

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

BUD ANTLE, INC . ,)	
)	
Respondent,)	No. 76-CE-24-M
)	
and)	
)	
UNITED FARM WORKERS)	3 ALRB NO. 56
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
<hr/>		

This decision has been delegated to a three-member panel. Labor Code Section 1146.

On April 4, 1977, administrative law officer Bernard S. Sandow issued his decision recommending dismissal of the complaint in this case. The general counsel and charging party filed timely exceptions.

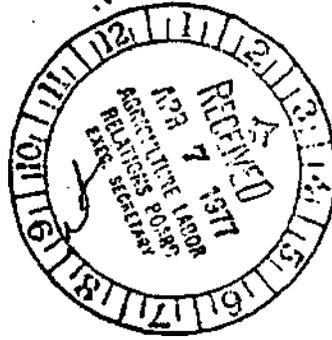
Having reviewed the record, we adopt the administrative law officer's findings, conclusions, and recommendations in their entirety. The complaint is hereby dismissed in its entirety.

Dated: July 19, 1977

RICHARD JOHNSEN, JR., Member

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member



STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
BUD ANTLE, INC.,)	CASE NO. 76-CE-24-M
)	
Respondent)	
)	
and)	DECISION
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

HARRY DELIZONNA, By JIM GONZALEZ, Legal Counsel for Agricultural Labor Relations Board, of Salinas, appearing for General Counsel.

TITCHELL, MALTZMAN, MARK, BASS & OHLEYER, By RICHARD D. MALTZMAN, Esq., of San Francisco, appearing for Respondent.

JEROME COHEN, SANFORD N. NATHAN, W. DANIEL BOONE, E. MICHAEL HEUMAN II, LINTON JOAQUIN, GLENN ROTHNER, TOM DALZELL, By PHILIP BAPTISTA, Counsel and ALLYCE KIMERLING, Legal Worker, of Salinas, appearing for Petitioner.

A contested Hearing was commenced March 14, 1977; before BERNARD S. SANDOW, Administrative Law Officer, and testimony and evidence was, taken March 14, 15 and 16, 1977, in Salinas, California, until conclusion. Witnesses Ignacio Arreguin, Miguel Arreguin Moreno, Gonzalo Torres, Arturo Cueva, John W. Buffington

1 Bob Merino and Robert Antle were sworn and testified. The moving
2 papers, pleadings, answers, motions, amendments and notices
3 were marked and admitted accordingly. Respondent's Exhibits A,
4 D,F,K,L,M,N,Q and R, and General Counsel's Exhibit 7 and Petition
5 er's Exhibit 2, were received in evidence subject to cross-exam
6 ination.

7 All parties were given full opportunity to participate
8 in the Hearing. After the close thereof the General Counsel,
9 Petitioner and Respondent filed a written brief in support of
10 its respective position timely, which were read and considered
11 by the Administrative Law Officer.

12 Based upon the testimony of the witnesses, exhibits,
13 matters of record and moving papers, stipulations of counsels
14 and the entire record, including my observation of the demeanor
15 of the witnesses, I make the following findings, conclusions and
16 recommended decision:

17 PRELIMINARY

18 That at the commencement of the Hearing, General Counsel
19 moved to Amend its Complaint by moving papers Exhibit 4, which in
20 effect changes only the date setforth in paragraph 5 (a) of the
21 original complaint from July 15, 1976, to June 28, 1976, and no
22 objections being made, the change of date was so ordered; and
23 General Counsel further moved to Amend its Complaint by moving
24 papers Exhibit 5, which in effect adds a paragraph 8 to the
25 original complaint, a new and further unlawful act, and no objection
26 being made, the same was ordered added. Each and both of said
27 Amendments are noted as deemed denied by Respondent.

28 IT IS ADMITTED BY THE PLEADINGS:

1 That the copy of the original charge as filed by the
2 United Farm Workers Of America, AFL-CIO, hereafter UFW on August
3 8, 1976, was duly served on respondent on July 30, 1976;

4 That Respondent is a corporation and is engaged in
5 agriculture in Monterey County and is and was a agricultural
6 employer within the meaning of the Agricultural Labor Relations
7 Act hereafter the Act; and

8 That UFW is now and was a labor organization within the
9 meaning of the Act.

10 Accordingly, it is so found.

11 ALLEGATIONS, DENIALS, DEFENSES

12 The complaint alleges that respondent has violated Sections
13 of the Act, and is charged with the following:

14 1. Interfering with, restraining and coercing its employ-
15 ees in the exercising of their rights guaranteed in Section 1152
16 of the Act by on or about June 28, 1976, by and through Arturo Doe
17 fail and refuse to reinstate Ignacio Arreguin, hereafter Ignacio,
18 to his same or substantially equivalent position of employment
19 and seniority;

20 2. Engaging in unfair labor practices affecting agriculture
21 within the meaning of Section 1153 (a) and Section 1140.4 (a)
22 of the Act, by its purported acts as setforth above;

23 3. Discriminating in regard to hire, tenure and/or terms
24 and conditions of employment to discourage union activities and
25 therefore engaging in unfair labor practices affecting agriculture
26 within the meaning of Section 1153 (c) and Section 1140.4 (a) of
27 the Act;

28 4. Discriminating against Ignacio, in violation of Section

1 1153 (d) of the Act In that he testified in a prior hearing of
2 the ALRB and he was refused reemployment because of testifying in
3 a prior hearing before the ALRB.

4 The Answer denies that Respondent has violated the Act
5 and/or any Sections thereunder, and sets forth the further defenses:

6 1. Denies that any acts and actions of Arturo Doe, if there be any,
7 are binding upon respondent as if performed by respondent, as he is a
8 supervisor within the meaning of Section 1140.4 (j) of the Act, and
9 therefore a agent of respondent;

10
11 2. That the proper means for relief would have been for Ignacio to
12 follow the grievance procedures, if there were any unlawful activities
13 violating his rights, as set forth in the collective bargaining agreement in
14 effect at that time between respondent and the Teamsters et al., Local 890,
15 which Ignacio failed to comply with;

16 3. That Ignacio had no seniority in rehiring for the next
17 season;

18 4. That on December 15, 1976, there was was a meeting which was
19 valid and with the purpose of the UFW and Teamster and respondent
20 representatives agreeing to a settlement and dismissal of all unfair labor
21 practices upon the reemployment of and full seniority reinstated to Ignacio
22 with his immediate return to work as the satisfaction of the settlement.

23 SECTIONS OF THE ACT

24 SECTION 1153 OF THE ACT - EMPLOYER; UNFAIR LABOR PRACTICES

25 "It shall be a unfair labor practice for a agricultural employer to do any of
26 the following:

27 (a) To interfere with, to restrain, or coerce agricultural
28 employees in the exercise of the rights guaranteed in Section
1152.

1 (c) By discrimination in regard to the hiring or tenure of
2 employment, or any term or condition of employment, to encourage
3 or discourage membership in any labor organization.
4 (d) To discharge or otherwise discriminate against an agricultural
5 employee because he has filed charges or given testimony
6 under this part."

7 SECTION 1152 OF THE ACT - ENUMERATION

8 "Employees shall have the right to self -organization, to form, Join, . or
9 assist labor organizations, to bargain collectively -through
10 representatives of their own choosing, and to engage in other concerted
11 activities for the purpose of collective bargaining or other mutual aid
12 or protection ----- ".
13

14 FACTS - EVIDENCE

15 On direct examination, Ignacio testified -

16 That he first worked for respondent in 1974 for 3-4 weeks packing celery
17 with crew #23 under foreman Manuel Doe. He did no cutting. He received no
18 complaints of his work or reprimands. That in 1975 he worked for
19 respondent from July 22, 1975 to December 16, 17 or 19, 1975 as a packer
20 except for 15 days as a cutter, and one-half of the time his foreman was
21 Manuel Doe and the other one-half Arturo Cueva, hereafter Arturo, and he
22 received no complaints of his work or reprimands. He worked sufficient J
23 time for seniority. Arturo, after one-half of season goes to { Oxnard and
24 that's when Kanuel becomes in charge and can hire and fire, but doesn't
25 know if he can discipline.

26 There was a election at respondent's in 1975 where Teamsters had a Union
27 contract and involving UFW in election and he was a UFW supporter, but
28 didn't pass out leaflets or wear a button or organize, but if asked would
say he was for the UFW. That there was a hearing before the ALRB
regarding this election in latter October, 1975, in which he testified as
a witness for the UFW. Arturo was not present at the Hearing, but there
was Jose Charles from the Teamsters present at the Hearing when he
testified. No one from the respondent was present when he testified. He
didn't discuss his testimony at the ALRB hearing with any of Respondent'
supervisors, but did have conversations with foreman Arturo in 1975 as to
what I said and Manuel Doe and co-workers would ask me about the Hearings
and what I said out of interest and in a friendly manner, like as friends.
After the hearing he was told by Arturo, in 1975 to change from packer to
cutter, which lasted for 15 days, and he was then returned to a packer of
celery and Ignacio felt this was a form of punishment for testifying at
the Hearing in behalf of the UFW. There were 7-8 other workers in the
field carrying UFW cards. At end of 1975 season, he had no conversation
with anyone about employment for the 1976 season, although he thinks that
someone said he would have a job in 1973 when the celery season started.
Note- under direct examination by Allyce Kimerling for petitioner- Ignacio
testifies that about 1¹/₂ months after returning to the field after his
testimony at

1 the ALRB hearing, Manuel Doe said that he was going to tell
2 Arturo not to give Ignacio work in 1976. I was earning at
3 respondent's, on a piece meal bases, an average of \$250-\$270 per
4 week.

5 That in 1976 I was working for Harden Farms, being paid hourly and
6 earning \$180.00 per week, and my work terminated there July .17,
7 1976. The last 2-3 weeks at Harden Farms, I worked as a irrigator working
8 2-3 days a week at night and earning \$70-\$80 a week. I knew that Arturo's
9 crew was already at work on June 23, 1976, at respondent's, because Jose
10 Luis Arreguin Moreno and Miguel Arreguin Moreno, my cousins living in the
11 same camp as I, but a different house, were already working in that crew.
12 I asked Miguel to ask Arturo for work for me in the beginning of July,
13 1976(Respondents Q in evidence used to refresh recollection as to date).
14 Ignacio went to the fields in the City of Gonzales to ask foreman Arturo
15 for work in July on the 22nd or 23rd, I was told that there was now no work
16 for him, possibly later on. No other reason was given Ignacio asked Miguel
17 a 2nd time to ask Arturo for work which was in August in Watsonville, since
18 he had a valid drivers license could also drive Miguel to work because
19 Miguel did not have a valid driver's license at this time, but Arturo said
20 get someone else for the job and that can drive. Also went to Manuel Doe
21 for work at Nashua Road.

22 Starting July 24 or 25, 1976, Ignacio went to the Teamsters to assist him
23 in reemployment and Jose Charles, his field representative. A meeting was
24 set for July 29, 1976, at respondent's but Jose Charles did not show. He
25 asked Jose Charles to talk to Arturo to get his Job back. They never filed
26 a complaint or grievance for him. In December, 1975, Jose Charles first
27 talked to Ignacio about the job with respondent. Ignacio went to the UFW
28 for help in July, 1976, and a charge was filed for Ignacio about July 30,
1976. It was between December 10-14, 1976, that he was returned to work at
Respondent's with the help of the UFW legal aid talking to Jose Charles of
the Teamsters. There were then 11 days left in the celery season and he
worked for crew #22 foreman Gonzalo Torres as a cutter, although he was a
packer by skill and training and there was 1 position open as a packer but
Gonzalo the foreman placed him as a cutter. Ignacio felt that he should
have his seniority as a packer and therefore continue as a packer, and told
Gonzalo this.

Under crossexamination, Ignacio testified -

Ignacio had previously worked 2 years at Harden Farms and started 1/1/76
for the 1976 season moving sprinklers, then as a cutter for asparagus and
as a cutter for cauliflower and a irrigator. They have cutters and packers
on the Harden Farms crews.

Ignacio told Arturo personally that he testified at the ALRB Hearings in
1975 about 3 days after he testified and because Arturo asked him and
because Jose Luis Arreguin Moreno, his cousin, was to testify that day.
Jose Luis was a cutter and after his testimony was returned to the field as
a cutter for respondent. Ignacio stated that he supported the UFW in the
election, and he states yes (at this point counsel for respondent offers
for impeachment purposes only from Exhibit B marked for identification

1 only, at page 449 lines 9 to 14 of the transcript of the ALRB election
2 hearing, to wit: "question-did you support the UFW in the election-
3 answer-no."). A cousin of Ignacio named Leonel was hired to work for
4 respondent and to drive Miguel's car. Ignacio in 1976, went to Arturo 3
5 times asking for work, on July 22 at 6: 30AM and 2: 00PM and Arturo had
6 said no, maybe later and August in Watsonville. (At this point counsel
7 for respondent using petitioners exhibit 6 for identification, the
8 statement of 2 pages taken of Ignacio by the UFW dated July 29, 1976, in
9 Salinas, California, and for impeachment purposes as a prior inconsistent
10 statement of Ignacio stating that 1) he was a "packer and a cutter" and
11 "2) that he went to see Arturo for work on 2 occasions, the 2nd time was a
12 week later". Counsel offers declaration as Respondents Q, in evidence,
13 with no objection, its so admitted). Ignacio explains that as a cutter, he
14 meant just the 15 days cutting after returning from the Hearing. When
15 Ignacio went to Watsonville to ask for work from Arturo, he told Arturo
16 that he filed a complaint but would drop it if Arturo gave him work, but
17 Arturo said no job. I never discussed or was asked about the Hearings in
18 1976.

19 Ignacio knew that Gonzalo was putting together a crew July 18-19, 1976,
20 but didn't go to ask him for a job because the ones that went that he knew
21 were the 7-8 UFW cardholders from 1975, and they didn't get the jobs.
22 Counsel asks for any names and Ignacio can't remember any names except a
23 Augustine, Pancho and others unnamed .

24 In December, 1976, there was a meeting et respondent's to get my Job back
25 with an "anglo" present for respondent and Jose Charles. I told the
26 "anglo" I had worked for Harden Farms that season. The "anglo" said he
27 could employ me again but next season because this season already started.

28
29 On direct examination, Miguel Arreguin Moreno testified-

30 That he's Ignacio 's cousin and lives in the same camp but different house
31 then Ignacio and both worked in the same crew at Respondent's in 1975.
32 June 26 or 29th, 1976, he worked in crew #23 with Arturo as foreman. In
33 1976, Ignacio asked him to ask Arturo for work on 2 occasions which could
34 have been 2 weeks after season started although he doesn't remember the
35 dates. Arturo told him 1 to tell Ignacio to wait till later on. The next
36 time he mentioned to Arturo that he needed someone to drive his car to
37 work and Ignacio could drive to work with him, but Arturo said to get
38 someone else, but didn't say why. Miguel then took his brother Leonel, who
39 never worked at respondent's before, and he received training as a packer
40 and hired as a packer. During 1976, no foreman remarked to Miguel about
41 Ignacio testifying at ALRB hearing

42 Under crossexamination, Miguel Arreguin Moreno testified-

43 In 1976, Miguel was a cutter than a packer, in 1975 a cutter. He
44 supported the UFW during the 1975 elections.

45 General Counsel offers into evidence Exhibit 7- list of celery
46 harvest workers for respondent in the Salinas area- Exhibit 7

1 admitted into evidence exepcting that the admissablility of the
2 crew's numbers under the heading "Last crew in period 6/23/76
thru 8/3/76" is limited for relevancy to those crews ?/C21, C22, C23, only.

3 General Counsel and Petitioner rest.

4 Respondent Defense:
5

6 On direct examination, Gonzalo Torres testified -

7 He's a celery crew foreman for respondent and after a back injury
8 he returned to work and forming a crew; around July 19, 1976; he notified
9 workers to notify each other and their friends and even went to crew #22- to tell
10 them to. July 30, 1976, Ignacio came to Gonzalo to ask if there was a chance and
Gonzalo understood this to refer to work and Gonzalo said no because he had a lot
of people, the crew was full on that date.

11 December 8 or 11th Ignacio came to work for Gonzalo. He didn't ask for a
12 particular job and I gave him a knife meaning a cutter. He never saw Ignacio's
13 work before December, 1976. Some days in December, 1976, he asked to pack and I
14 let him pack, but I didn't like his packing because he didn't put the same sizes
15 in the box and he didn't check each celery for cleanliness. He wasn't a good
16 cutter either, but not the worst. It requires more head skill (intelligence) to
be a packer then cutter, Gonzalo's opinion of Ignacio's work for the 11 day
period in December, 1976 was that Ignacio was irresponsible and required more
supervision then others in the crew. I told Ignacio many times that he wasn't
doing a good job. General policy is to put best men as packers.

17 No one from the company told me to treat Ignacio differently from any other
18 worker; Jerry Villa of the company just told me to hire him, I decided his job.

19 Under crossexamination, Gonzalo Torres testified -

20 Gonzalo first met Ignacio 7/30/76 and hired him 12/76 at the instruction of Jerry
21 Villa, supervisor, to put him to work. Gonzalo did not attend the ALRB hearings;
22 Gonzalo did not know that Ignacio testified at said hearings. Ignacio was put on
my crew because I had the least people then; Ignacio told me that he worked for
23 Arturo before, in 12/76. It is usual to put a new man on my crew as a cutter. I
24 pick the man to pack as the one who is cleaner on the job, more responsible and
careful. I didn't ask Ignacio if he had experience as a packer. The reason I let
25 him pack later was because he formed blisters on his hands from cutting. It is
26 not uncommon to get blisters from cutting when one hasn't been cutting for a
while and then to change him with a packer. On the first day at work in December,
1976, I saw Ignacio change himself with a packer and I saw his quality of work
and told him to go back to cutting. I've never fired a worker from the crew; if
27 there are complaints of work, there is nothing required in writing, I just tell
the worker himself. I was dissatisfied with Ignacio's packing, he didn't pack
28 one celery at a time, he was

1
2 admitted into evidence excepting that the admissability of the crew's
3 numbers under the heading "Last crew in period 6/23/76 thru 8/3/76" is
4 limited for relevancy to those crews #C21, C22, C23, only.

5 General Counsel and Petitioner rest.

6 Respondent Defense:

7 On direct examination, Gonzalo Torres testified -

8 He's a celery crew foreman for respondent and after a back injury he
9 returned to work and forming a crew around July 19, 1976; he notified
10 workers to notify each other and their friends and even went to crew #22-
11 to tell them to. July 30, 1976, Ignacio came to Gonzalo to ask if there
12 was a chance and Gonzalo understood this to refer to work and Gonzalo said
13 no because he had a lot of people, the crew was full on that date.
14 December 8 or 11th Ignacio came to work for Gonzalo. He didn't ask for a
15 particular job and I gave him a knife meaning a cutter. He never saw
16 Ignacio's work before December, 1976. Some days in December, 1976, he
17 asked to pack and I let him pack, but I didn't like his packing because he
18 didn't put the same sizes in the box and he didn't check each celery for
19 cleanliness. He wasn't a good cutter either, but not the worst. It
20 requires more head skill (intelligence) to be a packer than cutter.
21 Gonzalo's opinion of Ignacio's work for the 11 day period in December,
22 1976} was that Ignacio was irresponsible and required more supervision
23 then others in the crew. I told Ignacio many times that he wasn't doing a
24 good job. General policy is to put best men as packers. No one from the
25 company told me to treat Ignacio differently from any other worker; Jerry
26 Villa of the company just told me to hire him, I decided his job.

19 Under crossexamination, Gonzalo Torres testified -

20 Gonzalo first met Ignacio 7/30/76 and hired him 12/76 at the instruction
21 of Jerry Villa, supervisor, to put him to work. Gonzalo did not attend the
22 ALRB hearings; Gonzalo did not know-that Ignacio testified at said
23 hearings. Ignacio was put on my crew because I had the least people then;
24 Ignacio told me that he worked for Arturo before, in 12/76. It is usual
25 to put a new man on my crew as a cutter. I pick the man to pack as the
26 one who is cleaner on the job, more responsible and careful. I didn't ask
27 Ignacio if he had experience as a packer. The reason I let him pack later
28 was because he formed blisters on his hands from cutting. It is not
uncommon to get blisters from cutting when one hasn't been cutting for a
while and then to change him with a packer. On the first day at work in
December, 1976, I saw Ignacio change himself with a packer and I saw his
quality of work and told him to go back to cutting. I've never fired a
worker from the crew; if there are complaints of work, there is nothing
required in writing, I just tell, the worker himself. I was dissatisfied
with Ignacio's packing, he didn't pack one celery at a time, he was

1 irresponsible, didn't examine the celery for cleanliness and he would look
2 out for the foreman and then pack in 2-3 at a time.
3 Gonzalo knows of the seniority clause and the Teamsters and
4 Respondent's union contract and understands the clause to mean
5 to provide workers with the longest work the right to first hiring. But,
6 when Ignacio 1st came to me for work 7/30/76 my crew was
7 full. All of my crew members then were prior respondent workers,
8 although some not from 1975. I have never fired or suspended
9 anyone from work; respondent has rules for firing, but not for reprimanding
10 for bad work. I didn't know that Ignacio worked as
11 a packer before, but I learned that the first day at work 12/76.
12 Ignacio never told me had a right to be a packer.

13 On direct examination, Arturo Cueva testified -

14 He has worked for respondent for 11 years, starting as a cutter
15 in crew ,#21 and holding all the other jobs including packer and a
16 foreman since 7/71 and now foreman of crew #23. Ignacio first came to Arturo
17 in 1974 as a packer in December and I tried to train him for 2 weeks.
18 Ignacio worked for Arturo 7/75 to 12/75 of which the first 2-3
19 weeks was as a packer and the rest of the season as a cutter.
20 Arturo explained to Ignacio that respondent's policy in packing
21 is different then others and they pack one by one stalks. I
22 couldn't teach him to pack properly and that is the reason that I
23 changed him to a cutter in 7/75 for the rest of the season. He
24 wasn't a good cutter because he cut on a slant and different
25 lengths and he wasted stalks. He also didn't get along with
26 co-workers and many times he'd arrive at work half asleep. His
27 attendance record was bad missing 10 times in 4 months without a
28 prior excuse. I warned him about terminating if he continued
missing work. I went to Oxnard between November and December,
1975, and when I returned I checked the time book which Manuel
DOE kept, I saw Ignacio continued missing work.
Arturo knew of the election at respondents in 1975 and knew the
company policy was to leave workers alone to decide and he honored
that policy and did not change any job assignments because of
election. It was standard policy to change workers from packers
to cutters if their job wasn't done right or if more cutters
were needed, but never transferred one as a form of punishment.
He never changed jobs or failed to hire for the next season
because of election support. He did not rehire Ignacio because
all the time Ignacio worked for him he did not do his job right
and second was because he missed a lot of work in 1975 and third
because he didn't show up until I already had a lot of people,
because I started hiring June 28, 1976. Jose Luis and Miguel,
the cousins of Ignacio worked before in my crew and they knew and
they reported to work the 1st or 2nd day.
Arturo knows of the seniority clause in the union contract and understands
that it gives the worker the first right to hire if he shows up for work the
1st or 2nd or 3rd day or later if a valid reason given, but the first time
Arturo heard that Ignacio was looking for work was July 10, 1976, from
Miguel that where Ignacio was working the job might be ending and that it
might be possible that Ignacio would be coming around to ask him for work.

1 I understood from Miguel that when my crew was forming, Ignacio was working as a
2 irrigator and was living where the rest of the family was and new my crew was
3 forming. I told Miguel that I would not give him work because he did not- do his
4 job well. July 22, 1976, Ignacio came to me at Gonzales and told me that they
5 were going to lay him off and if so he would come to me for work and I told him I
6 would not give him work. He told me that he would try not to miss to much work
7 and I told him that he had toll me that before and I also told him that I already
8 had more people! then was needed. I next saw Ignacio one week later, and he was
9 off work and asked for work and I said no because he missed too much work and he
10 appeared to be unhappy about the way we wanted him to do his work in packing and
11 cutting.

12 I was then told that the UFW office had called and said that I didn't want to
13 give Ignacio work because of union activity; late Ignacio came to me in
14 Castroville or Watsonville asking if I was ever going to give him a job and I
15 said there wasn't a job available now but that didn't mean that I'd never hire
16 him and I asked him why he complained that I wouldn't hire him because he was
17 "Chavesta" and he said he never said that and he thought I didn't like him
18 yelling "viva Chavez". Arturo said you know why I didn't give you work and it
19 wasn 't because of that.

20 Under crossexamination, Arturo Cueva testified -

21 He has never fired anyone. Respondent has a grievance form for
22 employees performance but he has never made one. Usually a transfer from a packer
23 to a cutter can be demeaning. In 1975, Ignacio had first come to work for
24 respondent about 7/22/75 and in 1976 towards the end of July, but he said then
25 that he was maybe looking for work in the future, when his work would end for him
26 at Harden Farms. Host crew members showed within 3 days of hiring. He did hire
27 after July 10, 1976. He would not pack one stalk at a time (one hand is used to
28 hold the stalk while the other hand is to clean and pick leaves off the stalk).
There was no valid excuses for the 10 day work loss and he would give no reason
prior to missing work. Arturo knows that a irrigator in the Salinas area gets
paid hourly while Arturo's year round crew members earn around \$10,000.00.
Ignacio did not personally tell Arturo_ that he was not happy with the crew.
Arturo was asked at random by counsel of the absenteeism record of 3 crew members
and he did not know exactly their record for 1975. Arturo had. not talked about
the ALRB hearings on the election with anyone.

23 On direct examination, John w. Buffington testified -

24 He's the President of respondent corporation and familiar with the Teamsters
25 union contract with the company which has been since 1961 with Local 890. There
26 is no definition for seniority, but the company policy is for seniority when the
27 worker moves with the crew to areas or showing up with the same crew next season,
28 maintains seniority. The company policy at election time was no electioneering
by supervisors and employees need only do their Job. As to company policy at
ALRB hearing, employees testifying got time off and paid for time off and no
subpoenas necessary.

1 There were company instructions of no retaliation to foremen and if any
2 testifying employee was worried than the supervisor was to
3 return to the field with the employee to insure the same. Ignacio never
4 contacted the company about any grievance but the company
5 was called, not in writing, by Jose Charles of the Teamsters for Ignacio in
6 December, 1976. Ignacio never filed a grievance prior

7 Under crossexamination, John W. Buffington testified -

8 There is a form for a written grievance but it is not required,
9 just a writing setting forth grievance. Mr. Merino of respondent company kept a
10 record at the ALR3 hearing of the workers at hearing to submit their names to
11 payroll for payment for time off. There are no lists kept or posted, just in the
12 computer.

13 On direct examination, Bob Merino testified -

14 He is the director of personnel administration for respondent and
15 deals with union disputes and grievances. End of July, 1976, he received a verbal
16 complaint from Jose Charles of the Teamsters
17 as to Ignacio not being reemployed and he was told that Ignacio was not
18 returned to work because first he was a bad worker and second because the
19 crew was full and third because he did not apply at the time of the crew
20 hiring. He has a list of all the workers that testified (respondent's Exhibit
21 R, the list of the workers testifying at the ALRB hearings that were called
22 by the UFW and made by Mr. Merino is admitted into evidence as Exhibit R as
23 relevant only to the names Ignacio Arreguin, Javier Figueroa Arvizu, Jose
24 Luis Arreguin, Guillermo Cortez Valencia, Joacuin Martinez Ibarra and Ruben
25 Ibarra Cruz). He never received a grievance in writing in 1976 as to Ignacio
26 or from Ignacio. (Respondent's Exhibits F,K,L,M,N - employees which testified
27 at the ALRB hearing in behalf of UFW that were rehired and still working for
28 respondent- admitted into evidence). (Respondent's Exhibit D - payroll record
of Ignacio Arreguin admitted into evidence, excepting the exclusion of the
last column thereof).

Under crossexamination, Bob Merino testified -

It was reported to him in latter July, 1976, that Ignacio had been a bad worker,
reported possibly by Jerry Villa, but nothing written
He examined Ignacio's personnel file and nothing in writing of bad work, only
shows his time off from work without reasons.
Company did offer to reemploy him even though a bad worker, and this is
sometimes policy when an agreement with the Union.

On direct examination, Robert Antle testified -

He is chairman of the board and the executive officer of respondent company. He,
was present in October, 1976, along with Ignacio, the Teamster's and UFW
representatives with the purpose to get all the facts on the table and discuss
rehiring of Ignacio. He knew at the time that a unfair labor practice had been
filed. It was agreed to by all that Ignacio be rehired for the start of next

1 season, but after being told that he hadn't worked the whole summer, it
2 was decided to put him to work the next day. Most all of the discussion
3 was in Spanish, and Ignacio seemed happy and everyone seemed satisfied
4 and it appeared to me that ended that.

5 Under crossexamination, Robert Antle testified -

6 There was nothing of this meeting or agreement reduced to writing He felt
7 that this resolved the dispute. He didn't know that Ignacio also had a
8 charge against the Teamsters in 1976. He doesn't know if UFW put into
9 writing that the charge was withdrawn. It was his impression that at the
10 end of the meeting that Ignacio agreed and UFW agreed and we all left.

11 FINDINGS OF FACT - CONCLUSIONS OF LAW

12 1. That it is true that Gonzalo Torres and Arturo Cueva were, at
13 all times relevant herein supervisors within the meaning; of Section
14 1140.4 (j) of the Act in that they were invested with the authority to
15 hire, fire, transfer workers and discipline, in the interest of their
16 employer the respondent herein. That the acts of the employer's
17 supervisors are binding upon the employer and the employer respondent in
18 held responsible for said acts.

19 2. That it is true that Ignacio had earned seniority with
20 respondent for his 1975 employment; (It is noted that questions and
21 ambiguities arose during this hearing as to the definitions and effect
22 and the company policy in effect regarding the breaking or loss of
23 seniority if a worker does not move with his crew to changed locales or
24 his loss of seniority if he does not present himself for hiring at the
25 commencement or within 3 days thereof of the rehiring for the new harvest
26 season or is it a quit and loss of seniority by employment at Harden
27 Farms and there continued in employment subsequent to the hiring period
28 for the new season or presenting oneself after the crew is filled). That
it is further true that Ignacio failed to report or work under the terms
of the seniority provision of the Union Agreement

1 and consistent with the existing policy and that seniority was
2 broken, as related to hiring for the 1976 season.

3 3. That the burden of proof of showing that respondent
4 interfered with, coerced and restrained its employees and Ignacio
5 Arreguin in the exercise of their rights as enumerated in
6 Section 1152 of the Act, of the General Counsel and Petitioner.,
7 was not proven by a preponderance of the evidence; that the
8 failure and/or refusal by respondent to reinstate Ignacio
9 Arreguin to the same or substantially equivalent position of
10 employment and seniority was not a unlawful violation of employee
11 rights as enumerated in Section 1152 of the Act.

12 4. That it being found that respondent did not interfere
13 with, restrain and coerce its employees and Ignacio Arreguin in
14 the exercise of their rights in accordance with Section 1152 of
15 the Act, it is accordingly the finding that respondent did not
16 engage in a unfair labor practice affecting agriculture within
17 the meaning of Section 1153 (a) of the Act.

18 5. That the General Counsel and Petitioner had the
19 burden of proof to establish that respondent discriminated, at
20 all times relevant herein, in regard to hiring, tenure and/or
21 terms of employment and/or conditions of employment to discourage
22 union activities, which they did not prove by a preponderance of
23 the evidence; that the respondent didnt engage in a unfair
24 labor practice affecting agriculture within the meaning of
25 Section 1153 (c) of the Act.

26 6. That the General Counsel and Petitioner had the burden
27 of proof to establish that the reason that Ignacio Arreguin was
28 refused reemployment was in fact due to his activity in testifying

1 in a prior hearing before the Agricultural Labor Relations Board, to wit:
2 regarding the elections of 1975, which they did not prove by a
3 preponderance of the evidence and/or that he was discriminated against in
4 this regard; that the respondent did not engage in a unfair labor
5 practice affecting agriculture within the meaning of Section 1153 (d) of
6 the Act.

7 7. In accordance with the Findings of Fact and Conclusions of
8 Law recited herein, it is a moot issue as to the merits of the
9 respondent's affirmative defenses.

10 IT IS THE DECISION of the Administrative Law Officer, that
11 he finds for the Respondent Bud Antle, Inc., and that
12 Respondent be granted the relief requested.
13 DATED: April 4, 1977.

14 
15 BERNARD S. SANDOW
16 Administrative Law Officer
17
18
19
20
21
22
23
24
25
26
27
28