San Diego, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA, AFL-CIO, Respondent, and SUN HARVEST, INC., Respondent, and GEORGE MOSES, MICHAEL MOSES, RONALD MOSES, GUADALUPE BELTRAN, and CECILIA SALINAS, Charging Parties.	)	Case Nos. 80-CE-6-SD 80-CL-3-SD 9 ALRB No. 40

DECISION AND ORDER

On September 22, 1981, Administrative Law Judge[1/] (ALJ) James Wolpman issued the attached Decision in this proceeding. Thereafter, Respondent United Farm Workers of America, AFL-CIO (UFW or Union), the General Counsel and the Charging Parties each filed timely exceptions and a supporting brief. The Charging Parties filed a reply brief.

The Agricultural Labor Relations Board[2/] (Board) has considered the attached Decision in light of the exceptions and

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[1/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 30, 1983.)

[2/] Member Carrillo did not participate in the Board's consideration of this matter.

briefs and has decided to affirm the rulings, findings,[3/] and conclusions of the ALJ as modified herein, and to adopt his recommended Order with modifications.

Background

Each of the five Charging Parties was employed by Respondent Sun Harvest, Inc. in January of 1979, when strike and picketing activities began at Sun Harvest. For a number of years, Sun Harvest's employees had been covered by a series of collective bargaining agreements with Respondent UFW, which included a union security provision making union membership a condition of continued employment. In accordance with that provision, the five Charging Parties had become members of the UFW. Shortly after the agreement expired on January 15, 1979, Sun Harvest's workers went on strike until September 4, 1979, when Sun Harvest signed a new contract which contained a union security clause.

Although each Charging Party joined the strike at its inception, each subsequently returned to work while the strike was still in progress. However, none of the Charging Parties withdrew from membership in the UFW. George Moses and his brothers, Michael and Ronald, returned to work at Sun Harvest in March, April, and July of 1979, respectively. Guadalupe Beltran and Cecilia Salinas both returned to work at Sun Harvest in June 1979. Other Sun Harvest employees filed intraunion charges against the five Charging Parties, alleging that each had violated the UFW

[3/] In his Decision, the ALJ incorrectly found that Charging Party Cecilia Salinas had worked for Respondent Sun Harvest since 1979. The evidence indicates, and we find, that she worked for Sun Harvest from 1971 to 1980.

constitution by crossing a union-authorized picket line. Each of the Charging Parties was thereafter tried by the UFW Ranch Committee, found guilty as charged, and expelled from the Union. Thereafter, at the Union's request, pursuant to the collective bargaining agreement between the UFW and Sun Harvest, Inc., the latter terminated the employment of each of the Charging Parties. On appeal to the National Executive Board (NEB), the expulsions were reduced to suspensions.[4/] None of the Charging Parties appealed his or her suspension to the UFW's Public Review Board (PRB), but instead they all filed the instant unfair labor practice charges. These charges alleged that Respondent UFW violated Labor Code section 1154(a)(1) and (b)[5/] by causing Sun Harvest, Inc. to discharge them as a result of their loss of good standing as union members. The Charging Parties alleged that their loss of good standing in the UFW was based on proceedings which did not provide them due process. The unfair labor practice charges further alleged that Respondent Sun Harvest, Inc. violated section 1153(c) and (a) of the Agricultural Labor Relations Act (ALRA or Act) by discharging the employees.[6/]

[4/] The penalties imposed on Charging Parties Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas were reduced to one-year suspensions, while George Moses' penalty was reduced to a two-year suspension.

[5/] All section references herein are to the California Labor Code unless otherwise specified.

[6/] In its answer to the complaint, Respondent Sun Harvest asserted as an affirmative defense that the collective bargaining agreement between it and the UFW included a clause which required that the UFW hold Sun Harvest harmless from any liability in

(Fn. 6 cont. on p. 4.)

In United Farm Workers of America, AFL-CIO (Pasillas, et al.) (1982) 8 ALRB No. 103,[7/] we discussed the standard of review we will apply to internal union disciplinary proceedings. We noted that, by authorizing this Board to review internal union proceedings for fairness and reasonableness, the Legislature, in enacting section 1153(c), intended that we balance the Union's exercise of control over employment opportunities with the Union's duty to exercise that control in a fair manner. We stated that we will give close attention to internal union disciplinary proceedings on a case-by-case basis in order to insure that a union member charged with a violation of union rules is served with written specific charges, given a reasonable time to prepare his or her defense, and afforded a full and fair hearing, and in all other respects afforded due process.

We turn now to the specific issues presented in the instant matter.

(Fn. 6 cont.)

this case.

Although the ALJ found that both Respondents violated the Act, and ordered both to cease and desist from discriminating against any employees whose union membership had been terminated pursuant to a process which did not afford sufficient due process, he found that the UFW was primarily liable for any backpay liability, and that Sun Harvest was entitled to full indemnification from the UFW.

[7/] In conformance with his dissenting opinion in UFW/Sun Harvest and Mann Packing Company (1982) 8 ALRB No. 103, Member McCarthy would find that the disciplinary proceedings against the Charging Parties were void ab initio because the union sought to enforce an unreasonable term or condition of membership in violation of Labor Code section 1153(c). He would otherwise concur in the majority's conclusion that procedural deficiencies rendered the proceedings invalid. The affirmative remedies ordered in this case would be the same under Member McCarthy's analysis.

"Retroactive" Application of the Union Security Clause

Charging Parties argue, as a threshold issue, that the UFW acted unlawfully in seeking their discharge, for the union security clauses that the Union invoked were not in existence at the time they violated the union rules and crossed the picket lines at their employer's premises.

Charging Parties rely on several cases decided under section 8(a)(3) of the National Labor Relations Act (NLRA)[8/]

[8/] Section 8(a)(3) provides that it shall be an unfair labor practice for an employer:

> [B]y discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable ground for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;...

which hold that a labor organization may not discipline a member under a union security clause for failing to comply with union membership requirements, i.e., the payment of dues, at a time before the collective bargaining agreement embodying the union security clause had been signed.[9/]

Sections 1153(c) and 1154(b) of the ALRA[10/] create

[9/] Member Waldie agrees with the ALJ's conclusion that the Charging Parties herein were bound by the Union's picket line rule because they were voluntary Union members at the time they violated the rule. (See, Machinists Local 1327 (1982) 263 NLRB No. 141 [111 LRRM 1115], where the NLRB stated that a union may lawfully fine a current member for strikebreaking.) Member Waldie, like the ALJ, would withhold his judgment as to the "retroactivity" issue, until that issue is presented by the application, or attempted application, of a union security provision against an employee who was not a voluntary member of the labor organization at the time he/she committed the act(s) which the organization would penalize by denying him/her membership.

Member Henning also considers the Charging Parties' voluntary membership in the UFW at the time they crossed the picket lines a decisive factor on this issue, but believes that the difference between NLRA section 8(a)(3) and ALRA sections 1153(c) is a necessary part of the proper analysis of the issue.

[10/] Section 1153(c) provides that it shall be an unfair labor practice for an agricultural employer:

> By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.
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> Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such employment, or the effective date of such agreement whichever is later, if such labor organization

(Fn. 10 cont. on p. 7.)

a statutory scheme regarding union membership and union security agreements which differs significantly from that envisaged by the NLRA. We believe that the differences reflect a deliberate decision by the California Legislature to permit agricultural labor organizations a wider scope of disciplinary authority over their members than is permitted to labor organizations under the NLRA. The legislative history of the ALRA shows that this was the Legislature's reason for including the final sentence of section 1153(c), which states:

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(Fn. 10 cont.)

> is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement. No employee who has been required to pay dues to a labor organization by virtue of his employment as an agricultural worker during any calendar month, shall be required to pay dues to another labor organization by virtue of similar employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

Section 1154(b) provides that it shall be an unfair labor practice for a labor organization or its agents

> To cease or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against such an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the membership requirements specified in subdivision (c) of Section 1153.

> For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

In our Decision in UFW/Sun Harvest and Mann Packing Company (1982) 8 ALRB No. 103 at pages 10-12 we referred to that part of the legislative history which most clearly manifests the intent of the Legislature in this regard. In view of its importance for understanding the very significant difference between NLRA section 8(a)(3) and ALRA section 1153(c), we reiterate that part of our earlier Decision.

> We conclude from the legislative history of section 1153(c) of the Act that the Legislature intended to give agricultural employee unions the power to require their members to honor union authorized strikes and picket lines as a condition of continued good standing and continued employment. In a public hearing before the Senate Industrial Relations Committee on May 21, 1975, Jordan Bloom, an attorney representing a number of agricultural employers, testified as follows regarding the good standing provision which had been amended into Senate Bill No. 1:
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> "JORDAN BLOOM: ...Section 1153(c) and 1154(b) have been amended to entitle a union ... to be the sole judge of the good standing of its membership and for any reason it deems appropriate under by-laws and constitutions drafted by it to tell their grower that that member is no longer a member in good standing and the employee should be discharged. Now, I am not speaking of scare stories here. This has happened time and time again from 1970 through April 15 of 1973 where union members refused to go to a demonstration or refused to carry out the orders of the leadership the collective bargaining agreements provided that the union was the sole judge of the member's good-standing and the employer was told to fire those employees.

Now, this bill as initially drafted, the drafters recognized that the premise provided for in the National Labor Relations Act, the objective premise, not subjective, that you can only cause an employer to discriminate against an employee for the employee's failure to tender dues and initiation fees uniformly required as a condition of membership. That's pure and simple' either he's paid his dues or he hasn't paid his dues. Not that he hasn't gone to a meeting or he hasn't taken an oath of allegiance or he hasn't gone to a demonstration. I think opening this up for this kind of subjective evaluation of an employee's duties and obligations to a union and allowing the union to tell the employer to fire the employee for whatever reason, especially when that grower does not have anything to say about the drafting of those by-laws or that constitution is inherently discriminatory, and I'm speaking, you understand, from the growers' standpoint."
(Emphasis added.)[11/]

Following this explanation of the historical application of the good standing clause by the UFW, then Secretary of Agriculture Rose Bird explained to the committee that ALRB review of union membership requirements would protect farm workers from "arbitrary" union requirements. (See, Transcript of Senate Hearing at p. 72.) Senator Stull then moved that section 1153(c) of S.B. 1 be amended to eliminate the good standing language and return to conformity with NLRA section 8(a)(3). With Jordan Bloom's statements as to the likely effect of the good standing language in mind, the Senate committee then rejected the Stull amendment.

This history indicates that the Legislature understood and intended that, under section 1153(c), agricultural unions would be able to require a good deal more of their members than simply the payment of dues, as under NLRA section 8(a)(3). The determination as to how much more could be required was left to the case-by-case review of this Board. Although the Board's discretion in this area is broad, we are instructed that only union membership requirements which are fair and reasonable may be enforced through expulsion from the union and termination of employment under a union security agreement.

It is consistent with the legislative history of section

[11/] Hearings on Senate Bill No. 1 before the Senate Industrial Relations Committee on May 21, 1975, pp. 68-69.

1153(c), we believe, to hold that termination of union membership as the penalty for strikebreaking in violation of a labor organization's rules is not rendered unreasonable by a concomitant loss of employment pursuant to the union security provision of a later-executed collective bargaining agreement. That this could be a consequence of violating labor organization rules by strikebreaking is foreseeable to any member who troubles to inform himself or herself about the organization's rules.

Exhaustion of Internal Union Appeals

At the hearing, Respondent UFW argued that the Charging Parties had a duty to exhaust the intraunion procedures available to them and that, having failed to appeal their suspensions to the UFW's PRB, they should not be permitted to litigate unfair labor practice charges. The ALJ found that, in the circumstances of this case, no appeal to the PRB was necessary. Article XXI, section 5, of the UFW constitution requires the PRB to issue a decision within 45 days of the date the notice of appeal was filed. At the time the NEB issued its decision, the PRB had not yet issued a case decision in its five years of existence, and, given the fact that the NEB granted itself an extension of time to issue its decision, there was no reason for the Charging Parties to believe that their appeals to the PRB would be handled expeditiously. Moreover, the UFW's constitution provides that an appeal to the PRB, unlike an appeal to the NEB, does not stay enforcement of a union penalty. Furthermore, while a union security clause enables a union to cause an employee who has lost good standing to be suspended or terminated from

his/her employment, the Union has no legal authority to require an employer to rehire an employee so suspended or terminated. A member suspended or terminated from his/her job pending disposition of an appeal to the PRB could therefore sustain irreparable injury even if he/she were ultimately exonerated by the PRB. The ALJ therefore found that the Regional Director had the discretion to conclude that further appeals by the Charging Parties were not necessary and to process their unfair labor practice charges.

Respondent UFW excepted to the ALJ's finding, arguing that although the ALJ properly found that exhaustion of internal union remedies was necessary, he then incorrectly concluded that the Charging Parties were excused from taking the final step in the UFW's appeal procedure, appeal to the PRB. The Charging Parties also excepted to the ALJ's finding, arguing that exhaustion of internal union procedures was not required and that the determination whether a charging party has adequately exhausted internal union procedures does not lie within the discretion of the Regional Director.

In UFW (Pasillas), supra, 8 ALRB No. 103, we set forth some factors we shall consider in determining whether the reasons for a union member's failure to exhaust internal union remedies were reasonable in view of all the circumstances. We listed the following factors, as propounded by the United States Supreme Court in Clayton v. Automobile Workers (1981) 451 U.S. 679 [107 LRRM 2385]: whether union officials were so hostile to the employee that he/she could not hope to obtain a fair hearing;

whether the union could implement a full remedy for the employee; and whether exhaustion of internal procedures would unreasonably delay the employee's opportunity to obtain a hearing on the merits of his/her claim.

As mentioned above, all five Charging Parties appealed their expulsion penalties to the NEB, which reduced each expulsion to a suspension. None of the Charging Parties thereafter appealed his/her suspension to the PRB. Instead, each filed an unfair labor practice charge with the Board.

At the hearing, George Moses testified that he did not know anything about the PRB when he decided not to appeal to that body. He testified that he thought that PRB review would take too long, and that the PRB would not reverse the Union's action. He did not ask when the PRB would meet next, and did not read the constitutional provisions concerning the PRB before deciding not to appeal. Neither Beltran nor Salinas offered any explanation for her failure to appeal to the PRB.

Applying the first factor set forth in Clayton, we find that the Charging Parties in this case had no reasonable basis for assuming that an appeal to the PRB would be futile because of hostility on the part of union officials or PRB members. There is no evidence suggesting that the PRB members were likely to treat the Charging Parties unfairly, and the record in this case indicates that in six subsequent PRB decisions the PRB reversed, on due process grounds, suspensions ordered by the NEB.

The record indicates that, when the one-year suspensions

of Michael and Ronald Moses, Guadalupe Beltran and Cecilia Salinas expired, the UFW wrote letters to Respondent Sun Harvest reporting that those four members had been returned to good standing, and Sun Harvest thereafter offered Beltran and Salinas reinstatement to their former positions with full seniority.[12/] It is clear however, that the Union had no ability or authority to effect the most important remedy for the discharges of the Charging Parties; i.e., reinstatement to their jobs at Sun Harvest with full seniority. In UFW (Pasillas), we noted that appeal to the PRB is not necessary when, at the Union's request, an employee has been discharged. Since the Union lacks any authority or legal means to require an employer to reinstate an employee with full seniority, only unfair labor practice charges against both the employer and the Union can provide a full remedy. In view of this fact, and since the five Charging Parties in this case had all been discharged by Sun Harvest, Inc., at the Union's request, we agree with the ALJ that their failure to appeal to the PRB was not fatal to their right to file charges under the Act.[13/]

Procedural Due Process

The 60-Day Limitation on the Filing of Charges. The

[12/] The record does not indicate whether Sun Harvest also offered reinstatement with full seniority to Michael Moses and Ronald Moses.

[13/] The UFW also excepted to the ALJ's proposed Order directed to Respondent Sun Harvest, on the grounds that the UFW has agreed that the collective bargaining agreement between the Respondents holds Sun Harvest harmless for the UFW's conduct herein. We have adopted the ALJ's Order, as modified, so as to provide a sufficient and complete legal remedy for the Charging Parties.

charges filed against the individual union members in this case were all filed more than sixty days after the accusers first became aware of the strikebreaking. Article XVIII, section 4, of the UFW constitution requires that "[C]harges must be preferred within 60 days of the time the accuser becomes aware of the alleged offense or offenses...." The Charging Parties and the General Counsel excepted to the ALJ's finding that the ranch committee and the NEB could have reasonably upheld the timeliness of the charges based on any of several theories, including viewing the strikebreaking as a continuing violation or a series of daily violations. These exceptions are without merit. The Charging Parties, who remained members of the Union during the period when they were working behind the UFW's picket line, committed a violation of the UFW constitution each day they crossed the line and went to work. The internal union charges were filed within sixty days of the last such violation by each Charging Party and were therefore timely. (See UFW (Pasillas), supra, 8 ALRB No. 103.)[14/]

Reasonable Time to Prepare Defense. The intraunion charges against the Moses brothers were originally prepared in Spanish and served only on George and Ronald Moses. Although George had some command of Spanish, he protested the fact that

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[14/] The Charging Parties and the General Counsel both argued in their exceptions briefs that, had the charges been filed earlier, the union members might have decided to respect the picket line, or they might have received less severe sentences. While these allegations may have merit, they do not establish a violation of due-process guarantees, nor do they persuade us that the UFW's interpretation of its constitution was unreasonable.

the charges were in Spanish and requested a copy of the UFW constitution in English. The charges were translated into English and, on November 1, 1979, were served on George, Michael and Ronald Moses. Along with the charges, each brother received a notice setting his trial for the evening of November 7, together with an English translation of the portion of the UFW constitution covering trial procedure. When he received the new charge, George asked the union representative who served him with the charge for a complete copy of the constitution.[15/] By a letter written November 5, 1979, George reiterated his demand and requested a postponement of the trials to allow him time to study the constitution and prepare a defense.

On the morning of the day of his trial, George received an English version of the UFW constitution from Carlos Santiago. Although Santiago denied that he agreed to postpone the Moses' brothers' hearings for a week, General Counsel's Exhibit 11 is a receipt, signed by both George Moses and Carlos Santiago, which makes George's acceptance of the constitution conditional on a seven-day continuance. The ALJ found that Santiago understood the receipt and signed it after expressing reservations about his authority to grant a continuance.

Richard King, the director of the UFW's Calexico Field Office, who was advising the ranch committee on trial and discipline procedures, decided that a continuance was not

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[15/] George Moses testified that, throughout the trial and appeal proceedings, he was representing his brothers Michael and Ronald as well as himself, and the brothers testified that they relied on George as their representative.

warranted. King testified that he "probably" discussed the matter with the ranch committee, but none of the committee members testified about any such discussion.

When George Moses finished work on the day of his trial, he gave Carlos Santiago a two-page letter describing his defenses to the charge.[16/] Neither George nor his brothers appeared at their trials,[17/] and the letter was read to the ranch committee.[18/] Again, King testified that he was "pretty sure" that he mentioned the disputed postponement at the trial. Santiago, who served as one of the judges at the Moses brothers' hearing, testified that he did not tell any of the other judges about the requested extension.

After the ranch committee voted to accept the trial judges' recommendation of findings of constitutional violations and penalties of expulsion for the Moses brothers, George prepared and timely filed a ten-page appeal to the NEB on behalf of himself and his brothers.[19/]

[16/] In the letter, George stated that he returned to work to avoid losing his home and truck, and requested that the judges and the ranch committee consider the requirements of Article XVIII, section 4, of the UFW constitution and all the work George had done on behalf of the UFW.

[17/] George testified that he did not appear at his trial because he feared physical violence, but the ALJ found his testimony too inconclusive to establish actual intimidation.

[18/] The ALJ found that the written defense was read only at George's trial and that, since the letter was phrased in the first person singular, it could easily have been misunderstood by members of the ranch committee as applying only to George.

[19/] In his appeal, George listed several sections of the UFW

(Fn. 19 cont. on p. 17.)

The ALJ found that George Moses' request for a copy of the UFW constitution in English was reasonable and that the UFW's late delivery of the copy to George and his subsequent inability to study it fully before the trials deprived Moses and his brothers of their due process right to prepare a defense. Respondent UFW excepted to the ALJ's finding, arguing that George may have had another copy of the constitution in English, or that he could have selected a bilingual person to represent him and his brothers. In addition, the UFW argues that, even if George had a copy of the constitution earlier, he still would not have discovered any defense to the charge that he crossed the picket line.

We find no merit in the UFW's exception. Article XVIII, section 6, of the UFW's constitution contemplates that the accused union member will have seven days from the service of the charge until the trial in order to prepare a defense. Adequate procedural due process includes a sufficient opportunity to prepare a defense. We affirm the ALJ's finding that the UFW failed to establish that George Moses already had an English copy of the UFW constitution, or was so fluent in Spanish that he did not need one. George received an English copy of the

(Fn. 19 cont.)

constitution and alleged that the charge was untimely and was served improperly, that he had been discriminated against because Carlos Santiago refused to give him forms to use to file charges against other union members, and that he received a copy of the constitution too late to prepare a defense. Moses testified that he had such a short time to prepare his defense for the trial that he did not explain that he quit the strike because of strike violence, but his appeal to the NEB contained no reference to that reason for his abandoning the strike.

constitution on the morning of the day of his trial. As he worked that day, and his trial began at 6:00 p.m., he had virtually no time to prepare a defense for himself or his brothers. We affirm the ALJ's conclusion that the UFW violated section 1154(a)(1) and (b) of the Act when it caused Respondent Sun Harvest to discharge the Moses brothers as a result of their loss of good standing based on procedures which denied the brothers due process, and that Sun Harvest violated section 1153(c) and (a) by discharging the brothers at the UFW's request.

Prejudgment of Guilt and Penalty. The ALJ found that Charging Parties Guadalupe Beltran and Cecilia Salinas were deprived of their right to a fair hearing because Manuel Hernandez, one of their judges, determined at a meeting held before the trials that both women had violated the UFW constitution. Respondent UFW excepts to that finding. The General Counsel excepted to the ALJ's finding that there was insufficient evidence to prove that the guilt of the Moses brothers was prejudged or that any of the five Charging Parties was denied due process because his or her punishment was determined before the trial.

As we find that the Moses brothers were denied due process because they were given an insufficient opportunity to prepare a defense, we need not reach the question of prejudgment as to either their guilt or their punishment. We note, however, that the ALJ's findings are supported by our review of the record.

We affirm the ALJ's finding that the guilt of Beltran and Salinas was prejudged, although we note that neither Beltran

nor Salinas attempted to prove at the hearing that she had not in fact crossed the picket line. However, we find merit in the General Counsel's exception to the ALJ's finding that Beltran and Salinas were not prejudged as to their punishment. Although the testimony of Zulema Garcia, one of the judges, is internally inconsistent, we find, contrary to the ALJ, that the weight of the evidence indicates that the trial judges decided at their pretrial meeting that Beltran and Salinas had violated the UFW constitution by crossing the picket line, and that the punishment for crossing a picket line was expulsion. The Union's strike rules and constitution provide for consideration of a range of punishment options, including fines, suspension and expulsion. Yet the trial judges, before hearing Beltran's or Salinas' defenses to the charges, or other information that might have caused them to recommend one form of punishment rather than another, determined that the recommended punishment would be expulsion. We find that Beltran and Salinas were denied due process because they were prejudged as to their guilt and their punishment. We therefore affirm the ALJ's conclusion that the UFW violated section 1154(a)(1) and (b) of the Act by causing Respondent Sun Harvest to discharge Beltran and Salinas as a result of their loss of good standing based on procedures which denied them due process, and that Sun Harvest violated section 1153(c) and (a) of the Act by discharging the two women at the

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UFW's request.[20/]

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent United Farm Workers of America, AFL-CIO (UFW), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Sun Harvest, Inc. or any other agricultural employer to discriminate against any agricultural employee in violation of section 1153(c) and (a) of the Agricultural Labor Relations Act (Act), or discriminating against any such employee with respect to whom membership in the UFW has been suspended, terminated, or denied without affording such employees the due process rights guaranteed by section 1153(c) of the Act.

(b) In any like or related manner 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) Immediately restore George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas to membership in good standing in the UFW retroactive to January 2, 1980, without prejudice to their membership rights or privileges

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[20/] As we find that the internal union disciplinary proceedings against all five Charging Parties were deficient in the manner described in this Decision, we do not reach the ALJ's other finding concerning procedural inadequacies.

as though they had not been suspended on that date.

(b) Immediately notify Sun Harvest, Inc. by letter, and send copies thereof to the five affected employees, that George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas are members in good standing and are to be deemed as such retroactive to January 2, 1980, and that the UFW requests their reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other employment rights or privileges as though they had not been terminated January 7, 1980.

(c) Make whole George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas for all losses of pay and other economic losses they have suffered as a result of Respondent UFW's discrimination against them, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(d) With the cooperation of Sun Harvest, 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) Immediately notify George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran, and Cecilia Salinas, by mail

addressed to their respective last known addresses, and direct a copy of said Notice to the Regional Director, of their retroactive restoration to UFW membership in good standing as provided in paragraph 2(a) above, and forward to each of them a copy of the UFW's letter request to Sun Harvest, Inc. for their full reinstatement.

(f) 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.

(g) 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 Sun Harvest at any time during the period from January 2, 1980, until January 2, 1981. The UFW shall seek the cooperation of Sun Harvest in obtaining the names and addresses of the employees to whom said Notice shall be mailed.

(h) Post copies of the attached Notice, in all appropriate languages, in conspicuous places at all its offices and union halls throughout the State of California 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.

(i) With the consent of Sun Harvest, Inc., arrange for a representative of the UFW or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all Sun Harvest 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 to answer any questions the employees may have concerning the Notice or their rights under the Act. The UFW shall reimburse Sun Harvest for the employees' wages during this reading and question-and-answer period. The Regional Director shall determine a reasonable rate of compensation to be paid by the UFW to Sun Harvest and relayed to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(j) 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: July 12, 1983

ALFRED H. SONG, Chairman

PATRICK W. HENNING, Member

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Sun Harvest, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against, any agricultural employee with respect to whom membership in the United Farm Workers of America, AFL-CIO (UFW) has been suspended, terminated, or denied without affording such employee the due process rights guaranteed by section 1153(c) of the Agricultural Labor Relations Act (Act).

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

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

(a) Offer to George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights or privileges.

(b) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination,

by the Regional Director, of the backpay periods and the amounts of backpay and interest due under the terms of our Order issued on this date against the UFW.

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

(d) 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: July 12, 1983

ALFRED H. SONG, Chairman

PATRICK W. HENNING, Member

Chairman Song, concurring:

While I concur in all aspects of the majority opinion and the underlying decision of the Administrative Law Judge (ALJ), I write separately to more fully explain my position on the "retroactivity" issue raised by the Charging Parties.

The Charging Parties assert that the United Farm Workers of America, AFL-CIO (UFW), is not free under the Agricultural Labor Relations Act (ALRA or Act) to cause their discharge under the terms of a collective bargaining agreement that was not in existence at the time the Charging Parties allegedly violated the UFW's rules of membership by crossing union authorized picket lines. This contention by the Charging Parties is based on National Labor Relations Act (NLRA) precedent.[1/] However, that precedent is not applicable

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[1/] In Namm's Inc. (1953) 102 NLRB 466 [31 LRRM 1328], the National Labor Relations Board (NLRB) overruled its trial examiner and held that a union security clause could not be invoked to effect the discharge of union members who had neglected to pay dues during a

(fn. 1 cont. on p. 27)

to the statutory framework established by the California Legislature in the ALRA.

Primarily, the Agricultural Labor Relations Board's (ALRB or Board) jurisdiction involves the scrutiny of three different relationships. First, the ALRB oversees the relationship between agricultural employees and their employer. Second, the Board investigates the relationship between agricultural employers and the unions representing their employees. Finally, and most critical here, the Board investigates the events which occur between the labor organizations and their members. NLRA precedent is not generally applicable to the ALRB's analysis of this latter relationship, for unlike the California Legislature, the U. S. Congress has not chosen to vest the primary jurisdiction over the administration of internal union affairs in the labor board, but rather has given this duty primarily to the Secretary of Labor and to the federal

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(fn. 1 cont.)

ten-month period between collective bargaining agreements. The payment of periodic dues was a requirement to maintain one's good standing in the union. The NLRB stated:

> It is settled law that a union-shop contract may not be retroactively applied to effect the discharge of an employee for failing to maintain membership in good standing by paying dues that accrued during a time when he was under no contractual obligation to do so as a condition of employment. Such back dues are not periodic dues within the meaning of Section 8(a)(3) and Section 8(b)(2) of the [National Labor Relations Act]. (Id., at p. 469.)

(Accord, Local No. 25, International Brotherhood of Teamsters (1975) 220 NLRB 77 [90 LRRM 1193]; International Union of Chemical Workers, Local No. 112 (1978) 237 NLRB 864 [99 LRRM 1152]; NLRB v. Eclipse Lumber Co. (9th Cir. 1952) 199 F.2d 684 [31 LRRM 2065]; Colonie Fibre Co. (1946) 69 NLRB 589 [18 LRRM 1256], enforced (2nd Cir. 1947) 163 F.2d 65 [20 LRRM 2399].)

courts.

In interpreting the scope of union security clauses, the NLRB is not generally concerned with a labor organization's rules of membership, whether those rules provide full and fair rights of speech, assembly, and equal voting as well as providing adequate procedures to assure due process to members. However, the labor organization's rules of membership form the exclusive scrutiny for the ALRB in interpreting union security clauses in collective bargaining agreements.

Therefore, "retroactivity" arising through the relationship between the employer and the union is no issue at all in the analysis of union security clauses under the ALRA for the date of the execution of the collective bargaining agreement sheds no light on the fairness of the union's rules of membership.[2/] Under

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[2/]Consider the hypothetical case of an employee who during a normal year is successively employed by three different agricultural employers. In August, while employed at Employer 1, the employee crosses a union authorized picket line and is subsequently expelled or suspended from the union following procedures that would comport with our Act. Suppose the punishment is enacted in September. In October, the employee is employed by Employer 2, who signs a collective bargaining agreement with a union security clause in November. In January, the employee is hired by Employer 3, who has signed collective bargaining agreements with the union for many years previous to the employee's punishment. Suppose further that the employee has worked successively for these three employers for many years and was aware of their collective bargaining agreements. Under Charging Parties' analysis, the union could lawfully cause the discharge of the employee only at Employer 3, based upon the totally irrelevant date of the execution of the collective bargaining agreement. Such a mechanistic analysis does not further the purposes of the Act. Rather, assuming that the union comported with all the requirements of the Act in suspending or expelling this employee, and the employee chose to remain a union member when s/he violated the union's rules, s/he may be lawfully deprived of employment by both Employer 2 and 3 but not by Employer 1 as long as Employer 1 has no collective bargaining agreement with a union security clause in effect.

section 8(a)(3) of the NLRA, a person's right to refrain from union activity may be inhibited in two instances only, while the ALRA sanctions the inhibition of a person's right to refrain from union activity whenever the union's rules are fair and reasonable and there exists sufficient protection of due process in those rules.

Charging Parties, by seeking our adoption of the NLRA model, are asking that this Board "interpret" away the plain language of the Act. The role of constitutional interpretation of the "union shop" provision of the ALRA is not for this Board, but for the reviewing courts. We should not enter into the realm of constitutional analysis either directly, by declaring our statute constitutional or unconstitutional, or indirectly, through a contorted reading of the plain language of our Act.

Dated: July 12, 1983

ALFRED H. SONG, Chairman

MEMBER WALDIE, Dissenting:

I disagree with the majority's conclusions that the United Farm Workers of America, AFL-CIO (UFW) failed to afford the Charging Parties adequate procedural fairness during their disciplinary hearings.

We stated in United Farm Workers of America, AFL-CIO (Severo Pasillas, et al.) (1982) 8 ALRB No. 103 that Labor Code section 1153(c) does not require a union disciplinary proceeding to strictly observe all the procedures attendant to civil or criminal litigation in the courts. The general level of procedural fairness required of union disciplinary proceedings was well-described by the California Supreme Court in Cason v. Glass Bottle Blowers Assn. (1951) 37 Cal.2d 134, 143 as follows:

> In cases of this type we must strive both to protect the rights of individual members and to avoid impairing the right of the union to govern itself. The courts will interfere with the decision of an association expelling one of its members if the rules of the association governing expulsion have not been observed or if the accused member has not been

> afforded those rudimentary rights which will give him a reasonable opportunity to defend against the charges made. [Citations.] It is a fundamental principle of justice that no man may be condemned or prejudiced in his rights without an opportunity to make his defense, and this principle is applicable not only to courts but also to labor unions and similar organizations. [Citations.] It is, of course, true that the refined and technical practices which have developed in the courts cannot be imposed upon the deliberations of workingmen, and the form of procedure is ordinarily immaterial if the accused is accorded a fair trial. [Citations.] The union's procedure, however, must be such as will afford the accused member substantial justice, and the requirements of a fair trial will be imposed even though the rules of the union fail to provide therefor. [Citations.] The authorities recognize that such a trial includes the right to notice of the charges, to confront and cross-examine the accusers, and to examine and refute the evidence.
> (Citations omitted and emphasis added.)

In my view, a "reasonable opportunity" to defend oneself and "substantial justice" require only that an accused member receive adequate advance notice of the charges and an opportunity to present relevant evidence or arguments to the judges. Whether this measure of fairness has been afforded should be a question of actual prejudice to the accused. A violation of the "good standing" clause would not be found for a technical violation of a procedural rule where the error did not prevent the accused from presenting evidence or argument that could have affected the results of the hearing. This view is consistent with the rule of California civil procedure, which applies to the courts, that harmless error, not affecting the substantial rights of

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a party, is not grounds to reverse a judicial decision.[1/]

In the instant case, the Moses brothers received the charges against them seven days before their trials. They also received copies of the UFW constitutional provisions which described the disciplinary procedures. On the day of his trial, George Moses received a complete copy of the UFW constitution. Following receipt of the constitution, Moses prepared and submitted to the trial committee a written explanation of his and his brothers' reasons for crossing the picket line and a request for a postponement of their trials. None of the Moses brothers appeared at his trial, although the written statement of George Moses, signed by all three brothers, was read at George's trial.

I find merit in the UFW's argument that the Moses brothers suffered no material prejudice by their late receipt of the complete UFW constitution or the refusal of a postponement

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[1/]California Code of Civil Procedure section 475 reads as follows:

> The court must, in every state of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.
> (Emphasis added.)

by the trial committee. The Charging Parties have failed to show that further time to study the constitution would have led to some new defense, not raised in the written statement which they prepared and submitted to the trial committee after they received the complete constitution.

As to the prejudgment of Charging Parties Salinas and Beltran by the trial committee, I find the testimony of trial committee secretary Zulema Garcia and committee member Manuel Hernandez insufficient to establish the committee's predetermination to expel the Charging Parties. Although Garcia testified that the punishment for crossing the picket line during a strike is expulsion, she also testified that the committee discussed the possibility of other punishments, such as fines, and ultimately determined that there had to be a trial so the members could vote on both guilt and punishment.[2/] Hernandez admitted making statements to Beltran before her trial which indicated that he believed she had crossed the picket line, but said nothing about the punishment Beltran should receive.

I find it particularly significant that neither Salinas nor Beltran ever denied crossing the picket line or asserted

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[2/] Garcia's testimony indicates, once again, that in these UFW disciplinary proceedings, neither the trial committees, nor the accused, fully understand the procedures set out in the UFW constitution and do not clearly distinguish the accuser from the trier or review of allegations from review of evidence. Taking Garcia's inconsistent testimony as a whole I find that she believed that expulsion was the standard punishment once it was proved that a member crossed a picket line, absent some mitigating circumstances calling for a lesser penalty. This is a reasonable belief, given the relative seriousness of strike-breaking, and does not evidence predetermination to expel, regardless of anything the accused might offer in justification.

that that act did not violate the UFW constitution. They could not, therefore, have been prejudiced by prejudgment as to an undisputed fact. Moreover, although both appeared at their trials, their defenses were limited to the following explanations for their actions: Salinas stated that she had been insulted and accused of being a spy because she was married to a company foreman; Beltran claimed she had to work because she had a son studying in school. Neither of these explanations suggest the kind of serious personal hardship which the UFW considers a justification for returning to work during a strike. After listening to these explanations, the ranch community voted 110 to 0 to find the accused guilty and to expel them from membership.

I find it artificial and inappropriate to impose high standards of legal knowledge and impartial judicial efficiency on an internal union disciplinary proceeding conducted by farm workers against accused strike-breakers. A strike is an extremely serious event in the life of any worker, even more so for a farm worker living in poverty or near-poverty even when employed. The hardships of a strike are great for many strikers and the conflict with the employer may often escalate to the emotional equivalent to war. In this setting, a worker who crosses the picket line is perceived as no less than a traitor to the cause and, understandably, only the most dire of financial straits would likely soften the hearts of strikers - whose own hardships were prolonged by the defection of the nonstriker. I believe the nonstriker knows the seriousness of crossing the picket line and assumes a serious risk in doing so.

These circumstances are not an excuse for the union to "railroad" a nonstriker. However, neither is it reasonable to expect dispassionate or magnanimous treatment by the trial committee, or reasonable for this Board to let nonstrikers "off-the-hook" based on technicalities. In the instant cases, I find that every accused UFW member received adequate prior notice of the charges against them and of the nature of the Union's disciplinary procedures. Each was given an opportunity to appear before the ranch community and present a defense to the accusations, including the confrontation of their accusers. None of these members denied violating the picket line rule or offered any compelling reasons why these violations should be excused. Each was given an opportunity to appeal the trial decision to expel and each obtained a reduction in penalty to a one-year suspension.

Based on the foregoing, I would dismiss the complaint in its entirety.

Dated: July 12, 1983

JEROME R. WALDIE, Member

NOTICE TO MEMBERS

After investigating charges that were filed in the San Diego Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, United Farm Workers of America, AFL-CIO (UFW), had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by suspending the union membership of George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas, and causing their discharge by Sun Harvest in January 1980. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT do anything, in the future, which restrains or coerces you or any other farm worker to do, or to refrain from doing, any of the things listed above.

WE WILL NOT discriminate against, or suspend or terminate the UFW membership of, any agricultural worker in violation of the Act, and WE WILL NOT cause or attempt to cause any agricultural employer to discharge or otherwise discriminate against any farm worker with respect to his or her employment.

WE WILL restore George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas to membership in good standing in the UFW retroactive to January 2, 1980, without prejudice to their membership rights or privileges as though they had not been suspended on that date.

WE WILL notify Sun Harvest, Inc. that George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas are members in good standing retroactive to January 2, 1980, and WE WILL request Sun Harvest, Inc. to reinstate them to their former or substantially equivalent jobs without prejudice to their seniority and other rights or privileges of employment, as though they had not been terminated on or about January 7, 1980.

WE WILL make whole George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas for all losses of pay and other economic losses they have suffered as a result of our discrimination against them, plus interest.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, 92243. The telephone number is (714) 353-2130.

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

DO NOT REMOVE OR MUTILATE.

NOTICE TO EMPLOYEES

After investigating charges that were filed in the San Diego Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Sun Harvest, Inc., 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 discharging George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas, at the request of the United Farmworkers of America, AFL-CIO, in January 1980. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT do anything, in the future, which restrains or coerces you or any other farm worker to do, or to refrain from doing, any of the things listed above.

WE WILL NOT discriminate against, or suspend or discharge any agricultural worker in violation of the Act.

WE WILL offer George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran, and Cecilia Salinas reinstatement to their former or substantially equivalent jobs without prejudice to their seniority and other rights or privileges of employment, as though they had not been terminated on or about January 7, 1980.

Dated: SUN HARVEST, INC.

_____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, 92243. The telephone number is (714) 353-2130.

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

9 ALRB No. 40 DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

UFW and SUN HARVEST, INC
(Moses)

9 ALRB No. 40
Case Nos. 80-CE-6-SD,
et al.

ALJ DECISION

The ALJ found that the United Farm Workers of America, AFL-CIO (UFW) violated the Act by causing Sun Harvest, Inc., to discharge five employees for strikebreaking activities on the basis of internal union disciplinary proceedings which failed to afford the employees due process, and that Sun Harvest violated the Act by carrying out the discharges.

The five employees (George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas), all voluntary members of the UFW, chose to cross picket lines maintained by the UFW during a contract dispute with Sun Harvest, their employer. Following settlement of the contract dispute with Sun Harvest, the UFW prosecuted the five employees for violations of the UFW constitution, which required that UFW members honor sanctioned picket lines.

The ALJ found that George Moses, representing himself and his two brothers Michael and Ronald, was denied a reasonable opportunity to prepare his defense and the defense of his brothers due to the failure of the UFW to timely provide him with an English translation of the UFW constitution. The ALJ found that employees Beltran and Salinas were deprived of their right to a fair hearing because the UFW judges had predetermined their guilt.

The ALJ ordered the UFW to cease and desist from causing Sun Harvest to discriminate against any employee whose union membership has been terminated without affording them due process; to immediately restore the five employees to membership in good standing retroactive to January 2, 1979; to notify Sun Harvest of the fact; and to seek reinstatement for the employees to their former jobs. The UFW was also ordered to make the Charging Parties whole for their losses suffered by the violations and to sign, post and publish a Notice to Agricultural Employees. The ALJ ordered Sun Harvest to reinstate the employees and to post the Notice signed by the UFW.

BOARD DECISION

The Board, Member Carrillo not participating, adopted the rulings, findings, and conclusions of the ALJ and his proposed Order. Member McCarthy, in accordance with his dissenting opinion in UFW (Pasillas) (1980) 8 ALRB No. 103, would find the UFW action in this case void ab initio, for attempting to enforce an unreasonable rule.

DISSENT

Member Waldie would hold the UFW to a less rigorous standard of procedural correctness and find a union disciplinary hearing inadequate only where an employee/member was denied an opportunity to present material evidence under circumstances which could have affected the outcome of the hearing. Based on this standard, he would find that the union proceedings in the instant cases were adequately fair.

* * *

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

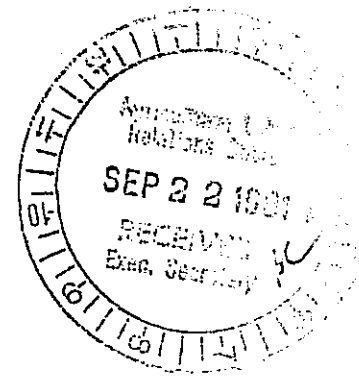
* * *

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	Case Nos. 80-CE-6-SD 80-CL-3-SD
	)	
Respondent,	)	
	)	
and	)	
	)	
SUN HARVEST, INC.,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
GEORGE MOSES, MICHAEL MOSES, RONALD MOSES, GUADALUPE BELTRAN, and CECILIA SALINAS,	)	
	)	
Charging Parties.	)	



Barbara Dudley
for the General Counsel

Scott A. Wilson,
of San Diego, California
for the Charging Parties

and

Robert F. Gore, National Right to Work Legal Defense Foundation, Inc.
of Springfield, Virginia
for the Charging Parties

Carlos Alcala, Chris A. Schneider, and Diana Lyons (on brief)
for the Respondent

DECISION

STATEMENT OF THE CASE

JAMES WOLPMAN, Administrative Law Officer: This case was heard before me on October 15, 16 and 17 in San Diego, California and October 20, 21, 23 and 24 in El Centro, California; all parties were represented.[1/] The Complaint, as amended, alleged that Respondent United Farm Workers of America, AFL-CIO, (hereafter "UFW") had violated Sections 1154(a)(1) and (b) of the Agricultural Labor Relations Act (hereafter the "Act") and that Respondent Sun Harvest, Inc. had violated Sections 1153(a) and (c) of the Act. The complaint is based on charges filed by George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas, copies of which were served on Respondents; all of whom intervened and participated in the proceeding through counsel. The General Counsel, the UFW and Charging Parties all filed briefs in support of their respective positions.

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

FINDINGS OF FACT

I. Jurisdiction

Respondent UFW was, at the time of the events which gave rise to the Complaint, a labor organization representing

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1/Sun Harvest appeared by its attorney Andrew Church of Abramson, Church and Stave, at the Pre-Hearing Conference October 1, 1980, and tendered the defense of the action to the United Farm Workers in accordance with the hold harmless Clause of Article 2, Section E, of the Collective Bargaining Agreement then in effect (GC-EX 2); the UFW accepted the tender of defense. Sun Harvest then withdrew and did not participate further in the proceedings.

agricultural employees within the meaning of Section 1140.4(f) of the Act. Respondent Sun Harvest was, at the time of the events which gave rise to the Complaint, a corporation engaged in agriculture in various counties throughout California and as such is an agricultural employer within the meaning of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges that the UFW violated Sections 1154(a)(1) and (b) when it caused Sun Harvest to discharge each of the charging parties as the result of their loss of good standing as union members because of their failure to respect UFW picket lines. The General Counsel alleged that the UFW is not legally entitled to seek the discharge of workers deprived of good standing for refusal to honor UFW picket lines; and, in addition, alleged that the procedures which led to the charging parties' loss of good standing did not comport with due process as required by the Act. Sun Harvest is likewise alleged to have violated the Act by carrying out discharges which were legally impermissible and imposed without due process. Respondents denied the allegations of the complaint, alleged that the discharges were permissible under the Act and asserted that the charging parties were afforded due process in the disciplinary proceedings which led to their suspension from the UFW and their discharge at Sun Harvest. The UFW asserted, in addition, that the ALRB lacked jurisdiction because the Charging Parties had failed to exhaust their internal union remedies; and Sun Harvest asserted the hold harmless clause contained in its labor agreement and tendered the defense of the Action to the UFW.

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III. The Facts

A. Introduction

All five charging parties worked for Sun Harvest. Sun Harvest's agricultural employees had for a number of years been represented by the UFW and covered by collective bargaining agreements containing union shop provisions making membership within a prescribed period a condition of continued employment. Because of this, all five had become UFW members.

On January 15, 1979, after two interim extensions, the 1976-1978 Sun Harvest agreement expired; a week later, on January 22nd, the Company was struck.

The strike began in the Imperial Valley and followed the lettuce harvest for the next seven months from there to Tacna, Arizona, then to Huron and up into the Salinas Valley during the Summer. It involved not only Sun Harvest but most other large California lettuce growers. Each side was adamant in its position. The serious and volatile nature of the conflict became manifest in February when Rufino Contreras, a striker at another Company, was shot to death. Both before and after the shooting, there were incidents of violence and property damage. A nationwide lettuce boycott of certain brands was also underway. Feelings ran high--perhaps too high for effective negotiations--and the strike continued on.

Finally, in August and September some contracts were signed, among them, one at Sun Harvest. That agreement, executed September 4, 1979, contained a union shop clause similar to its predecessors:

ARTICLE 2: UNION SECURITY

A. Union membership shall be a condition of employment. Each worker shall be required to become a member of the Union immediately following five (5) continual days after the beginning of employment, or five (5) days from the date of the signing of this Agreement, whichever is later; and to remain a member of the Union in good standing. Union shall be the sole judge of the good standing of its members. Any worker who fails to become a member of the Union within the time limit set forth herein, or who fails to pay the required initiation fee, periodic dues or regularly authorized assessments as prescribed by Union or who has been determined to be in bad standing by the Union pursuant to the provisions of the Union's constitution shall be immediately discharged or suspended upon written notice from the Union to the Company, and shall not be re-employed until written notice from the Union to the Company of the Worker's good standing status.

The UFW Constitution--like that of most unions--condemns strike-breaking, contains machinery for trying offenders, and provides for punishments up to expulsion. A suspended or expelled member is then subject to discharge under the Union Security Clause of the labor Agreement for lack of "good standing."

Each of the five charging parties abandoned the strike in midcourse and returned to work without attempting to resign from the UFW.[2/] Each was charged, tried, found guilty, and expelled. On appeal the Union Executive Board reduced the expulsions to suspensions. The UFW then demanded and obtained their discharges pursuant to Article 2 of the labor agreement.

The circumstances surrounding each offense and its prosecution differ in important respects and so require separate consideration.

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2/None were advised by the UFW of their right to resign.

B. The Moses Brothers

Three of the charging parties are brothers: George, Michael and Ronald Moses. Their father, George Sr., had for many years been a grower supervisor at Sun Harvest. All three brothers worked in the "steadies" crew primarily as Tractor Drivers, but at times as Irrigators.

1. George Moses

George (who is sometimes called by his middle name, Neil, to distinguish him from his father) began working for the company that eventually became Sun Harvest in 1966. He was first on the Tractor Driver seniority list and probably third on the Irrigator list. Originally, he opposed the UFW and became a member--in 1970--only because membership was required. He is intelligent and outspoken and was well thought of by his fellow workers. In 1974 or 1975 they elected him Secretary of "Steadies" or Permanent Workers Ranch Committee, but because of his attitude toward the UFW, he declined to serve. Then, as a result of the medical assistance provided his uncle, who had cancer, by UFW Clinics in Calexico, his attitude changed and he came to see the UFW as a viable possibility for dealing with worker problems. When, in 1977, he was elected President of the "Steadies" Committee, he accepted the position. In this capacity he became involved in contract administration, processing 15-20 grievances, and was a delegate to the 1977 UFW Convention in Fresno. He made it his business to study the UFW Constitution and became familar with its terms. He has a solid working knowledge of written and conversational Spanish, gained from four years study in school and from his experience at work and

during the strike.

George's term as President of the Steadies Committee was to run from September 1977 to September 1979, and so took in the 1978-1979 negotiations. In August, 1978, at a meeting held at UFW headquarters in La Paz for Ranch Committees throughout the vegetable industry, George was elected an alternate to the industry negotiating committee.[3/] With the withdrawal of certain employers from the group and the unavailability of some committee members George became a full member. Given the magnitude of the 1979 negotiations and the ensuing strike, the position was an important one. George had become a leader respected and relied upon by his fellow workers.

In January, 1979, separate strike vote meetings were scheduled for the employees of each vegetable grower. George was unable to attend the Sun Harvest meeting, but testified that he was in favor of a strike if UFW demands were not met. He did attend strike vote meetings for two other employers--meetings at which the possibility of a strike was discussed, solidarity stressed, and strikebreaking denounced both in written "strike rules" and in comments and speeches. There can be no doubt that George knew from common sense, if not from what he read, heard and understood, that strikebreaking would have dire consequences.

When the strike began at Sun Harvest on January 22, 1979, he favored it and assisted on picket lines whenever he was not

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3/These were not traditional multi-employer negotiations, but rather a number of separate employers who, for convenience, bargained together, each for a separate contract.

busy with negotiations.

George testified that the dissatisfication which ultimately led him to abandon the strike and return to work began, shortly after the strike started when the final UFW proposals arrived from La Paz. In George's view, these proposals came from the union's top leadership and ignored the announced role of the negotiating committee. He felt it was time to do something, "to make a move" but the UFW leadership did not agree that further concessions were in order. Closely related, was his feeling that the negotiations were dominated by representatives of the lettuce crews whose interests diverged from his constituency of tractor drivers and irrigators. This friction supplied the basis for his ultimate break with the UFW when, one day, he gave Sun Harvest permission to irrigate two wheat fields. He did it to insure that, once the strike settled, there would be harvesting work for tractor drivers. When the other union leaders learned of it, they were insensed with George for reducing the pressure on Sun Harvest.

Meanwhile, George had also become upset with the violence and property damage which he believed to have been inspired or at least condoned by the UFW. A confrontation over this issue erupted in mid-March when he and his brother Michael rejoined a gathering of steadies after having been dispersed from a picket line by tear gas. The rest of the group had been resting and playing cards. Cleofas Guzman, the President of the Lettuce Crew Ranch Committee, and Jose Morales, the Strike Coordinator, arrived, and began berating the steadies, George and Michael included, for their lack of

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participation.[4/] George was personally offended because he and his brother had indeed been in the danger area; furthermore, he felt the other steadies were being criticized for not participating in the kind of confrontations which led to the tear-gassing. A heated exchange occurred.

Later the same day, Raul Ramirez, Vice President of the "Steadies" Ranch Committee and a member of the Negotiating Committee, and Carlos Santiago, a striker who later became a member of the "Steadies" Committee, encountered George and his brother in front of the Union hall and berated him for permitting the wheat fields to be irrigated. Again there was a heated exchange, and, at its conclusion, George told Ramirez and Santiago that he was resigning from the negotiating committee.

Two weeks later, on March 26, 1979, he returned to work. Before doing so, he spoke to the Committee and to several workers, as well as to Jessica Govea, a member of the UFW Board of Directors. He testified that, while his reasons were primarily the "moral" ones described above, financial need also played a role; evidently he was having serious problems meeting living expenses and making payments on his auto and mobile home. Raul Ramirez, a friend of George's and a witness whose testimony I fully credit, had some recollection that George mentioned the issue of violence but recalls his main reason being that "he needed to go back to work." Ramirez responded, "That was not right because he was also the president of the committee."

4/Guzman has he and Morales arriving before the two brothers, but it makes no significant difference. He also has George resigning all of his positions at the conclusion of the encounter; again the discrepancy is of no great moment.

Jessica Govea likewise told George, "You can't do this."

2. Michael Moses

Michael began working full time for Sun Harvest in 1966 as a Tractor Driver, by 1979 he was second on the Tractor Driver seniority list and probably fourth on the Irrigator list. Like his brother he initially joined the UFW because the labor agreement required it. By 1977 or 1978 he was sympathetic enough to serve on the "Steadies" Ranch Committee, eventually becoming Treasurer. In 1978 he was appointed to George's vacancy on the Consilio--a body created to oversee the negotiating committee; however, he attended no meetings. More important, George appointed him Strike Coordinator for the Steadies, serving under Jose Morales who was the overall Coordinator. He attended the strike vote meeting of Sun Harvest employees at the Calexico Armory and voted in favor of the strike. The meeting was conducted in Spanish, and Michael's Spanish is not as good as George's: he understands some people but not others, and he reads "a little." He understood enough of the meeting, however, to know that crossing UFW picket lines violated the constitution and could result in the loss of employment.

Like his brothers, Michael testified to his disillusionment with the UFW cause, emphasizing violence as the primary factor. In early February, he and his brother Ronald were mistaken for strikebreakers by a group of angry picketers armed with sticks and rocks and were about to be manhandled when one of the crowd recognized them. Also in February, Michael, upon hearing that a tractor driver had been beaten by pickets, went to the scene and encountered Cleofas Guzman, President of the Lettuce Committee. He

told Guzman, "You can't go out there beating up a guy." Michael then had to persuade Guzman to allow the company to remove the tractor from the field.[5/]

The incident which brought matters to a head was the one, already described, where Guzman and Morales became angry at the Steadies who were resting and playing cards while other picketers were being tear-gassed. At the conclusion of this episode Michael quit as strike coordinator, feeling that he had lost control over the strikers for whom he was responsible.

After talking the matter over with George, Michael decided to return to work, and did so in late April, 1979.

3. Ronald Moses

Ronald began working for Sun Harvest as a Tractor Driver in 1979. He joined the UFW in July 1975 because he was required to do so. Except for assisting Michael with his duties as Strike Coordinator, Ronald had little formal involvement with the UFW. He did attend the strike meeting and voted to strike. He understands very little Spanish, but knew that strikers were not to cross UFW picket lines. He appears to have been aware that doing so could jeopardize his job because he testified, "I went out on strike to keep my job."

He talked to his father in late March about returning to work, but it was not until July that Sun Harvest wrote soliciting

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5/Guzman, who was actually present when the picketers confronted the driver, described his success, as a UFW representative, in preventing the beating. He also testified that he and Michael argued, not over the right to remove the tractor, but over the Company's right to disk its fields without interference.

his return. He resumed work as a Tractor Driver on July 9, 1979.

C. Disciplinary Proceedings against the Moses Brothers

The UFW Constitution specifies crossing an authorized picket line and working without authorization for a struck ranch as punishable offenses. It also sets out a procedure for determining guilt and punishment. It allows for appeals up to the National Executive Board and then either to the next Convention or, in case of expulsion or suspension, to a Public Review Board.

Responsibility for the initial stages, through trial, is vested in the individual Ranch Community to which the accused belongs. A Ranch Community is made up of all workers at single employer whose job classifications are related. The Moses, for example, belonged to the Sun Harvest Permanent Employee Ranch Community, a group consisting primarily of tractor drivers and irrigators; while the other Charging Parties belonged to a different Sun Harvest Community, that of the Thinning and Weeding crews. Each Community elects from its ranks a Ranch Committee charged with carrying out the Community's functions and goals.

To ensure that constitutional mandates are observed in meting out discipline, the UFW has prepared and circulated outlines and forms for Ranch Committees to use in preparing charges and conducting trials (GC-EX 5, 6 & 70; RESP-EX C). In these cases the only outline actually used was Respondent Exhibit C.[6/] Additional assistance was provided by Richard King, the Director of the UFW's

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6/A number of Exhibits including Respondent Exhibit C are in Spanish; a stipulated translation is in evidence as General Counsel Exhibit 72.

Calexico Field Office, who made himself available at pretrial meetings as well as the trials themselves for advice and consultation on procedure.

The first step in the disciplinary process is the preparation of written charges signed by an accuser. These are reviewed by the Ranch Committee to determine whether a constitutional offense has been stated, with specificity, and in a timely fashion (GC-EX 3, Article XVIII, Sections 3 & 5).

Written charges against each of the brothers were filed by Estaban Sanchez, as accuser. It appears that they were reviewed sometime in mid-October by the Committee with the assistance of Richard King.[7/] Felipe Meir, the Committee president described the meeting and initially had difficulty in distinguishing the Committee's proper function of determining the propriety of the charges from the trial body's exclusive function of determining guilt and punishment. I am convinced that he understood the distinction, but had difficulty in stating it clearly. I therefore find that he did not prejudge the cases. Subsequent testimony by Carlos Santiago, who was also in attendance, bears this out.

The Constitution also requires the charges be "preferred within 60 days of the time the accuser becomes aware of the alleged offense" (Article XVIII, Section 4) and provides for Committee review of their timeliness (Section 5). It is uncertain whether

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7/The record is not entirely clear whether this meeting was held in mid-October to review the charges or a week before the trial to plan for it. It is even possible that two different meetings were held. Regardless of the timing and purpose, my findings on the question of prejudgment remain the same.

this occurred. At the trial Sanchez testified to seeing George first cross the picket line on March 26, 1979, and that he continued to do so until the strike concluded at the beginning of September, 1979. Sanchez was thus aware of the initial violation seven months before signing the accusation. The same is true of Michael; he began crossing the picket line in late March and continued until the strike was settled. Ronald returned to work on July 9, 1979, and so crossed the line from then until September. In both cases Sanchez was aware of the initial crossing and yet no charges were filed for more than sixty days. One can only conclude that the Committee, if it did indeed consider the problem, was satisfied that the occurrence of any strikebreaking during the 60-day period entitled it to charge the entire duration of the crossing as a violation.8/

Originally the charges were prepared in Spanish and served on Ronald (October 20th) and George (October 22nd). When George wrote protesting the Spanish, they were translated into English, re-executed and again served on George, October 31st, and on Ronald and Michael, November 1st. Each received, along with his Charges, a Notice in English setting his trial for the evening of November 7, 1979.

Article XVIII of the Constitution requires charges to be served at least seven days before trial. Evidently, the Committee interpreted this as allowing service on the 1st for trial on the

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8/The UFW President did extend the time to file charges (GC-EX 7), but since the extension was limited to the Salinas area and came after their actual service, I have not relied upon it.

7th.[9]

Along with his Formal Charges and Notice of Trial each brother also received an English translation of the portion of the Constitution dealing with trial procedure (Article XVIII). This was in partial response to George's earlier written protest of the Spanish Charges, in which he also asked for a copy of the Constitution in English.

George inquired of the person who served him, "Where my Constitution was;" and when referred to the translation of Article XVIII protested that he wanted the entire document. By letter of November 5, 1979 (misdated October 5, 1979), he reiterated his demand requested a postponement to give him time to study it in preparing a defense.

In these, as with all of his other contacts with the union on through trial and appeal, George testified that he was representing not only himself but Michael and Ronald as well, and both testified to their reliance on him as their representative. The Committee and the UFW appeared to have accepted this.

Besides requesting a copy of the Constitution in English, George asked that he be supplied with charge forms so that he could file accusations against other Sun Harvest workers whom he believed to have escaped prosecution for the very offenses for which he was being charged. The request was made of Carlos Santiago and reduced to writing in the letter of November 5, 1979. The forms were never

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9/California Statutes, of course, provide for a different computation: The first day is excluded and the last is counted; service on the 1st, therefore, would come only six days before trial.

supplied because, according to UFW witnesses, he failed to go personally to the union office to obtain them; or, according to George, because he was told that he was already in bad standing and so could not bring charges. While I am inclined to believe the UFW witnesses on this point, it makes little difference since the trials concerned strikebreaking by the Moses brothers and no one else. Selective prosecution was a possible defense or mitigating factor, but its presentation would not require independent charges. Moreover, no significant evidence was introduced to show the deliberate pattern required for such a defense.10/

A day or so before the trial Richard King obtained a copy of the UFW Constitution in English and gave it to Carlos Santiago (or possibly to Javier Silva, who in turn, gave it to Santiago) to give to George. Santiago was instructed either to obtain a receipt or to take a witness along. At 6:00 a.m. the day of the trial, he approached George, constitution in hand. George testified that he asked Santiago, "What good was it going to do me now?" The trial was that night and, "I had to work that day. I had no time to go over this." Santiago does not deny the conversation. What he does deny is George's further claim that he agreed to the postponement when he signed General Counsel's Exhibit 11, a receipt which makes acceptance conditional on a seven day continuance. Santiago

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10/If George indeed was told that he could not file charges because he lacked "good standing," it might be argued that, by implication, he had been prejudged; however, it is equally plausible that the Committee erroneously believed that an accused, regardless of his guilt, lacked standing to prefer charges. The inference of prejudgment is just too weak to overcome the evidence to the contrary.

testified, at one point, that George refused to take the booklet until he signed the extension and that he signed only after making it clear that he was acting without authority. Later on, he shifted ground and claimed that he could read very little English and had no idea what he was signing. Santiago's shifting explanation leads me to believe that he understood the receipt but signed it anyway, after expressing reservations about his authority.

When Santiago returned with the receipt, King decided that the one continuance already necessitated by having to re-serve the charges in English was enough and George was only trying "to draw this thing out." He did not see fit to instruct Santiago to tell George the trial would go ahead as scheduled.

Meanwhile George, who must have understood the tenuous character of his agreement with Santiago, wrote out a brief Statement in defense. At the end of the work day he gave it to Santiago to present at the trials. At this point Santiago made it clear that there would be no postponement and urged him to attend.11/

Neither George nor his brothers appeared at their trials. George testified that he would have been beaten up. His explanation and the evidence he offered to support it are too inconclusive to justify a finding of actual intimidation.

The trials nevertheless proceeded with Felipe Meir, Carlos Santiago and either Jaime Moreno or Lorenzo Mauricio as

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11/George's testimony is unclear on whether he was actually told the trial would occur that night. However, his testimony as to why he did not attend (fear of physical violence) and the preparation of a written defense warrant the inference that, in all probability, he knew the trial would be held.

as judges. Richard King was present and testified that he was a "little hazy," but "pretty sure" that he mentioned the disputed postponement and that Felipe Meir discussed it. Carlos Santiago remembered raising it with the other two judges, but it was left unresolved. The trials proceeded: George's at 6:00 p.m., Michael's at 6:30 p.m., and Ronald's at 7:00 p.m. In each, Estaban Sanchez testified as accuser and was followed by other witnesses who supported his charges. The minutes indicate that only during George's trial was the written defense he had submitted read. Teresa Sandoval testified that it was read at each trial, but immediately reversed herself, saying it was read only once. While the judges and at least some of the Ranch Community were aware that George was representing his brothers as well as himself, his defense was phrased in the first person singular and so could easily have been misunderstood by many of those assembled as applying only to him.

In each case the judges deliberated and recommended a guilty finding which was unanimously accepted by the Community. Then, after additional deliberations, a penalty of expulsion was recommended and also unanimously accepted. The testimony is somewhat unlcear, but it appears that there was little, if any, consideration of alternative penalties.

Each brother was timely served with a Notice of the Trial Decision, advising him of the right to appeal to the National Executive Board (NEB) within 15 days of the trial date. George did so by preparing a ten page appeal for himself and his brothers. It was timely filed on November 18, 1979 (misdated "1-18-79").

The Constitution gives the NEB 30 days from receipt of an appeal to issue its decision. On December 6, 1979, without consulting George or his brothers, the UFW President extended this period an additional 30 days. George wrote protesting the extension as unauthorized, claiming irreparable damage from the delay. On January 2, 1980, the Board issued its Decisions, changing George's expulsion to a two year suspension and reducing Michael's and Ronald's to one year suspensions. The Decisions notified them of their rights to further appeals.

Under the UFW Constitution a member suspended or expelled as a result of a Decision by the NEB has the choice of appealing either to the Public Review Board (PRB) or the next Convention, but not to both. Appeal to either body does not stay the suspension or expulsion. Notice of Appeal is due within 15 days of receipt of the NEB's Decision. The next UFW Convention was not scheduled until 1981. The Public Review Board must issue its decision within 45 days of receipt of an appeal.

Neither George nor his brothers attempted any further appeal. George testified that he did not pursue appeals to the PRB because he believed it would take one-and-one-half or two years. He also testified that the Board would never reverse UFW President Chavez.

At that point PRB had heard no appeals since its formation in 1975. Subsequent to the close of hearing, the Board decided a number of appeals involving strikebreakers and reversed all but one because of procedural irregularities.

On January 7, 1980, as a result of requests directed to

Sun Harvest by the UFW, George, Michael and Ronald Moses were discharged because they lacked good standing under the Union security provision in the Sun Harvest Collective Bargaining Agreement.

D. Guadalupe Beltran and Cecilia Salinas

Both worked in the Sun Harvest thinning and weeding crews, Beltran since 1970 and Salinas since 1979. Both had husbands who were foremen at Sun Harvest. Beltran had joined the UFW because the union security agreement required it;[12/] while Salinas had become a member, back in 1971, to obtain "greater benefits and better treatment." Both women had participated in UFW activities, walking picket lines and traveling to cities to distribute literature and publicize UFW boycotts. Neither attended the strike vote meeting of Sun Harvest employees. Salinas said she stayed away because foremen's wives were not welcome, but offered no concrete evidence of the existence of such a policy.

When the strike began Beltran, who was not working at the time, returned home to Calexico with her husband and helped picket for approximately two weeks; she then accompanied him to Oxnard, next to Huron and finally up to the Salinas Valley, where on June 18, 1979, she returned to work. Salinas, who likewise was not working at the time, left Calexico with her husband immediately after hearing from him that the strike had begun. They moved on to Oxnard, then to Huron and finally to the Salinas Valley, where on June 7, 1979, she returned to work.

12/In an earlier declaration she had indicated that when she joined she was in favor of the UFW.

The reasons given by both women for returning to work were similar. Each had, as a foreman's wife, been treated to insults and hostility, and each had children in school who needed financial support. For Cecilia Salinas the deciding incident occurred at the beginning of June when she went to the union office in Salinas to complain of her treatment. She spoke to Victoriana Juicho, a fellow Sun Harvest worker who had some role on the "justice committee," and told her that, while she was not actively participating in the picketing, at least she was not hindering it by working. According to Salinas, Juicho replied that, as a foreman's wife, she had no business coming to the UFW office. For Beltran, even more significant than her treatment as the wife of a foreman, was the financial pressure of having two children away at school.

Both women knew that strikebreaking was forbidden and would lead to the imposition of some penalty, probably of a serious nature. I find that their ignorance of exactly what the penalty would be is more the result of their failure to make inquiry than the UFW's failure to disseminate the information.

E. Union Disciplinary Proceedings against Salinas and Beltran

1. Events leading up to the trial

Early on the morning of October 18, 1979, Manuel Hernandez attempted to serve Guadalupe Beltran with formal Charges and a Notice of Trial, but he mistakenly handed her the envelope designated for Cecilia Salinas. He discovered his error and returned about 11:00 a.m. with the correct documents. He retrieved Salinas' envelope, and the following day, October 19th, she was served.

Salinas claims, however, that the formal Charge was missing from her envelope, and that she received only a Notice of Trial. She was supported in this by Beltran who, after some initial confusion, testified that when she opened Salinas' envelope after it had been mistakenly delivered to her, it contained only the Notice. Manuel Hernandez, who examined and served the papers, testified that he was positive Salinas' envelope contained both documents. The UFW also produced Zulema Garcia, the Secretary of the Thinning and Weeding Ranch Committee, who prepared the envelopes. She testified that she placed both documents in Salinas' envelope and double-checked their contents before giving them to Hernandez to serve.

Salinas, throughout her testimony, manifested a fierce resentment at the treatment she had received from her fellow workers and the UFW. It colored her testimony and caused her repeatedly to claim absolute certainty about statements and events which other witnesses recalled quite differently,[13/] to the point where she resisted her own counsel's attempt to correct a statement which was almost certainly wrong[14/] and became unnecessarily evasive about

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13/Where Maria Preciado sat at her trial and whether she voted. Compare IV:92, VII: 14, 18 with III:192-4 and Respondent Exhibit A. Whether Manuel Hernandez left the trial to deliberate. Compare IV:87-89, VI:58, VII:34 with III:191, IV:48; and see III:122 and 143.

14/Whether the deliberation of the judges preceded, rather than followed, the vote of the Ranch Community. Compare IV:39 with IV:46-47, III:192.

other matters.[15/] While any one of these instances, standing alone, might be explicable, when they are taken together, along with her perceptable antagonism toward the UFW, the objectivity of her testimony is underminded. She was not a credible witness.

Guadalupe Beltran's corroboration of the missing Charges is likewise open to doubt. She was present in the hearing room when Salinas claimed, with aboslute certainty, that her envelope contained no formal Charges. Beltran was immediately recalled to the stand and essentially given the choice of destroying completely her friend's credibility or coming to her aid with incorrect testimony. I find she took the latter course and therefore disregard her testimony on this issue.

Beltran also testified to a conversation she had with Manuel Hernandez and Celophas Guzman, presumably when she was served (which of the two services is unclear). An unnamed woman was also present. She testified that Hernandez told her, "It would have been better if I had stolen than going to work," and "If I had any conscience that I should not appear [at her trial]." She went on to testify that Guzman told her, "I could appeal to La Paz to the National Committee, to President Carter, but I still would not be able to return to work." Almost immediately, she softened her testimony to say that Guzman had told her "to appeal to the convention, to the committee, to President Carter and to get the best attorney."

15/Whether her husband had a copy of the labor agreement, IV:19. Whether she worked on the days immediately following her trial so as to be available for service of the Notice of Decision. IV:6-7.

Hernandez does not recall what he said to Beltran except that someday one of her children would belong to the Farmworkers. She replied, "No because they were studying and they would have a profession," and he told her that the UFW also had professionals. Guzman has his conversation with her occurring separately from Hernandez'. He says she explained that her reason for crossing the picket line was because her children were away at schools. He told her he respected her reasons, that if she was innocent she had nothing to worry about, and if found guilty "she had the right to appeal to the Board of Directors and then the option to the convention...she could even appeal to the President, Jimmy Carter."

Closely related to the issue of prejudgment raised by this testimony is a meeting of the Ranch Committee held the day before, October 17, 1979, to review the charges against the two women and schedule the time and place of trial. Zulema Garcia, the Committee secretary, testified that the Committee determined, "A trial would have to be held because they violated the constitution." UFW Counsel sought to clarify her testimony to establish that the Committee had merely decided, in accordance with the Constitution (Article XVIII, Section 5), that the act complained of was a punishable offense. He had almost succeeded when she again explained that the Committee had determined, "That Mrs. Guadalupe Beltran violated the Constitution by crossing a strike line." When Garcia was questioned about possible predetermination of punishment, she stated: "We decided that we would have to have the trial, too, because we also needed the members votes to decide."

I find that, while Beltran's recollection of the

statements of Hernandez may have been colored by her antagonism toward the UFW and her interest in the outcome of these proceedings, there is substance to her tesimony. Hernandez did not recollect all that he said, and the comments he did acknowledge about her children someday being UFW members make sense only in the context of his remonstrating with her for returning to work, thus manifesting his belief that she was at fault.

Guzman's comments are more problematical: he made it clear that he was not making predictions but simply advising her. Her own testimony fluctuates: At first she says he told her she would lose, no matter what; then she seems to say he simply outlined her appeal rights. I therefore find no prejudgment in his comments. However, this exchange is much less important because, unlike Hernandez, he was not one of her judges.

As for the meeting of the Thinning and Weeding Ranch Committee, it is possible that Garcia, like Meir who testified about the review meeting held by the "Steadies" Committee, understood the distinction between reviewing charges and determining guilt, but simply had difficulty in phrasing it. On balance, however, I think not. She was afforded every opportunity by UFW counsel to clarify the distinction but failed to do so; and, more importantly, Committee member Hernandez made statements on the following day which I have found to betray the conviction that she was guilty.

The record does not reflect whether the Committee considered the "statute of limitations" problem. The accusations against Salinas and Beltran, like those against the Moses, came more than 60 days after their accusers were first aware that they had

returned to work (See UFW Constitution, Article XVIII, Section 4).

2. Salinas' Trial and Appeal

Cecilia Salinas' trial was scheduled to begin at 5:00 p.m., October 25, 1979. She was present, accompanied by her mother and daughter. Before the proceeding began Manual Hernandez, who acted as presiding judge, asked those present who were not members of the Thinning and Weeding Ranch Community to leave.

The sign-up sheet shows 130 persons in attendance, among them Modesta Chavez and Maria Preciado. Chavez had been off with an injury but was expected to return soon. Preciado was on leave of absence but attended because of her involvement in the strike. I credit her testimony, corroborated by another witness, that she did not vote, and for reasons already stated, discredit Salinas' contrary testimony. As for Chavez, her expectation of reemployment may well have entitled her vote; but even if not, I find her presence and participation of little consequence.

In addition to Hernandez, two other Ranch Committee members, David Lopez and Gregorio Flores acted as Judges. Charges were read, the accuser testified and was followed by seven witnesses, all of whom supported the charges. Salinas was then offered an opportunity to present her defense. She admitted returning to work and went on to complain of her mistreatment by strikers as wife of a foreman, alleging that it had motivated the charges against her. She also claims to have protested the failure to provide her with a UFW Constitution and a Sun Harvest labor Agreement. Previous to the trial, however, she had done nothing to indicate her need for those documents.

Thereafter the judges left the room to deliberate and returned to recommend a guilty finding. Their recommendation was unanimously accepted. They then left to deliberate on punishment and returned with a recommendation of expulsion. Again it was unanimously accepted.

Salinas testified that Hernandez did not leave the trial area to participate in deliberations and that each vote preceded, instead of following, the deliberation of the judges. For the reasons already stated I do not credit her testimony in this regard. Nor do I credit her assertions of drinking and disruption among those in attendance.

She did not return to work the following day, Friday, October 26th, nor on the 27th or 28th. So it was not until five days after the trial that she received her Notice of Trial Decision; nevertheless she filed a timely appeal which eventually resulted in her expulsion being reduced to a one year suspension. No further appeal was taken. On January 7, 1980, upon written demand by the UFW, she was discharged by Sun Harvest.

3. Beltran's Trial and Appeal

Guadalupe Beltran's trial took place the same evening before the same judges. Two of her sons accompanied her and, after some discussion, were allowed to remain. In addition to Modesta Chavez and Maria Preciado, she recognized Cristobal Nunez, a worker at Coastal Farms, among those in attendance. I find that, even if present, their participation was insufficient to affect the character or outcome of the meeting.

Her trial lasted one hour and followed the same format as

that of Salinas. I find that she was given the opportunity to be represented and to question witnesses. She expressed some uncertainty as to whether Hernandez' particpated in the deliberations, but there is clear testimony that he did, and I so find. She also testified that the children in attendance were unruly and that people were coming and going during the proceedings. Given other testimony as to the relatively orderly nature of the trial, I find her testimony to be overstated. What little difficulty may have occurred was insufficient to affect the character or outcome of the proceedings.

Beltran was properly served with a Notice of Trial Decision. She filed a timely appeal which eventually resulted in her expulsion being reduced to a one year suspension. No further appeal was taken. On January 7, 1980, upon written demand by the UFW, she was discharged by Sun Harvest.

CONCLUSIONS OF LAW

I. Introduction

One of the most unique and controversial parts of our Act is its treatment of the scope and permissible limits of union security. Both Section 1153(c) [with its corollary Section 1154(b)] and Section 8(a)(3) of the NLRA prohibit discrimination aimed at encouraging union membership but specifically allow, as an exception, union shop agreements. Section 1153(c) then goes on, unlike its NLRA counterpart, to permit the union to seek and obtain the discharge of a worker who is denied membership or looses his "good standing" in the union for any reason, subject only to the qualification that the such denial or loss be:

"in compliance with a Constitution or bylaws which afford full and fair rights to speech assembly and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

The NLRA, on the other hand, permits discharge only in the limited situation where a member or applicant fails:

"to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." 29 USCA Section 158(c)

Thus, industrial workers expelled or suspended from membership for engaging in conduct prohibited by their union constitution cannot be discharged if they continue to tender dues, but farmworkers can be so long as their rights of speech, assembly and equal protection are not infringed and so long as they are afforded due process.16/

At issue here is whether suspensions from membership for failure to respect a UFW picket lines violate the free speech guarantee of Section 1153(c) and whether proper due process guarantees where adhered to in the imposition of those suspensions.

Before considering those issues on their merits, it is necessary to place them in a proper legal context. Indeed, the challenge of this case is not so much in determining whether the rights of the Charging Parties were violated, for under any realistic theory of due process, George Moses was entitled to more time to study the UFW Constitution in preparing a defense for

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16/From an historical standpoint, the effect of Section 1153(c) is to allow agricultural unions to negotiate union security clauses less severe than those available to industrial unions between 1935 and 1947 under the Wagner Act, but more severe than those possible under Taft-Hartley. Under the Wagner Act, not only was the closed shop permissible, but there were no limits on union discipline.

himself and his brothers, and Cecilia Salinas and Guadalupe Beltran were entitled to judges who had not predetermined their guilt. The perilious task is the formulation of a proper ratio deceidendi: One which will not come back to haunt subsequent adjudication of cases involving the relation of farmworkers to their union. What makes the task both perilious and difficult is the existence of competing analyses of the relation which--while they make little difference to the outcome here--can generate wildy differing and, perhaps, unwanted outcomes in future cases.

The problem--in its broadest sense--has to do with the differing approaches courts have adopted in seeking to mitigate the control exercised over the individual by non-governmental entities--be they labor unions, corporations, or simply other wealthier or more powerful individuals or groups. This has been accomplished by the importation of free speech, due process and equal protection concepts from the Bill of Rights, where they had been confined by the Founding Fathers as limitations on the power of government, over to the broad arena of non-governmental activity. This judicial activism has been engendered, more than anything else, by a felt need to redress gross imbalances which have arisen in social and economic life--the single, most powerful being the condition of the Negro in America.

With stakes so high and emotions so deep, it is no wonder that the unwieldy theoretical task of "broadening" the constitution gave rise to divergent and, at times, confusing legal approaches. The most well known is the "State Action" doctrine, under which conduct by a non-governmental entity is found so invested with

incidents of governmental power as to warrant treating it as subject to the Bill of Rights.[17] The focus of the State Action approach is not so much on the scope of the constitutional protection, as on whether or not the necessary incidents of governmental authority are present. Once found, the scope of protection follows automatically from existing constitutional precedent. For example, if strict State Action doctrine were applied to shopping center picketing, the inquiry would focus on whether the center, in its operation, acts like a governmental body or receives so much support from governmental bodies as to warrant treatment as one; if that be the case, normal First Amendment rules automatically apply with only minimal accomodation to the unique circumstances of the shopping center.[18]

In the last 10 years State Action doctrine has been

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17/Smith v. Allwright, 321 U.S. 649 (1944); March v. Alabama, 326 U.S. 501 (1946); Shelley v. Kraemer, 334 U.S. 1 (1948); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Garner v. Louisiana, 368 U.S. 157 (1961); and Shuttlesworth v. City of Birmingham, 373 U.S. 262 (1963).

18/This approach, which was the basis for the decision in Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968), was repudiated in Lloyd v. Tanner, 407 U.S. 551, 569 (1972) and abandoned by our own Supreme Court in Robbins v. Pruneyard Shopping Center, 23 Cal.3d 899 (1979), aff'd 447 U.S. 74 (1980). It might still persevere in the factual context of Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

increasingly beset by difficulties.[19] These difficulties spring primarily from its "all or nothing" character; that is, once sufficient government involvement is found, the full range of constitutional protection springs into being, without it, there is no protection. The effect of this unitary approach is, first of all, to focus attention on the actor rather than the conduct involved. Is he sufficiently invested with governmental power or subsidies to warrant constitutional scrutiny of his conduct? The conduct itself takes second place. For example, taking the doctrine at face value, once a utiliity company is found to lack State Action, then regardless of whether it deprives customers of service because of non-payment of bills or because it is actively engaged in racial discrimination, there will be no constitutional review. See Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).[20] It is doubtful, however, whether in a real life situation courts would allow a utility to engage in significant discrimination; they would probably bend over backward to find State Action. While one may applaud the morality of such an outcome, it is difficult to defend the conceptual confusion created by finding governmental involvement in one case, when, on the same facts, it would not be found in another.

A second problem with the doctrine is its Procustean nature: once government involvement is found, then, regardless of

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19/See: Glennon & Nowak, A Functional Analysis of the 14th Amendment "State Action" Requirement, 1976 Supreme Court Review 221; Van Alstyne, Mr. Justice Black, Constitutional Review, and the Talisman of State Action, 1965 Duke L. J. 219.

20/McCoy, Current State Action Theories, The Jackson Nexus Requirement, and Employee Discharges by Semi-Public and State Aided Institutions, 31 Vand L. Rev. 785 (1978).

the needs, functions or character of the institution, a fixed body of constitutional law, formulated in the context of actual government power, comes into play. It makes no difference, for example, whether the State of Delaware or the Eagle Coffee Shop, who rents from the Wilmington Parking Authority, is the actor, the constitutional rules of conduct it is obliged to follow are the same. See Burton v. Wilmington Parking Authority, supra.

As a practical matter courts have sought to avoid the imposition of the full array of constitutional duties--notably in the area of procedural due process--either by creating different standards for State Action [See: R. I. Chapter, Assoc. Gen. Contractors v. Kreps, 450 F.Supp. 338, 350, fn. 6 (D.R.I. 1978)], or else by finding State Action, but tailoring constitutional duties to the needs of the institution affected [See: Developments in the Law--Academic Freedom, 81 Harv. L. Rev. 1045, 1064 (1968); Cf. Dix v. Alabama State Board of Education, 294 F.2d 150, 158-9 (5th Cir. 1961)]. The possibility nevertheless remains that, by buying into State Action, one acquires, from the considerable store of constitutional duties and obligations, some that are unwanted and even unknown. For example, if State Action does apply to our Act, there could be a question of whether--regardless of what Section 1153(c) says--the union shop is permissible.21/

21/See City of Hayward v. United Public Employees, 54 Cal.App.2d 761 (1976), where it was held that a government entity cannot enter into a union shop agreement requiring employees to join a "private" labor union. See also: Abood v. Detroit Board of Education, 431 U.S. 209, 217, fn. 10 (1977) where the issue was specifically reserved. Were the roles reversed such that the repository of governmental authority was the labor union, rather than the employing entity, (footnote 21/ continued on next page)

These criticisms are not intended as a denunciation of the doctrine. It has an honorable history and a valid role, especially in the area of equal protection, and conceivably it can be reformulated to meet current objections.[22/] Rather the criticisms are meant as a warning that, unless absolutely necessary, it is inadvisable to involve our Act in such a constitutional morass.

An alternative approach to the problem, and one which can yield very different results, is to be found in the line of cases beginning, in California, with James v. Marinship Corp., 25 Cal.2d 721 (1944). In James a union had used its hiring hall/closed shop agreements to restrict the employment opportunities of black workers. The Court discussed, but did not resort to State Action doctrine; instead, it found (or fashioned) a common law duty:

> "Where a union has ... attained a monopoly of the supply of labor ... such a union occupies a quasi public position similar to that of a pubic service business and its has certain corresponding obligations. It may no longer claim the same freedom from legal restraint enjoyed by golf clubs or fraternal associations." Id. at 721.

This common law duty has been elaborated in subsequent cases,[23/] the most recent being Gay Law Students Assn. v. Pacific Telephone and Telegraph, 24 Cal.3d 458, 480-85, (1979). Its theoretical

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(continuation of footnote 21/) there might still be an argument--albeit much weaker--that membership could not be made a condition of employment.

22/See Glennon & Nowak, supra; Van Alstyne, supra.

23/Pinsker v. Pacific Coast Society of Orthodonists (Pinsker I) 1 Cal.3d 160 (1969); Directors Guild of America, Inc. v. Superior Court, 64 Cal.2d 42 (1966); Pinsker v. Pacific Coast Society of Orthodonists (Pinsker II) 12 Cal.3d 541, 555 (1974); Marin Realtors v. Palsson, 16 Cal.3d 920, 938-939 (1976); Ezekial v. Winkley, 20 Cal.3d 267 (1977); Kronen v. Pacific Coast Society of Orthodonists, 237 Cal.App.2d 289 (1965) cert. denied, 384 U.S. 905.

underpinnings were given their fullest expression by Justice Tobriner and (now) Justice Grodin in their article, The Individual and the Public Service Enterprise in the New Industrial State (1967) 55 Cal. L. Rev. 1247; 1254:

> "As economic and political power becomes channelled through organizations, individuals become increasingly dependent upon membership and participation in such groups as unions, professional societies, and trade associations. Membership in these groups is often essential to effective conduct of an individual's trade or profession, and, because of the economic and political control exercised by such groups, participation in their affairs may be the only practical means an individual has of influencing his working environment. Whether or not it receives government sanction or recognition, the organization often becomes a kind of private government, effectively determining the conditions under which a trade or profession will be conducted."24/

The James v. Marinship approach has much to recommend it. The "all or nothing" aspect of State Action doctrine has been tempered. Even where monopoly power is found, the court remains free, on a case by case basis, to take into account the unique needs, functions and character of the institution in fashioning legal requirements. Pinsker II, supra, 12 Cal.3d at 555-56; Ezekial v. Winkley, supra, 20 Cal.3d at 278-79. Then too, the common law approach is not "writ in stone," but can develop with changing times and attitudes.

A third approach--one which allows for the more flexible common law analysis, while still acknowledging a constitutional dimension to the problem--is to be found in Steele v. Louisville & Nashville R. R. Co., 323 U.S. 192 (1944) where, again in the context of discriminatory treatment of black workers, the Court read the

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24/And see: Sloss and Becker, The Organization Affected With a Public Interest and Its Members - Justice Tobriner's Contribution to Evolving Common Law Doctrine, (1977) 29 Hast. L. Rev. 99.

Railway Labor Act provision creating an exclusive bargaining agent as implying a concomitant duty on the agent's part to represent workers fairly and without discrimination. The Court explained that it was compelled to this result because:

> "If...the [Railway Labor] Act confers this power [of exclusive representation] on a bargaining representative of a craft or a class of employees without any commesurate statutory duty [of fair representation], constitutional questions arise." Id. at 198.

In other words, the Court implied a statutory duty in order to avoid the necessity of resorting to State Action.25/

II. The Interpretation of Section 1153(c)

An examination of our own Act to determine which approach to take in reconciling and defining rights of individual farmworkers vis-a-vis their union must begin with the unique and explicit manner with which it confronts the issue. Unlike the Railway Labor Act or the National Labor Relations Act, the ALRA explicitly requires:

> "a constitution or bylaws which afford full and fair rights of speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership."

It thereby accomplishes, by concrete guarantee, what elsewhere has

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25/Steele has, of course, inspired a very long line of Federal precedent: Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); Humphrey v. Moore, 375 U.S. 335 (1964); Vaca v. Sipes, 386 U.S. 171 (1967). And these precedents have, in turn, been assimulated, here in California, into the James v. Marinship Corp. theory. See Lerma v. D'Arrigo Brothers Company of California, 77 Cal.App.3d 836 (1978). It is important to recognize, however, that the Steele duty is a limited one. Because it arises out of the status of a union as exclusive bargaining agent, rather than out of the relation of a member to his union, it is confined to the union's conduct in representing the worker in dealings with management; it does not extend into internal union affairs.

been left to judicial ingenuity.

But what do the words of the statute mean? Are they meant to incorporate, lock, stock and barrel, the rigorous constitutional analysis of due process, equal protection and free speech which goes along with the State Action approach or do they point to the more flexible common law approach to these concepts manifest in James v. Marinship?

The answer, I conclude, is to be found in reasoning, similar to that in Steele, which acknowledges that without protective statutory language, constitutional questions might well emerge; but with it, they do not. Furthermore, just as the Court in Steele found that constitutional questions could be avoided by recognizing a duty--that of Fair Representation--whose strictures are less rigorous than those imposed by the Constitution on governmental bodies, so too, under Section 1153(c) of our Act, the guarantees of due process and full and fair rights of speech, assembly and membership need not be interpreted with the same rigor as their constitutional counterparts.

The same reasoning can be applied to the so-called "Bill of Rights for Union Members" contained in Title I of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin), 29 USCA Sections 411-415. By enacting specific statutory provisions, roughly analogous to those found in the Constitution, Congress removed a mounting impetus for courts to invoke State Action theory in dealing with internal union injustice. Thus Landrum-Griffin--even though its protections fall short of what might have been constitutionally mandated if State Action doctrine

were applied to labor unions--nevertheless obviated the need to resort to constitutional precepts. There is no reason why the statutory protections contained in Section 1153(c) should not be afforded the same treatment. In short, our statute can protect workers, and it can do so without being shored up by the Constitution.

I am aware that in United Farm Workers of America (Jesus R. Conchola), 6 ALRB No. 16 (1980), the Board, after finding no basis for Section 1154(a)(1) or (b) violations in the fear expressed by a worker that his failure to contribute to a Union political fund would result in his loss of good standing and, with it, his job, went on, by way of guidance, to say that had Conchola actually been threatened with loss of employment a violation would be found. In reaching this conclusion the Board said that Section 1153(c), by sanctioning the union security provision used to compel the contribution, amounted to State Action. It cited Railway Employees' Dept. v. Hansen, 351 U.S. 225 (1956); and Abood v. Detroit Board of Education, 431 U.S. 209 (1977), but acknowledged:

> "Neither Hanson nor Abood is necessarily dispositive of the state action issue under the ALRA. In Hanson, the Court specifically relied on the preemptive nature of federal [Railway Labor] act in finding governmental action. And in Abood, the governmental action was clear, since the employer was a governmental entity." Id. at 12.

And that:

> "The Federal Circuit Courts have differed on whether union security agreements under the NLRA bring constitutional considerations into play. See, e.g., Linscott v. Millers Falls Company, 440 F.2d 14 (1st Cir. 1971), cert. denied, 404 U.S. 872; Reid v. McDonnell Douglas Corporation, 443 F.2d 408 (10th Cir. (1971).

It then went on to cite Gay Law Students Assn. v. Pacific Telephone

& Telegraph Co., supra, in which Justice Tobriner, in ruling that the telephone company was affected with state action, expressed the view, by way of dicta that any union which "is afforded monopoly control over employment opportunities is not free to exercise its power without regard to constitutional constraints." 24 Cal.3d at 473. 26/

The considerable drawbacks of relying on State Action--a doctrine which has reached a point in its development where its imposition has more of a tendency to complicate and obscure than to simplify and elucidate--have already been described. These are the reasons why I believe it unwise to proceed further down the path begun in Conchola. The explicit statutory protections afforded workers in Section 1153(c) suffice; there is no need to clothe them in ill-fitting constitutional garb. 27/

The content and meaning of the statutory protections afforded by Section 1153(c) are therefore to be ascertained primarily by resort to the precedents which have emerged from James v. Marinship Corp. and its progeny, recognizing that labor unions, associations of orthodonists [Pinsker I & II], real estate sales persons [Marin Realtors v. Palsson], and public utilities [Gay Law Students] all have their own unique mission and character in an

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26/By this he appears to be saying that, even if there were no such thing as the NLRA or the RLA or even the ALRA, any strong union would be affected with state action. This a very different approach to State Action doctrine than that taken by the authorities he cites: Hansen and Machinists v. Street, 367 U.S. 740 (1961).

27/Indeed, the guidance offered by the Board in Conchola is equally explicable as mandated by Section 1153(c)'s statutory guarantee of "the full and fair right of speech."

industrial democracy and that this uniqueness must be taken into account in fashioning appropriate standards of speech, assembly and due process. Attention to precedents arising under the analogous provisions of the "Bill of Rights for Union Members" found in Title I of Landrum-Griffin are therefore especially helpful.

Having set out the framework for analysis, it is appropriate now to turn to the issues raised in this case.

III. Strikebreaking and the Full and Fair Right of Speech

James v. Marinship recognizes the existence of "the fundamental right to work for a living." 25 Cal.2d at 731. And so, as a matter of statutory interpretation, mandated not by State Action but, as in Steele, by the desire to avoid a constitutional question, I conclude that "the fundamental right to work" is cognizable under the "full and fair right to speech" guaranteed by Section 1153(e). However, even if one were to give it constitutional dimension, the right would still not be absolute. It would yield, in a proper case, to a compelling state interest where there was a close relationship, or nexus, between the conduct regulated and the compelling interest and where no other, less restrictive alternative was available. Bates v. Little Rock, 361 U.S. 516, 524 (1960); Sheldon v. Tucker, 364 U.S. 479, 488 (1960); Gibson v. Florida Leg. Invest. Comm., 372 U.S. 539, 546 (1963). This constitutional analysis can fruitfully be adopted in interpreting Section 1153(c)--again, not as constitutionally mandated, but as a legitimate device for interpreting the "full and fair right of speech" there protected. See Marin County Bd. of Realtors, Inc. v. Palsson, supra, 16 Cal.3d at 938-39 where the

analysis was utilized in the context of the James v. Marinship theory.

The strike is, after all, the primary economic weapon of a labor union. As such it is the premise on which our "Federal labor policy has been built." NLRB v. Allis-Chalmers Mfg. Co., 338 U.S. 175, 180 (1967) and:

> "Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and 'the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent.'" (citation omitted) Id. at 182.

So there is a compelling interest. And the conduct here in question--the use of union discipline procedures to punish strikebreakers--is, as the Court points out, closely aligned with that interest, thus satisfying the nexus requirement.

This much the General Counsel concedes; she does not concede, however, that there is no less restrictive alternative. It is argued that a fine would have achieved the same result without impairing the Charging Parties' right to work.

Suppose there were a criminal statute forbidding strike-breaking; it would be very odd to argue--apart from "cruel and unusual punishment"--that its invocation of felony, rather than misdemeanor punishments, could determine its validity.

In any event, I believe a union should be afforded some discretion in determining for itself the quantum of punishment necessary to deter and appropriately punish strikebreaking. The existence of some margin of discretion is consistent with the

proviso to Section 1154(a)(1) allowing a union to "prescribe its own rules with respect to...retention of membership," and with the general policy of according some measure of judicial respect to the decisions of private associations, even though they be affected with a public interest. Pinsker v. Pacific Coast Society of Orthodontists (Pinsker II), supra, 12 Cal.3d at 557.

I therefore conclude that a union is entitled, under our Act, to impose discipline, ranging from economic fines up to expulsion; against members who cross a picket line authorized by their union. However, such discipline must, under the language of Section 1153(c), comport with due process.

IV. Due Process

The standard of due process in union discipline proceedings under the James v. Marinship line of cases is to be found in Cason v. Glass Bottle Blowers Assn., 37 Cal.2d 134, 143-44 (1951). Cason recognizes that for a fair trial, there must be notice of charges, the right to confront cross examine, and the right to examine and refute evidence. Id. at 144. These rights differ in no substantial way from those guaranteed by Section 101(a)(5) of Landrum-Griffin to be:

> "(A) Served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

Both State and Federal precedents recognize, however, that members need not be afforded the "full panoply of procedural safeguards found in criminal proceedings" [Tincher v. Piasecki, 520 Fed.2d 851, 854 (7th Cir. 1975)], and that "failure to comply 'strictly' with procedural aspects of a Union's constitution would not render the

action 'void' so long as due process requirements...are satisfied" [Buresch v. IBEW, Local 24, 343 F.Supp. 183, 190 (D. Md. 1971), aff'd, 460 Fed.2d 1405; McConville v. Milk Wagon Drivers, 106 Cal.App. 696, 701 (1930)], the reason being that "the refined and technical practices which have developed in the courts cannot be imposed on the deliberations of working men" [Cason v. Glass Bottle Blowers Assn., supra at 143].

Closely related is the rule that courts will not interfere with interpretations placed on a union constitution by its governing board unless they be unreasonable and arbitrary. DeMille v. American Fed. of Radio Artists, 31 Cal.2d 139, 147 (1947); Stelling v. IBEW, Local 1547, 587 Fed.2d 1379, 1388 (9th Cir. 1978).

A. The 60-day Limitation on the Filing of Charges

Both General Counsel and the Charging Parties argue that the provision in the UFW constitution requiring that charges be filed within sixty days of the time the accuser first becomes aware of the offense (Article XVIII, Section 4) renders the charges here invalid, since, in each case, they were preferred more than sixty days after the accuser first learned of the strikebreaking. The UFW, on the other hand, contends that so long as the charging parties were engaged in strikebreaking during the sixty-day period, their entire conduct may be considered.

It is possible to view the strikebreaking any number of ways--as barred by the lapse of the initial sixty days, as a continuous violation, or as a series of violations each of which was separately chargeable. It can also be argued that once a timely offense is found, other time-barred offenses may be taken into

account in determining the degree of guilt or punishment.

The National Executive Board upheld the charges without specifying a "theory." Nor was it required to do so. The existence of an interpretation which would allow for prosecution is sufficient so long as that interpretation is neither arbitrary or unreasonable. DeMille v. Am. Fed. of Radio Artists, supra at 147; Stelling v. IBEW, Local 1547, supra at 1388. Given the range of possible theories, I cannot conclude that the NEB took an unreasonable or arbitrary position, especially in view of Bush v. I.A.T.S.E., 55 Cal.App.2d 357, 361 (1942), where the Court, faced with almost identical language, upheld a similar result.

B. Reasonable Time to Prepare a Defense

It is not enough merely that a specified time elapse between notice and trial. During the pre-trial period, the accused must be afforded an adequate opportunity to prepare his defense. This does not mean that he is entitled to pre-trial discovery or even the right to interview adverse witnesses; it does mean that the Union should not unnecessarily hinder his preparation or deprive him of the information necessary to understand the offense with which he is charged, the defenses available to him, and the procedures to be followed.

The request that George made, on behalf of himself and his brothers, for a copy of the UFW Constitution in English was a reasonable one. It mattered not that he had considerable familiarity with its terms. Union constitutions are sufficiently complex that few lawyers would feel comfortable giving advice about them without first reviewing the written document. The experience

of rereading a constitution, a statute, or a regulation for the tenth or twentieth time, only to discover a new argument or a previously unnoticed but significant turn of phrase is a familiar one. Nor was it unreasonable to ask that the constitution be provided in English. It is a complex document and George is not completely bilingual; therefore he was entitled to study it in English. 28/

The UFW argues that, even if he had had a dozen copies, the result would have been the same, and then goes on to argue the merits of the prosecution. George, on the other hand, says that with time to study the Constitution, he could have written ten pages in defense, rather than the two he gave to Santiago; and, indeed, he did prepare a ten page appeal. (GC-EX 16).

Courts do not review Union disciplinary hearings de novo. Tc do so "would be inconsistent with the congressional intent to allow unions to govern their own affairs." Boilermakers v. Hardeman, 401 U.S. 233, 246 (1971). The UFW is asking that I violate this policy and, in effect, conduct a de novo hearing by determining what would have happened had the Ranch Community been presented with George's ten page defense. Ellis v. American Federation of Labor, 48 Cal.App.2d 440, 445 (1941). This I cannot do; for, while it is evident that he and his brothers did cross UFW picket lines to return to work, it is simply impossible for me to say with any certainty how the Ranch Community would have reacted to

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28/That a partial translation was supplied is no defense. Only Article XVIII was provided, and there is much in the Constitution bearing on the issue that is not to be found there.

a more throughgoing defense, especially on the question of punishment. At the very least he might have clarified his status as representing his brothers; something which, while clear to the Committee, could easily have been misunderstood by the Community at large. Given time to reflect on the terms of the constitution, he might even have chosen to appear personally, a decision which could well have had a significant impact on the outcome of the trial. See the testimony of Raul Rameriz on this point (VI:81, 83). 29/

A union is, however, under no obligation, absent a timely request, to anticipate a member's need for a copy of the constitution; especially where, as here, copies (in Spanish) were readily available and freely distributed. Therefore, Beltran's failure to request a copy and Salinas' belated request at trial preclude the conclusion that their due process rights were infringed.

C. Prejudgment of Guilt and Penalty

While it is too much to ask that those selected to judge a fellow member's conduct have no strongly held beliefs about the principles involved, it is not too much to demand that they bring to each case a will to reach an honest conclusion after hearing all the evidence and a resolve not to make up their minds beforehand on the personal guilt or degree of fault of the accused member. Indeed, such will and resolve are fundamental to the concept of a fair

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29/Having found that the Moses' due process right were violated by the belated delivery of the constitution over George's objection, it is unnecessary to take up the other factual issues surrounding its delivery--what Santiago said, whether he knew what he was signing, whether he had apparent authority and so on.

hearing. Stein v. Mutual Clerks Guild, supra 560 Fed.2d at 491; Falcone v. Pantine, 420 Fed.2d at 1157 (3rd Cir. 1969); see Davis v. I.A.T.S.E., 60 Cal.App.2d 713, 720 (1943); Andrews v. ALRB, 28 Cal.3d 781, 790-91 (1981).

Having found as a fact that Manuel Hernandez, who was one of the judges in the trials of Guadalupe Beltran and Cecilia Salinas, did prejudge Beltran's guilt and that the Ranch Committee, from which he and the other judges were selected, had determined at a meeting held prior to the trials that both women had violated the UFW constitution, I conclude that they were deprived of a fair hearing.

No such conclusion is warranted in the case of the Moses brothers. Their guilt was not determined beforehand by any of their judges.

With respect to punishment there is insufficient evidence--both in the cases involving the Moses brothers and in those of the two women--to warrant a finding of prejudgment. The lack of discussion of punishment alternatives and, in Beltran's and Salinas' cases, the ambiguous testimony of Zulema Garcia as to what was said about punishment in the Committee's pre-trial meeting is simply not enough to permit an inference of prejudgment.

D. Appellate Review

General Counsel, after acknowledging a paucity of authority on the issue, argues that the Union's National Executive Board did not meet minimum due process standards in handling the appeals: Not only did it unilaterally extend the time for its decision, but it, in effect, delegated its reviewing function to the

UFW Legal Department, and conducted its review with only a sketchy trial record.

Had any of the Charging Parties insisted, as did the plaintiff in Kuebler v. Cleveland Lithographers, Local 24-P, 473 Fed.2d 359 (6th Cir. 1973), that the NEB be provided a more complete record or requested that other significant information be placed before it, and had the request not been honored, then there might well have been a due process violation. But that did not happen. None of the charging parties inquired after the sort of record to be provided or asked that additional matter be considered. The only protest, as such, was George's objection that his brothers had been prejudiced by the UFW President's unauthorized, ex parte 30-day extension of the deadline for the NEB's decision. That extension, like the service of charges six, rather than seven days before trial, and the lapse of five, rather than three days for the service of Salinas' Notice of Trial Decision, must be judged in light of the policy that excuses minor deviations from the Union Constitution so long as basic due process is observed. Buresch v. IBEW, Local 24, supra, 343 F.Supp. at 190; Vars v. Boilermakers, 320 Fed.2d 576 (2nd Cir. 1963). George and his brothers were still working, so the prejudice alleged is insufficient to overcome the policy.

The reliance of the NEB on its Legal Department in assessing procedural "legalities" is well within the interpretative discretion vested in a union's governing body. See DeMille v. American Fed. of Radio Artists, supra, 31 Cal.2d at 147. There was nothing arbitrary or unreasonable in relying on the Legal Department's advice.

E. George Moses' Punishment

I conclude there was nothing wrong with imposing a greater penalty on George. As a union officer and an acknowledged leader among workers, the damage done by his defection was much greater that with the others, Michael included. Michael's union positions were subordinate to George's and he did not occupy the same leadership role in the eyes of his fellow workers. The NEB was entirely justified in taking this into account.

V. Exhaustion of Internal Union Appeals

The requirement that a member exhaust reasonable intra-union appeals before resorting to courts or public agencies has long been recognized. NLRB v. Marine & Shipbuilding Workers, 391 U.S. 418 (1968); Holderby v. Operating Engineers, 45 Cal.2d 843 (1955). In Landrum-Griffin, Congress gave it a precise and measurable formulation: A member need wait no longer than four months before going to a court or an outside agency. LMRDA, Section 101(a)(4).

Here all Charging Parties appealed up the NEB, but no further. Had they continued they would have had to chose between the Public Review Board and the next Convention.

The UFW concedes that, given the timing of the next Convention (held biannually, the next being 1981), no appeal to that body could be required. It argues, however, that an appeal to the Public Review Board would have been completed within the time limits imposed by due process.

In the circumstances of these particular cases, I conclude that there was no necessity for appeal to the PRB. First of all, it

had yet, in five years of existence, to hear a case. Secondly, in view of the arguably unauthorized extension of time given by the General President to the NEB, the Charging Parties had little or no reason to believe their appeals would be handled expeditiously. Thirdly, appeal to the PRB would not stay the discharges [Article XX, Section 2].

Therefore, even though it was possible for the PRB, acting within the time parameters found in the UFW Constitution, to issue a decision within four months of the original trials, the Regional Director was entitled, in his discretion, to conclude that further appeals would be too time consuming and too problematical to justify the damage which the Charging Parties would suffer if he stayed his hand any longer.

VI. Alleged Retroactive Enforcement of the Union Security Clause

Charging Parties argue that since their refusal to honor UFW picket lines occurred prior to the execution of the Sun Harvest union shop clause, their discharges were the result of the retroactive application of that clause. They cite the line of NLRB cases making it illegal for a union to invoke the threat of discharge as a means of collecting dues during periods prior to the execution of a labor agreement.

At bottom, the issue is not so much one of retroactivity as it is of statutory interpretation. In Eclipse Lumber Company, Inc., 95 NLRB 464 (1951), a leading NLRB case on the question, the Board interpreted the terms "periodic dues and initiation fees" which appear in the membership proviso to Section 8(a)(3), as including only current obligations, not "back dues." Id. at 467.

It did so to prevent workers from being forced to join and pay dues to a union before the contract which obligated them to do so had come into existence. See Colonie Fibre Co. v. NLRB, 163 Fed.2d 65 (2nd Cir. 1947)

But that is not the problem posed here. None of the Charging Parties were forced to join or remain members of the UFW during the period of the strike (when no union shop clause was in effect). They were already union members and they chose to remain so. As such, they were legitimately subject to union constitutional provisions forbidding strikebreaking. The punishment of suspension did, by virtue of the later executed union shop clause, impact upon their jobs, but this is, under our Act, a legitimate end (Supra, pp. 40-42)--one which in no way forces, or even encourages, workers to join or remain union members before they are required to do so. It therefore does not run afoul of the policy which motivated the NLRB in the cases cited.30/

VII. Conclusion

The UFW, by causing Sun Harvest to discharge union members for strikebreaking on the basis of internal union disciplinary proceedings which failed to afford the due process provided for in Section 1153(c), has violated Section 1154(b), and derivatively Section 1154(a)(1). Sun Harvest, by acceding to the UFW and carrying out the discharges has violated Section 1153(c), and derivatively Section 1153(a). Its violations are, however, purely

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30/There would be a true problem of retroactivity if the UFW had sought to punish workers who later became members (voluntarily or otherwise) for conduct such as strikebreaking, engaged in before they became members; but that is not the case here.

technical in nature; there is no evidence that it participated in, or was even aware of, the procedural derelictions which occurred. Nevertheless, Section 1153(c)--unlike the proviso to Section 8(a)(3) of the NLRA--does not afford an employer a defense when he has no "reasonable grounds for believing membership was denied or terminated" improperly.

REMEDY

Because of the technical nature of Sun Harvest's violations, it would be inappropriate to require it to do more than make the necessary accomodations so that the Charging Parties can be restored to their jobs without prejudice to seniority and other employment rights. By incorporating a "hold harmless" clause into their labor agreement, the Respondents have, in effect, agreed to the allocation of back pay. That allocation--which places the entire burden on the union--I find to be in accordance with the policies of the Act in the circumstances here presented. Therefore, while both parties are liable for back pay, Sun Harvest is primarily liable and is therefore entitled to full indemnification from the UFW of its obligation. Union Boiler Company, 245 NLRB No. 93, fn. 3 (1979); Wismer and Becker, 228 NLRB 779, fn. 7 (1977); NLRB v. Laborers, Local 282, 567 Fed.2d 883, 836 (8th Cir. 1977); Cf. American Motorcycle Assn. v. Superior Court, 20 Cal.3d 578 (1978).

Since the violations engaged in result from the UFW's failure to provide proper due process, the question arises as to whether it should be allowed to retry the Charging Parties, giving them a fair hearing, or whether the failure of due process precludes further prosecution.

The overwhelming weight of authority holds that, where the defect is of procedural due process, retrials are to be permitted. Cason v. Glass Bottle Blowers Assn., supra; Allen v. Los Angeles Community District Council of Carpenters, 51 Cal.2d 805, 814 (1959); Bernstein v. Alameda-Contra Costa Med. Assn., 139 Cal.App.2d 241, 252-53 (1956); Taylor v. Marine Cooks & Stewards Assn., 117 Cal.App.2d 556, 565 (1953); Falcone v. Dantinne, supra at 420 Fed.2d at 1167; Magelssen v. Plasters' and Cement Masons, Local 518, 233 F.Supp. 459, 462 (W.D.Mo. 1964). In Cason V. Glass Bottle Blowers Assn. where the Trial Court had foreclosed further disciplinary proceedings, the Supreme Court modified the judgment below saying:

> "This judgment is too broad since it appears that the imposition of such a penalty by the union after a fairly conducted hearing may be justified on the basis of the charges of insubordination. The matter should therefore be remanded to the union for further proceedings in accordance with the rules which we have discussed." 37 Cal.2d at 147

The rationale for the rule is to be found in Ellis v. American Federation of Labor, supra, where the charter of the Santa Clara Labor Counsel was revoked by the AFL without proper or hearing:

> "This court will not undertake to inquire at this time whether the Central Labor Council committed any breach of its obligations to the American Federation of Labor or was guilty of any conduct which could justify the suspension or revocation of its charter after proper notice and a hearing. The very purpose of such hearing would be to determine those facts. Having determined that its character may not legally be suspended or revoked without a hearing, it would be improper to substitute a hearing in this or the trial court for the hearing that the Central Council is entitled to have within the federation to which it belongs: 48 Cal.App.2d at 445 (emphasis supplied).

See discussion: Zurn Engineers v. State of Calif. ex rel. Dept. of Water Resources, 69 Cal.App.3d 798, 836-37 (1977).

Therefore, if the UFW desires to retry the Charging

Parties, it may do so. It should be mindful, however, that its own Public Review Board, in a series of cases involving procedural defects, decided after the close of the hearing here, appears to have prohibited retrials (RESP-EX K). This means that, should the union retry the instant cases, it would arguably be treating those who appealed to the PRB differently from those who did not; thus, in effect punishing members for failing to exhaust additional intra-union remedies. Since such exhaustion is not required (supra pp. 49-50) and, furthermore, since a union may not, under NLRB v. Industrial Union of Marine and Shipbuilding Workers, 391 U.S. 418 (1967), punish the failure to exhaust, there may be a serious question of the legality of such retrials. However, because there is insufficient evidence in the record to determine whether there are other, valid grounds upon which to distinguish the cases of those who appealled to the PRB from those who did not, the union must be allowed to determine for itself whether it wishes to risk retrials.

The other terms of remedial relief I recommend as necessary in view of the nature of the violations and the conditions among farmworkers and in the agricultural industry at large. Therefore, upon the basis of the entire record, the findings of fact, and the conclusions of law, I hereby issue the following recommended:

ORDER

I. By Authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, United Farm Workers of America, AFL-CIO (UFW), its

officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause a Sun Harvest Inc. or any other employer to discriminate against any employees with respect to whom membership in the United Farm Workers has been terminated without affording them the due process rights guaranteed by Section 1153(c) of the Act.

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

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

(a) Immediately restore George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas to membership in good standing of the UFW retroactive to January 2, 1979, without prejudice to their membership rights or privileges as though they had not been suspended on that date, and without prejudice to the right of the union, if it so decides, to reactivate disciplinary proceedings here involved so long as each is given a full and fair hearing with adequate time to prepare a defense.

(b) Immediately notify Sun Harvest, Inc. that George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas are members in good standing and are to be deemed as such retroactive to January 2, 1979, and that the UFW seeks their reinstatement to their former jobs or equivalent employment (where not already accomplished) without prejudice to their seniority and

other rights or privileges of employment as though they had not been terminated January 7, 1979, subject only to the right of the UFW, if it so decides, to reactivate the disciplinary proceedings in accordance with 2(a) above.

(c) Make whole George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas for any loss of pay and other economic losses they have suffered as a result of their discharge; reimbursement to be made according to the formula stated in J & L Farms, 6 ALRB No. 43 (1980), plus interest thereon at a rate of seven percent per annum. And, if necessary fully indemnify Sun Harvest, for any monies it has paid pursuant to paragraph II, 2(b) of this Order.

(d) Notify George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas at the earliest possible time by mail at their last known address of their retroactive restoration to membership in good standing as provided in paragraph 2(a) above, of the UFW position on their full reinstatement as communicated to Sun Harvest, Inc. pursuant to paragraph 2(b) above, and whether or not the UFW will seek to reactivate the charges which led to their loss of good standing, and, should the decision be to reactivate the charges, explain in writing to each that they will be given a full and fair hearing with adequate time to prepare a defense.

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

(f) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places at all its offices, union halls and headquarters which directly service Sun Harvest Employees or applicants for employment, the period and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(g) Mail copies of the attached Notice, in all appropriate languages within 30 days after the date of issuance of this Order, to George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas, and provide sufficient copies of the Notice to Sun Harvest for posting in accordance with paragraph II 2(d).

(h) Print the attached Notice, in all appropriate languages, in any and all newsletters and other publications which it publishes and which it circulates among Sun Harvest employees or applicants for employment during the period from one month to six months following the date of issuance of this Order.

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

II. By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Sun Harvest, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against any employee where that employee has been deprived of his membership in good standing without being given the due process rights guaranteed by Section 1153(c).

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

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

(a) Immediately offer to George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas full reinstatement to their former jobs or equivalent employment (except where this has already been accomplished), without prejudice to their seniority or other rights or privileges.

(b) Make whole George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas for any loss of pay and other economic losses they have suffered as a result of their discharge, reimbursement to be made according to the formula stated in J & L Farms, (August 12, 1980) 6 ALRB No. 43, plus interest thereon at a rate of seven percent per annum; provided, however, that Sun Harvest, Inc., is entitled to full indemnification from the United Farm Workers for any payments made under this paragraph 2(b).

(c) Preserve and, upon request, make available to this Board and its agents, and also to the United Farm Workers in carrying out their obligations under paragraph I, 2(c), for

examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination of the backpay period and the amount of backpay due under the terms of this Order.

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

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

DATED: September 22, 1981

JAMES WOLPMAN
Administrative Law Officer

NOITICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by our conduct in suspending five of our members who were employed at Sun Harvest, Inc. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is law that gives you and all other farm workers in California these rights:

1. To organize themselves;

2. To form, join or help unions;

3. To vote in a secret ballot election to decide whether you want a union 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 another; and

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

WE WILL NOT cause or attempt to cause any employer to discriminate against any employee with respect to whom membership in the United Farm Workers has been terminated without proper due process.

SPECIFICALLY, the Board found that we discriminated against, restrained and coerced George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas, all employees of Sun Harvest, by causing their discharges based on internal union disciplinary proceedings which failed to give them, in some cases, full and fair hearings and, in others, adequate time to prepare a defense.

WE WILL see to it that any member charged with violating the UFW Constitution gets a full and fair hearing with adequate time to prepare a defense.

WE WILL restore George Moses, Michael Moses, Ronald Moses, Guadalupe Beltran and Cecilia Salinas to membership in good standing without loss of membership rights and privileges, subject only to our right to re-try them with full due process rights should we so decide.

WE WILL seek to have Sun Harvest reinstate them to their former or substantially equivalent employment (where this has not already happened) in accordance with the Board's Order that Sun Harvest do so without loss of seniority or other privileges, and WE WILL assume the primary responsibility for reimbursing them for the pay and other money they have lost because of their discharges.

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

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

By: _____
Representative Title

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

DO NOT REMOVE OR MUTILATE.