region, for his or her acceptance, copies of the Notice, accurately and appropriately translated, and such proof as requested by the Regional Director, or agent, that the Notice has been distributed and made known in the required manner.

(d) Make available to the UFW sufficient space on a bulletin board or boards and provide to the UFW the names and addresses of employees, all as set forth more fully in the section entitled, "The Remedy."

(e) Allow the UFW to have its representatives meet and talk with employees at its fields, under the terms and conditions of the Board's current Access Regulation, for a period of two months from the time that Respondent initially complies with this Decision and Order.

(f) Notify the Regional Director of the Regional Office within 20 days from receipt of a copy of this Decision and Order of steps the Respondent has taken to comply therewith and to continue reporting periodically thereafter until full compliance is achieved.

DATED: July 15, 1981

AGRICULTURAL LABOR RELATIONS BOARD

By 

LEONARD M TILLEM
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all persons coming to work for us in the next harvest season that we will remedy those violations, and we will respect the rights of all our employees in the future. Therefore, we are now telling each of you that,

(a) We will reinstate DANIEL SOTO, MARIA SOCORRO SOTO, LORENZO GALVAN, TOMAS RODRIQUEZ, MARTHA RODRIQUEZ, SAMUEL MANRIQUEZ and JUANA MANRIQUEZ to their former jobs and give each and every one of them back pay for any losses each and every one of them had while each one was off work.

(b) We will not promulgate or enforce any work rules which are designed to discourage protected union activities by our employees.

(c) All our employees are free to support, become or remain members of the United Farm Workers of America, or any other labor organization. Our employees may wear union buttons or pass out and sign union authorization cards or engage in other organizational efforts including passing out literature or talking to their fellow employees about any union of their own choice provided that this is not done at times or in a manner

which will interfere with their doing the job for which they were hired. We will not discharge, lay off, or in any manner interfere with the rights of our employees to engage in these and other activities which are guaranteed them by the Agricultural Labor Relations Act.

DATED: _____

TEJON AGRICULTURAL PARTNERS

By _____

(title)

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

DO NOT REMOVE OR MUTILATE