

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS, INC.,	)	
	)	
Respondent,	)	Case No. 80-CE-7-D
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	7 ALRB No. 17
AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
	)	

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DECISION AND ORDER

In November 1980, Administrative Law Officer (ALO) Stuart A. Wein issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions to the ALO's Decision and a brief in support of exceptions.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the ALO's rulings, findings, and conclusions only to the extent consistent herewith.

General Counsel alleged in the complaint that Respondent violated Labor Code section 1153 (c) and (a) by its layoff of Bernabe and Luz Ramirez, husband and wife, because of their support for and activities in behalf of the United Farm Workers of America, AFL-CIO (UFW). General Counsel was granted leave to amend the complaint at hearing in order to allege additionally that

Respondent violated Labor Code section 1153 (d) by its subsequent refusal to reinstate the Ramirezes because they had filed the unfair labor practice charge in which they alleged that they had been discriminatorily laid off.

The ALO concluded that Respondent had not violated the Act by its layoff of the Ramirezes. No exception was filed with respect to this conclusion and it is hereby affirmed. The ALO also found that the Ramirezes twice made proper applications for work following their layoff, at times when work was available. He concluded that Respondent refused to reinstate them on both of those occasions in violation of Labor Code section 1153 (d) because Mr. Ramirez either had threatened to file, or had in fact filed, the unfair labor practice charge which is the basis of this proceeding. We find merit in Respondent's exception to this conclusion.

The Ramirezes were among the approximately 20 employees who were laid off from a grape-pruning crew on January 22, 1980, Respondent reduced the size of the crew on that date, choosing to give seniority preference to employees who had worked during the spring thinning season. Accordingly, Respondent retained only those employees whose names appeared on the crew's employee roster for the previous May. The ALO found that the method utilized by Respondent to determine seniority was proper.

As the Ramirezes had not been in Respondent's employ in any capacity during the May qualifying period, their names did not appear on the relevant employee list. Neither of them returned to Respondent's premises following the layoff to request work and they

were not rehired.<sup>1/</sup>

The Ramirezzes left the field immediately upon being informed of their layoff status, encountering ranch manager Alfred Giumarra as the latter was approaching the work site. Mr. Ramirez informed Giumarra that he had just been laid off and "... if you don't hire me, I can turn you in to the ALRB." Giumarra suggested that if that was his intention, he might as well take along all employees who had been similarly laid off, adding, "Let them all level a charge against me,"

The ALO found that Ramirez' reference to the ALRB in the course of that conversation with Giumarra was the reason neither he nor his wife was rehired. The basic flaw in the ALO's analysis is his reliance on a purported admission-by Respondent which is devoid of any evidentiary support. According to the ALO:

[Giumarra] conceded that Mr. Ramirez's actions and words were the sole motivating reasons for his not being rehired, after it became clear--within three days--that too many people had been laid off.

Apparently the ALO has reference to his own questioning of Giumarra during which he asked the witness whether the filing of the charge "was basically the reason they weren't rehired ...?" In his reply to this question, Giumarra merely suggested that the Ramirezzes might have been rehired had they remained at or returned to the

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<sup>1/</sup>Several other employees whose names were not on the crew's employee list for May 1979, and who were laid off at the same time as the Ramirezzes, were reinstated as vacancies occurred a few days later. All of these employees persisted in returning to the work site following the layoff, insisting, and ultimately prevailing, in their contention that they had thinned for Respondent in May 1979, but in a different crew.

work site following their layoff, as did those workers who ultimately were reinstated.

As no basis for the ALO's finding exists, and as the record reveals no additional evidence to warrant a finding that the Ramirez were unlawfully denied rehire,<sup>2/</sup> we shall dismiss the complaint.

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that the complaint in this matter be, and it hereby is, dismissed in its entirety.

Dated: July 10, 1981

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

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<sup>2/</sup>We reject the ALO's finding that work was available when Ramirez confronted Giumarra on the roadway immediately following the layoff, in light of the fact that Respondent did not need to augment the crew until at least three days later.

CASE SUMMARY

Giumarra Vineyards, Inc. (UFW)

7 ALRB No. 17

Case No. 80-CE-7-D

ALO DECISION

The ALO dismissed the complaint insofar as it alleged that Respondent discriminatorily laid off two employees, husband and wife, because of the husband's prior support for and activities in behalf of the United Farm Workers of America, AFL-CIO. However, he concluded that Respondent subsequently refused to reinstate the couple in violation of Labor Code section 1153(d) because they had threatened to file, or had in fact filed, the unfair labor practice charge herein based on their layoff.

BOARD DECISION

The Board affirmed the ALO's conclusion that the couple had not been discriminatorily laid off but rejected the ALO's conclusion that Respondent had violated section 1153(d) by refusing to reinstate them. The Board found that the couple had not made a proper application for-work at a time when work was available.

ORDER

The Board dismissed the complaint in its entirety.

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

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STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
)  
GIUMARRA VINEYARDS, INC., ) Case No. 80-CE-7-D  
)  
Respondent, )

and  
—

UNITED FARM WORKERS OF  
AMERICA, AFL-CIO,  
  
Charging Party



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DECISION

STATEMENT OF THE CASE

STUART A. WEIN, Administrative Law Officer: This case was heard by me on August 21, 22, 25 and 26, 1980 in Delano, California.

The Complaint, dated July 8, 1980, is based on one charge filed by the UNITED FARM WORKERS OF AMERICA, AFL-CIO (hereafter

the "UFW or Union"). The charge was duly served on the Respondent, GUIMARRA VINEYARDS, INC., on January 23, 1980.<sup>1</sup>

The Complaint was amended without objection from the Respondent by oral motion made at the commencement of the hearing and reduced to writing pursuant to 8 California Administrative Code Section 20222.<sup>2</sup> The Complaint and Amendment allege that Respondent committed certain violations of the Agricultural Labor Relations Act (hereinafter referred to as the "ACT").

All parties were represented at the hearing and were given a full opportunity to participate in the proceedings. The General Counsel, Respondent, and Charging Party (Intervenor) filed briefs after the close of the hearing.

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

#### FINDINGS

##### I. Jurisdiction:

Respondent, GIUMARRA VINEYARDS, INC., is a corporation engaged in agricultural operations -- specifically the growing and shipping of table grapes in Kern County, California -- as

<sup>1</sup>Unless otherwise specified, all dates herein mentioned refer to 1980.

<sup>2</sup>The written amendment to the Complaint was dated 5 September 1980, but indicates a filing date of 11 September 1980, and a service date of 15 September 1980. Although the filing and

was admitted by Respondent. Accordingly, I find that Respondent is an agricultural employee within the meaning of Section 1140.4(c) of the Act.

I further find that the UFW is a labor organization within the meaning of Section 1140.4(f) of the Act, as was also admitted by the Respondent.

## II. The Alleged Unfair Labor Practices:

The General Counsel's Complaint and Amendment charge the Respondent with violations of Sections 1153 (a) and 1153(c) of the Act by its discriminatory layoff of BERNABE RAMIREZ and LUZ MARIA RAMIREZ on or about January 22<sup>3</sup> because of their alleged support for and activities on behalf of the UFW. The Respondent is further charged with violations of Sections 1153(a) and 1153(d) of the Act by its refusal to rehire BERNABE RAMIREZ and LUZ MARIA RAMIREZ because they threatened to complain to the Board about Respondent's discriminatory treatment, and did, in fact, make a formal complaint to the ALRB about Respondent's discriminatory treatment on or about January 23, 1980.

The Respondent denies that it violated the Act in any respect. Particularly, Respondent contends the layoffs were

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service are untimely under Section 20222, Respondent has made no objection thereto, and consequently has demonstrated no prejudice by the lack of timeliness. I therefore consider the Complaint to be properly amended.

<sup>3</sup>While the Amendment, to Complaint referred to January 23, the record reflects that the layoffs occurred on January 22.



attributable to the business necessity of reducing the labor force because of insufficient supervisory personnel during the grape pruning season. The Respondent further contends that BERNABE RAMIREZ and LUZ MARIA RAMIREZ were not rehired because they did not make a proper application for rehire.

### III. Background:

The Ducor area of Respondent GIUMARRA VINEYARDS, INC., is the site of a 1700-acre grape operation and 200 acres of row crops including potatoes, wheat, and cotton in Kern County, California. Several varieties of table and wine grapes are grown on the Ducor ranch --Thompson Seedless, Ribiers, Exotics, Emperors, Alexander Muskats, Italian Muskats, Queens, "Calmerias, and Almerias -- and the various operations required to grow, harvest, and ship these grapes<sup>4</sup> define the seasonal work activity in the Ducor sector.

The pruning and tying season generally starts in December and lasts until the end of February or middle of March. Suckering or leafing usually commences sometime in April and continues until June, when the thinning begins. Thinning is normally completed by mid-July, and re-leafing or re-thinning will conclude by the end of July. Harvesting of the Exotics and Queens begins in early August; Italian Muskats and the Thompson Seedless are picked in late August, and the Ribiers in September. Depending upon the weather and other conditions, the harvest is usually completed by December.

<sup>4</sup>Table grapes are the primary crop.

Normally, two crews of 30-45 workers each, supervised by two foremen and two helpers, would do the pruning and tying. One crew - - composed of 90 to 100- plus workers -- supervised by one foreman and two helpers would generally do the leafing and suckering. The same number of people would also do thinning, and the work force would be reduced to about 50 for the second leafing or rethinning. Two crews consisting of 120 people in total, supervised by one foreman and two helpers would work the harvest season.

With respect to the charge filed, the key personnel of the Ducor area are field manager Alfred Giumarra -- participant stockholder of Respondent GIUMARRA VINEYARDS, INC. --; Ranch Supervisor (and cousin of Mr. Giumarra) John Murray; and the various foremen - including Demetrio Pascua and the latter's helper, niece Remy Pascua, who has worked as "acting" foreperson in her uncle's absence.

The alleged unfair labor practices occurred on January 22, 1980, when BERNABE RAMIREZ and his wife LUZ MARIA RAMIREZ were notified that they were laid off from the pruning and tying crew headed by Remy Pascua, and were not subsequently rehired.

Because the alleged violations stem from the same factual context, Conclusions of Law and Analysis for each theory will follow the Findings of Fact.

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#### IV. Discussion:

##### A. Facts: <sup>5</sup>

BERNABE RAMIREZ and LUZ MARIA RAMIREZ, husband and wife, worked seasonally at Respondent's Ducor sector at least since 1976. Respondent's payroll records reflect that LUZ MARIA RAMIREZ worked from August 7, 1976, to December 25, 1976, presumably harvesting grapes; from January 1, 1977 to February 5, 1977 (pruning and tying) and August 13, 1977 to October 1, 1977 (harvesting); January 21, 1977 to February 18, 1978 (pruning and tying) and August 12, 1978 to November 4, 1978 (harvesting); and January 27, 1979 to February 24, 1979 (pruning and tying). (See Respondent's Exhibit No. 2). BERNABE RAMIREZ worked from January 5, 1977 to February 5, 1977 (pruning and tying); and August: 13, 1977 to November 5, 1977 (harvesting); January 7, 1978 to February 18, 1978 (pruning and tying); and | August 12, 1978 to September 16, 1978 (harvesting); and December 23, 1978 to February 24, 1979 (pruning and tying). (See Respondent's Exhibit No. 1). They both worked without incident. for various foremen including Demetrio Pascua, Jesse Juarez and Piano Padillo. Although field manager Alfred Giumarra testified that he had informed Mr. RAMIREZ that there was no work for him in 1978, Mr. RAMIREZ found a position in Demetrio Pascua's crew during that year.

<sup>5</sup>As neither discriminatee testified, there was no conflict in the evidence regarding the incident surrounding the layoff and failure to rehire. Thus, the chief witnesses at the hearing were Alfred Giumarra and Remy Pascua, and to a lesser extent, bookkeeper Ralph Dominquez. Unless otherwise indicated, all findings of fact were uncontroverted.

General Counsel alleges that Mr. and Mrs. RAMIREZ were discriminatorily laid off in January, 1980, because of Mr. RAMIREZ' prior support for and activities on behalf of the UFW. Mr. Giumarra conceded that Mr. RAMIREZ was a known UFW activist:, who served as an election observer in 1977, distributed leaflets, spoke with co-workers and wore UFW emblems during the course of his employment.

Mr. and Mrs. RAMIREZ obtained work again with Respondent during the second week of January, 1980, apparently with some assistance from the Delano Regional Office of the ALRB. (See General Counsel's Exhibit 3.) They pruned and thinned in Demetrio Pascua's crew until January 22,<sup>6</sup> when they, along with various others, were notified that they were laid off. At around 7:00 a.m., prior to work, Remy Pascua, acting foreman in the absence of Demetrio Pascua who had left the area with his ailing wife, read from a list of names. (General Counsel's #2.) Those workers not on the list were not allowed to continue working with Respondent.

Respondent denied that there was any anti-union motivation for the layoffs of Mr. and Mrs. RAMIREZ. Rather, Alfred Giumarra testified that the "list" was one of many composed at his instruction by Remy Pascua in the spring and early summer of 1979

<sup>6</sup>During his second day of testimony, Mr. Giumarra apparently suggested that the layoff occurred on January 21 (R.T., Vol. II, p. 26, l. 24). Because Ms. Pascua's version fixes the layoff on January 22 (R.T., Vol. IV, p. 56, .l. 11), which date is consistent with Mr. Giumarra's testimony on the first day of the hearing (R.T., Vol. I, p. 100, ll. 12-13), I find the layoff to have occurred on January 22. In any event, there is no particular significance in the discrepancy.

to keep a readily available record of workers who thinned at Respondent's Ducor area. Because there was a sudden and unexpected influx in the number of workers seeking employment with Respondent during this period of time (spring, 1979), Mr. Giumarra attempted to establish a type of "seniority" accounting of those people who performed the various seasonal operations with Respondent. Thus, lists were compiled on a weekly basis of the workers in Demetrio Pascua's crew by Mr. Pascua's helper (and niece), Remy Pascua. Mr. Giumarra explained that this particular list (May 14-19, 1979) was utilized to determine the people to be laid off on 22 January 1980 because its size - some 75 workers - would enable Respondent to reduce the 1980 pruning crew to a manageable size in light of the exigent and unforeseen circumstances of Demetrio Pascua's departure, the abrupt resignation of his interim replacement, "Mariano", and the inability of Remy Pascua to adequately supervise the rather unwieldy group of 55-60 workers. Approximately 30-35 members of the January 22 crew - including BERNABE RAMIREZ and LUZ MARIA RAMIREZ - were not on the May, 1979 list and were all informed that they had been laid off.

Alfred Giumarra was in his car approaching the crew to supervise a new job at approximately 7:30 a.m., as the layoff was announced. The first person he encountered was BERNABE RAMIREZ (also in his car) who flagged down and stopped. Mr. Giumarra. Mr. RAMIREZ inquired as to why he was being laid off, since he had worked several previous seasons for Respondent. Mr. Giumarra

explained that there were too many people in the crew and there was no supervisor, so that if Mr. RAMIREZ was not on the list, he (Mr. Giumarra) was sorry, but there would be no work. Mr. RAMIREZ replied that he was "going to turn Mr. Giumarra into the ALRB, which brought on the following retort from the Field

Manager: "Well, if you are going to do that, you might as well go down there and get them all, let them all level a charge against me." (R.T., Vol. II, p. 23, 11. 12-16.) Mr. RAMIREZ proceeded to put his car in reverse and "dug out". A charge alleging the discriminatory discharge of BERNABE and LUZ MARIA RAMIREZ "because of support and assistance to the UNITED FARM WORKER'S Union and going, to ALRB for help" was signed by Mr. RAMIREZ, filed by the UFW, and served on Respondent on 23 January 1980. (General Counsel Exhibit 1A.)

Some of the laid-off workers left without further discussion with either Mr. Giumarra or Ms. Pascua. Others -3-5 workers - waited at the work site where the layoff was announced and spoke to Mr. Giumarra about the possibility of being rehired. Because the crew dropped to a lower number than Mr. Giumarra had anticipated, because some workers persisted in returning during the next few days, and because some were able to have verified their prior work with Respondent, approximately 6-10 were rehired by 24 January 1980. According to Alfred Giumarra, the RAMIREZES were not rehired because they never returned to the ranch. (R.T., Vol. II, p. 44, 11. 4-7.)

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B. Analysis and Conclusions:

1. Layoff of BERNABE RAMIREZ and LUZ MARIA RAMIREZ of

22 January 1980:

Section 1153 (c) of the Act makes it an unfair labor practice for an employer "(b)y discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization." The General Counsel has the burden of establishing the elements which go to prove the discriminatory nature of the layoffs or discharges. Maggio-Tostado (1977), 3 ALRB No. 33. The standard whether the evidence, which in many instances is largely circumstantial, establishes by its preponderance that employees were laid off for their views, activities, or support for the union. Sunnyside Nurseries, (May 20, 1977) 3 ALRB No. 42, enf. den. in part, Sunnyside Nurseries, Inc., v. Agricultural Labor Relations Bd. (1979), 93 Cal.App.2d 922. Of significance in determining General Counsel's prima facie case are the extent of the employer's knowledge of union activities, the timing of the alleged unlawful conduct, and the employer's anti-union animus.

Field Manager Alfred Giumarra conceded knowledge of BERNABE RAMIREZ' union (UFW) sympathies and activities at the hearing. Mr. Giumarra testified that from as early as 1977, he recalled that Mr. RAMIREZ was an organizer, a "very active Chavista", who wore UFW buttons. He remembered Mr. RAMIREZ being a union observer during the 1977 election at Respondent's ranches. Additionally, the two discussed Mr. RAMIREZ' "disenchantment"

with the UFW in 1978.

Employer knowledge of an employee's union activities standing alone, however, will not support finding a violation of Section 1153(c). The Van Heusen Co. (1975), 221 NLRB 732 [90 LRRM 1687]; Freeport Transport, Inc. (1975), 220 NLRB 833 [90 LRRM 1444]. The General Counsel has not, in my opinion, met her burden of proving by a preponderance of the evidence that there was a causal connection between Mr. RAMIREZ' past union activities and the layoff of 22 January 1980. I reach this conclusion with the following considerations:

The layoff procedure was determined after Mr. Giumarra's return from vacation .the first week of January 1980. Foreman Demetrio Pascua left the area to be with his ailing wife. Helper "Mariano" resigned, and it became apparent that Demetrio Pascua would not be returning in the foreseeable future. Remy Pascua - who had been a "second", but not a foreman for Respondent - was unable to properly supervise the 60-member crew, so some method of reducing the work force had to be initiated.

Mr. Giumarra conceived the "list" plan because he thought its utilization would most equitably determine those who would be laid off. Rather than attempt to single out activist RAMIREZ, Mr. Giumarra was attempting to reward those workers who had assisted Respondent on a more-or-less continuous basis during previous years. (R.T., Vol. 1, p. 106, 11. 13-14; p. 113, 11. 14-23.) Since Mr. and Mrs. RAMIREZ had not previously worked



for Respondent in April or May, their names were not on the list, and they and 30-35 others were informed of the layoff on the morning of 22 January. While one might question the applicability of a May, 1979, suckering crew list to determine the work force for the January pruning, Respondent is entitled to lay off an employee for any reason just, or unjust, other than for engaging in protected activity. Hansen Farms (1977), 3 ALRB No. 43; NLRB v. Tayko Industries, Inc. (9th Cir. 1976), 543 F.2d 1120.

While General Counsel and Charging Party suggest in their briefs (G.C. Brief, p. 9; C.P. Brief pp. 13-14) that Mr. Giumarra attempted to thwart the RAMIREZES' efforts to work for Respondent at every opportunity, the record belies this allegation. The RAMIREZ ES worked in 1978, 1979, and the commencement of 1980. Although apparently Mr. RAMIREZ was hired by a foreman rather than by Mr. Giumarra himself, there was no apparent effort to interfere with Mr. RAMIREZ' employment in 1978. He was rehired in 1979 and again in 1980. While Board Agent, Jack Matalka, testified that he helped Mr. RAMIREZ obtain employment in January 1980, there is no evidence that Mr. Giumarra considered such assistance in devising the layoff scheme. Unlike the situation in Sahara Packing Co. (1978), 4 ALRB No. 40, the Respondent herein reduced the size of his work force for legitimate business reasons. There is no suggestion in the record that a substantial number of union activists were disenfranchised by the January 22 layoff, nor is

there sufficient evidence to infer that Mr. Giumarra concocted an elaborate scheme to disguise his attempts to rid Respondent of activists BERNABE and LUZ MARIA RAMIREZ.

In the latter regard, General Counsel has preferred the theory that the May 1979 list was not the basis for the layoff, but was rather a post-facto machination to justify the RAMIREZES' departure. My review of the applicable documents (General Counsel Exhibit #2 and Respondent's Exhibit #4), however, leads me to conclude that the group of names not on the May 1979 list but also not laid off relate to those who remained behind and were "rehired", as well as family relatives of workers for May 1979. Such inference is further consistent with the uncontroverted testimony of Mr. Giumarra that too many people were laid off on 22 January, permitting the rehiring of numerous workers the following days. There is no suggestion that the May 1979 list was prepared for this litigation, and thus not relied upon by Respondent during the period in question. See Harry Carian Sales (1980), 6 ALRB No. 55, citing, Thermo Electric Co. (1976), 222 NLRB 358, 368 [91 LRRM 1310], enf'd. (3d Cir. 1977) 547 F.2d 1162. Rather, both Mr. Giumarra and Ms. Remy averred without contradiction that the document was compiled in May 1979 by Ms. Remy at the specific request of Mr. Giumarra to remedy hiring difficulties that Respondent was encountering at that time. And both confirmed that the list was indeed relied upon in announcing the layoff of 22 January. I so find.

(R.T.,

<sup>7</sup>Florence R. Sumahit was on the May 1979 list, as apparently were various members of the families Santa Maria, Martinez, Espiritu and Pascua.

Vol. I, p. 72, ll. 12-20; p. 88, ll. 4-9; Vol. IV, p. 49, ll. 14-19.)

It is my further opinion that bookkeeper Ralph Dominquez's testimony placing Mr. Giumarra's request for verification of various employees' prior work before the day of the layoff is due to the witness's lack of knowledge of the actual date of the layoff rather than to any pretextual guise of Respondent. There is no evidence in the record that the timing of the layoff was geared to thwarting a union organizational or negotiation effort, or that Mr. Giumarra selected the May 1979 list to specifically exclude the RAMIREZES. There were certainly many other weekly crew lists for the period April - June, 1979 which also would not have carried the names of BERNABE and LUZ MARIA RAMIREZ. Although Mr. Giumarra often volunteered comments which did not seem to express particular concern for the welfare of the RAMIREZES, I do not find in the record sufficient evidence of animus to suggest the fabrication of an elaborate scheme to disguise Respondent's real purposes. There was uncontrovertible evidence that Remy Pascua did read off the list of names on 22 January, and that "more than enough" workers were laid off on that date. The 37 workers listed on Respondent's Exhibit #4 reflect Mr. Giumarra's testimony that many were rehired between 22 January and 24 January because the original layoff exceeded his expectations.

While there is a suspicion that there was no particularly rational relationship between the May 1979 suckering work force

and those who should keep their jobs in January 1980, I find that the General Counsel has failed to establish by a preponderance of the evidence that there was a connection or causal relationship between Mr. RAMIREZ' union activities and the 22 January layoffs. See Jackson & Perkins Rose Co., 5 ALRB No. 20 (1980). The layoffs would have occurred as planned regardless of the union activities of Mr. RAMIREZ. I do not view the Act as giving the Board a license to dictate the methods by which an employer chooses to reduce its work force, so long as the method selected is not taken for prohibited purposes. See Maggio-Tostado (1977), 3 ALRB No. 38, citing NLRB v. Midwest Hanger Co. (8th Cir. 1973)[82 LRRM 2693].

Mr. Giumarra may have been somewhat less than displeased by the termination of BERNABE RAMIREZ' employment, but I do not find that any anti-union motive constituted "the last straw which broke the camel's back," in reaching the layoff decision. See NLRB v. Whitfield Pickle Co. (5th Cir. 1967), 374 F.2d 576, 582 [64 LRRM 2656]. The Respondent was compelled to reduce the size of its pruning and tying crew because of the absence of the regular foreman. The Respondent's utilization of the May 1979 list was consistent with this need to trim the 60-member crew. While Mr. Giumarra may not have shared Mr. RAMIREZ' views on the merits of the UFW, the record reflects no history of mutual animosity or prior related unfair labor practices which would be a motivating reason for the 22 January layoff, While another layoff procedure might have been utilized, I

find no indicia of anti-union animus as a causal factor in the implementation of this particular plan. Having determined that Respondent's business justification refutes any inference of discrimination which may be drawn from the circumstances, I therefore find that Respondent did not violate Section 1153(a) or (c) of the Act by laying off BERNABE RAMIREZ and LUZ MARIA RAMIREZ on 22 January 1980.

2. Refusal to Rehire:

I reach a different conclusion with respect to the refusal to rehire BERNABE RAMIREZ and LUZ MARIA RAMIREZ following the 22 January layoffs. Section 1153(d) of the Act makes it an unfair labor practice for an agricultural employer "to discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony" under the Act. The quoted language is identical to that in Section 8 (a) (4) of the NLRA except for the inclusion of the word "agricultural" in the ALRA.

To facilitate the policy of encouraging the free flow of communications to the Board, and to promote enforcement of the Act's protective provisions, the NLRB has used a broad and liberal interpretation of Section 8(a)(4). Thus, the protection]of that Section has been applied to employees filing charges or testifying as well as to participation in various aspects of its processes. See E. H., Ltd., dba Earringhouse Imports (1977), 227 NLRB No. 118, 94 LRRM 1494. In NLRB v. Scrivener (1972), 405 U.S. 117, 79 LRRM 2587, the U.S. Supreme Court

endorsed the liberal interpretation of Section 3(a)(4) as follows:

This broad interpretation of §8(a)(4) accords with the Labor Board's view entertained for more than 35 years. Section 8(a)(4) had its origin in the National Industrial Recovery Act, 48 Stat. 195. Executive Order No. 6711, issued May 15, 1934, under that Act (10 NRA Codes of Fair Competition 949), provided, "No employer . . . shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation." The first Labor Board interpreted that phrase to protect the employee not only as to formal testimony, but also as to the giving of information relating to violations of the NLRA. New York Rapid Transit Corp. 1 N.L.R.B. Dec. 147,148 (1935) (state court testimony . . . The approach to §8(a)(4) generally has been a liberal one in order to fully effectuate the section's remedial purpose. Id. at 122 and 124.)

Expanding upon this rule, the National Labor Relations Board has also found violations of Section S(a)(4) where an employee was discharged because the employer suspected that he had filed or was about to file a charge with the Board. First National Bank and Trust Co. (1974), 209 NLRB 95, 85 LRRM 1324; accord: Rock Road Trailer Parts and Sales (1973), 204 NLRB 1136, 83 LRRM 1467.

Citing the Scrivner precedent, the ALRB has found violations of Section 1153(d) for an employer's constructive discharge of an employee for attendance at a hearing, as well as refusal to rehire because "too many charges were filed." Bacchus Farms (1978), 4 ALRB No. 26; C. Mondavi & Sons dba Charles Krug Winery (August 14, 1979) 5 ALRB No. 53, review denied by Ct.App.,

1st Disc., Div. 2, June 18, 1980, hg. den. July 16, 1980.

In the instant case, it is conceded that there was work available immediately following the 22 January layoffs, because the remaining crew force was less numerous than Mr. Giumarra had anticipated. Those who waited in the field to speak with Mr. Giumarra or returned the following days to request verification of their previous work for Respondent were subsequently rehired. Mr. Giumarra suggested that Mr. and Mrs. RAMIREZ would also have been rehired had they stayed out in the fields and spoken (further) with him. (R.T., Vol. II, p. 44, 11. 4-27.) The Respondent's rehiring "policy" following the 22 January layoff therefore distinguished among three groups of employees :

(1) Those who left without comment and never returned to ask for work;  
(2) Those who either stayed at the camp on the day of the layoff or returned during the next day or two, claiming that they had worked for Respondent previously; (3) BERNABE RAMIREZ and I LUZ MARIA RAMIREZ - who approached Mr. Giumarra on the day of the layoff, claimed that they had worked previously, and left with the threat and subsequent filing of a charge against Respondent.

Since there is no evidence that any of the laid-off workers who left immediately and did not return ("Class 1") had either worked previously for Respondent or were even interested in being rehired, the differentiation relevant to this analysis occurred between Mr. and Mrs. RAMIREZ on the one hand ("Class 3") and the rehired workers on the other ("Class 2"). In reviewing

the record, it is apparent that the latter two "categories" of employees were similarly situated. That is, none were on the May 1979 list; all worked or claimed to have worked previously for Respondent; all were interested in remaining in Respondent's employ; all discussed the layoff with Mr. Giumarra subsequent to the announcement. Only BERNABE RAMIREZ threatened to file a charge and actually did file a charge with the ALRB which was served upon Respondent on 23 January. Only Mr. and Mrs. RAMIREZ were not rehired. That they were "penalized" for this conduct I find to be inimical to the protection of employees' rights under Section 1152 of the Act.

I decline to adopt Respondent's theory "that Mr. RAMIREZ failed to establish a proper application for rehire. (See Respondent's brief, p. 12, citing Abatti Farms (May 9, 1979) 5 ALRB No. 34, enf. den. in part, Abatti Farms, Inc. v. Agricultural Labor Relations Bd. (1980) 107 Cal.App.3d 317; International Brotherhood of Teamsters v. U.S. (1977) 431 U.S. 324 (97 S.Ct. 1843), since Mr. RAMIREZ' own conduct in speaking with Mr. Giumarra after the layoff constituted a proper effort to seek re-employment. Mr. Giumarra conceded that Mr. RAMIREZ pointed out in this conversation that he and his wife had previously worked for Respondent. The field manager further admitted that he knew Mr. and Mrs. RAMIREZ had indeed worked for Respondent in prior years. By receipt of the charge of 23 January, Respondent certainly knew the desire of Mr. and Mrs. RAMIREZ to be rehired. (See General Counsel, Exhibit #1-A.)



And there was no evidence that Mr. Giumarra was unable to contact the RAMIREZ ES in the days immediately following the layoffs .

Once Mr. Giumarra challenged Mr. RAMIREZ to "get all the other people who also had just been laid off" (to file a charge),, any further applications for rehire would be futile, and thus not prerequisite to the finding of an unlawful refusal to rehire. See M. Caratan.Inc. (March 5, 1979) 5 ALRB No. 16, review den. by Ct.App., 5th Dist., April 3, 1980. The Respondent had only to communicate with the RAMIREZES When the bulk of the returnees recommenced work. That he failed to do so I find to be conduct violative of Section 1153 (a) and (d) of the Act. While Mr. Giumarra may not have had a policy of recalling employees from previous seasons (See Robert H. Hickam, (1978) 4 ALRB No. 48), the fact remains that numerous employees were recalled in the days immediately following the 22 January layoff. The May 1979 list proved to be "too successful" and Respondent was in need of a work force larger than what remained following the list. Whether or not Mr. Giumarra was accustomed to calling employees to work, once Mr. RAMIREZ had discussed the matter with him, indicated his intention to file a charge, and actually did file a charge, there was no legitimate reason for the RAMIREZes not to be rehired. That they were not rehired at least through the date of the hearing belies Respondent's avowed willingness to resolve the "problem" of 22 January had not Mr. RAMIREZ abruptly departed, and I so find.

I further reject the contention that the RAMIREZES were not rehired because Mr. RAMIREZ "put his car in reverse and drove away accelerating sharply." (Respondent's brief, p. 12, 11. 11-14.) There is no suggestion that Mr. RAMIREZ' language during the "last" conversation was offensive or abusive, or that he had disclaimed interest in keeping his job. On the contrary, Mr. Giumarra admitted that Mr. RAMIREZ threatened to file charges, and ultimately followed through on his threat. Insofar as Respondent has conceded that Mr. RAMIREZ' actions and words during his discussion with Mr. Giumarra were the sole motivating reasons for his not being rehired, after it became clear - within three days - that too many people had been laid off - those reasons are discriminatory and violative of Sections 1153(d) and 1153(a) of the Act. Had Mr. RAMIREZ not threatened to file a charge and actually filed same, he and his wife would have been rehired along with the other employees who sought reemployment following the 22 January layoff.

Ultimately, Respondent's contentions would place the burden on Mr. RAMIREZ to have returned to the fields on the days immediately following 22 January and repeat his supplications for work. Because of the necessity of assuring free access to the Board's procedures, I would place the duty (to recall) upon Mr. Giumarra in the instant context where, as here, there was at least a de facto rehiring policy which followed the worker's informal request to retain his job. No preferential treatment is afforded Mr. and Mrs. RAMIREZ by this conclusion, but rather

only equal treatment for their reliance on the processes of the Board. If workers are to forfeit employment for their reliance on these processes, the statutory protections of the Act become meaningless. If job opportunities are lost because workers rely upon the Board and its procedures, then the purpose of the Act to afford workers a comprehensive set of protected rights similar to those enjoyed by workers in other industries will be thwarted.

Because I find that there was sufficient testimony from Mr. Giumarra concerning his reasons for not rehiring Mr. and Mrs. RAMIREZ, the absence of testimony from the discriminatees is not critical. It is the duty of the Board to enforce "public rights". Findings of violations are required where the evidence in its entirety shows they have occurred, regardless of the absence of testimony by the discriminatees. See Harry Carian Sales (1980) 6 ALRB 55, citing Valiant Moving and Storage (1973) 204 NLRB 1058, 1063 [83 LRRM 1300]. As the Board has recently suggested, "There is no requirement in the Labor Code or in case law that testimony be received from a victim of every alleged unfair labor practice." George Lucas & Sons (1979) 5 ALRB No. 62 at p. 4. There, as here, evidence from other I sources can be sufficient to prove that violations occurred as alleged.

Nor should the absence of testimony from Mrs. RAMIREZ preclude a finding of a violation, where, as here, the refusal to rehire Mrs. RAMIREZ is directly related to the protected activity of her husband. See McAnally Enterprises, Inc. (1977)

ALRB No. 82. Since Mrs. RAMIREZ' name appears on the charge actually filed and served upon Respondent, and since the two were perceived by Mr. Giumarra to generally work together as a husband and wife couple, I find that the record as a whole supports the finding that LUZ MARIA RAMIREZ was not rehired because of her husband's threat to file charges with the Board and the actual filing charges by Mr. RAMIREZ which referred to both he and his wife.

#### SUMMARY

I find that Respondent violated Sections 1153(a) and (d) of the Act by the failure to rehire BERNABE RAMIREZ and LUZ MARIA RAMIREZ in the pruning and tying crew of Remy Pascua following the January 22 layoff. I recommend dismissal of all other fully litigated allegations raised during the hearing and incorporated in the Complaint as amended on 5 September 1980. Because of the importance of preserving stability in California agriculture, the significance of employee rights, and the particular need of affording employees free access to the processes of the Board, I find the violations to be serious, and recommend the following:

#### REMEDY

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

Having found that Respondent unlawfully failed to rehire BERNABE RAMIREZ and LUZ MARIA RAMIREZ, I shall recommend that Respondent be ordered to offer them immediate and full reinstatement to their former jobs in the pruning and tying or substantially equivalent jobs if it has not already done so without prejudice to their seniority or other rights and privileges. I shall further recommend that Respondent make BERNABE RAMIREZ and LUZ MARIA RAMIREZ whole for any losses they may have suffered' as a result of its unlawful discriminatory action by payment to them of a sum of money equal to the wages they would have earned from January 24, 1980 to the date on which they are reinstated, or offered reinstatement, less their respective earnings, together with interest at the rate of seven percent per annum, such back pay to be computed in accordance with the formula adopted by the Board in Sunnyside Nurseries, Inc. (May 20, 1977) 3 ALRB No. 42, enf. den. in part; Sunnyside Nurseries, Inc., v Agricultural Labor Relations Bd. (1979) 93 Cal. App. 3d 922.

In order to further effectuate the purposes of the Act and to ensure to the employees the enjoyment of the rights guaranteed to them in Section 1152 of the Act, I shall also recommend that Respondent publish and make known to its employees that it has violated the Act and that it has been ordered not to engage in future violations of the Act. Accordingly, I shall recommend that Respondent furnish the Regional Director of the Fresno Region, for his or her acceptance, copies of the notice attached

to this decision, accurately and appropriately translated into Spanish and that the notice and translation then be made known to its employees in the following methods:

1. Post a copy of the Notice, including a copy of the translation for the duration of the 1980-81 pruning and tying season (through March 31, 1981) at appropriate locations proximate to employee work areas, including places where notices to employees are customarily posted.

2. Mail a copy of the Notice and the translation to each employee employed by Respondent for any period from January 1, 1980, to the date of mailing (excluding employees who are I current employees). The Notice shall be mailed to the employee's last known home address.

3. Give a copy of the Notice and the translation to each I employee employed by Respondent at the time of distribution.

4. Have the Notice and the translation read to assembled employees on Company time by a Company representative or by a Board agent and accord said Board agent the opportunity to answer questions which employees may have regarding the Notice and their rights under Section 1152 of the Act. Such question and answer period should not be conducted in the presence of the Respondent and/or any of its agents.

To further ensure to the employees the enjoyment of the rights granted in Section 1152, I will recommend that. Respondent notify the Regional Director on a periodic basis under penalty of perjury of the steps it has taken to comply with this decision.

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

ORDER

Respondent, its officers, agents and representatives shall:

1. Cease and desist from:

(a) Discouraging membership of any of its employees in the UFW, or any other labor organization, by unlawfully failing to or refusing to rehire, or in any other manner discriminating against individuals in regard to their hire or tenure of employment, or any term or condition of employment because of their union membership or because they filed charges under the Act.

(b) In any other manner threatening, interfering with, restraining or coercing employees in the exercise of their rights under Section 1152 of the Act.

2. Take the following affirmative action:

(a) Offer to BERNABE RAMIREZ and LUZ MARIA RAMIREZ immediate and full reinstatement to the former pruning and tying or equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole for any losses they have suffered as a result of the Respondent's failure to rehire them in the manner described above in the section entitled "The Remedy".

(b) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records,

social security payment records, time cards, personnel records and reports, and other records necessary to analyze the back pay due to BERNABE RAMIREZ and LUZ MARIA RAMIREZ.

(c) Furnish the Regional Director of the Fresno region, for his or her acceptance, copies of the Notice attached hereto, accurately and appropriately translated into Spanish.

(d) Post a copy of the Notice attached hereto including the Spanish translation for the duration of the 1981 pruning and tying season (through March 31, 1981) at appropriate locations proximate to employee work areas, including places where notices to employees are customarily posted.

(e) Mail a copy of the Notice attached hereto and the translation to each employee employed by Respondent for any period from January 1, 1980, to the date of mailing (excluding employees who are currently employees). The Notice shall be mailed to the employees' last known home address.

(f) Give a copy of the Notice attached hereto and the translation to each employee employed by Respondent at the time of distribution.

(g) Have the Notice attached hereto read in English and Spanish, to assembled employees on Company time by a Company representative or by a Board agent and accord the Board agent the opportunity to answer questions which employees might have regarding the Notice and their rights under Section 1152 of the Act, without the presence of Respondent or any of its agents.

(h) Notify the Regional Director in the Fresno Regional



Office within twenty (20) days from receipt of a copy of this decision of the steps Respondent has taken to comply therewith, and to continue to report periodically thereafter, in intervals of twenty (20) days until full compliance is achieved.

It is further recommended that the remaining allegations in the Complaint as amended be dismissed.

DATED: November \_\_\_\_, 1980.

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STUART A. WEIN  
Administrative Law Officer

APPENDIX A  
NOTICE TO WORKER

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found we interfered with the right of our workers to freely decide if they want a union. The Board has told us to hand out or send out and post this Notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

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

Because this is true, we promise that:

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

Especially:

1. WE WILL offer BERNABE RAMIREZ and LUZ MARIA RAMIREZ their old jobs back if they want them, and we will pay them any money they lost because we failed to rehire them.

2. We will not refuse to rehire or otherwise discriminate

against any employee because he or she exercised any of these rights.

3. We will not refuse to hire or rehire, or otherwise discriminate against any employee for filing charges with the ALRB.

Signed:

GIUMARRA VINEYARDS, INC.

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.