

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

HIGH AND MIGHTY FARMS,)	
)	
Respondent,)	Case Nos. 78-CE-38-EC
)	79-CE-44-EC
and)	
)	6 ALRB No. 34
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER

On January 28, 1980, Administrative Law Officer (ALO) Arie Schoorl issued the attached Decision and Order in this proceeding. Thereafter Respondent and Charging Party each timely filed exceptions^{1/} with a supporting brief.

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 briefs and has decided

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^{1/} Respondent excepts to the ALO's credibility resolutions. To the extent that credibility resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. Adam Dairy dba Rancho dos Rios, 4 ALRB No. 24 (1978); El Paso Natural Gas Co., 193 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, 91 NLRB 544, 26 LRRM 1531 (1950). We have reviewed the record and find the ALO's credibility resolutions to be supported by the record as a whole.

to affirm the rulings, findings, and conclusions^{2/} of the ALO and. to adopt his recommended Order, as modified herein.

ORDER

Accordingly, pursuant to Labor Code Section 1160.3, IT IS HEREBY ORDERED that the Respondent, High and Mighty Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Preventing union organizers from entering, or expelling them from, labor camps or other premises where employees live; or assaulting union organizers who are attempting to communicate with its workers.

(b) Discharging, laying off or otherwise discriminating against employees because of their union membership, union activities, or association with union agents.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their 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 Samuel Gonzalez immediate and full reinstatement to his former position or a substantially equivalent position, without prejudice to his seniority or

^{2/}The ALO states, in footnote 7, that an employer need not authorize or ratify a supervisor's conduct for it to be imputed to the employer, citing Whitney Farms, 3 ALRB So. 68 (1977). We do not rely upon this statement since we find that Respondent ratified the assault through head foreman Sarkisian's actions. Under agency principles, Laffont's conduct in evicting the union organizer from the labor camp may be imputed to Respondent.

other rights and privileges.

(b) Make Samuel Gonzalez whole for any loss of pay or other economic losses incurred by reason of his discharge, plus interest thereon at the rate of 7 percent per annum.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the provisions of this Order.

(d) Sign the Notice to Employees attached hereto. After its translation by a Board Agent into Spanish and any other appropriate language(s), Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice at times and places to be determined by the Regional Director. The notices shall remain posted for 60 consecutive days thereafter. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

(f) Mail copies of the attached Notice in Spanish and any other appropriate language, within 30 days after the date of issuance of this Order, to all employees employed at any time from June 26 through July 1978 and during March 1979.

(g) Arrange for a representative of Respondent or a Board Agent to read the attached Notice in Spanish and any other appropriate language to the assembled employees of

Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice of their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with the Order.

Dated: June 19, 1980

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

JOHN P. McCARTHY, Member

NOTICE TO WORKERS

After a trial in which each side had an opportunity to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely discuss with union representatives about union affairs, and also with their right not to be discriminated against because of their union activities.

We will do what the Board has ordered, and also tell you that: The Agricultural Labor Relations Act is a law of the State of California which gives farm workers these rights:

1. To organize themselves.
2. To form, join, or help unions.
3. To choose, by secret ballot election, a union to represent them in bargaining with their employer.
4. To act together with other workers to try to get a contract or to help and 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 prevents you from doing, any of the things listed above.

Especially, WE WILL NOT:

1. Prevent or interfere with your communications with union organizers at our labor camps or premises where 'you live.
2. Strike or otherwise assault any union organizer who is visiting, or attempting to visit, workers at the labor camps or other premises where they live.
3. Discharge, layoff or otherwise discriminate against any employee because of his or her union activity, union sympathies, or association with union agents.

The Agricultural Labor Relations Board has found that we discriminated against Samuel Gonzalez by discharging him. We will reinstate him to his former job and give him back pay plus seven percent interest for any losses that he suffered as a result of his discharge.

DATED:

HIGH AND MIGHTY FARMS

By:

Representative Title

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

High & Mighty Farms

6 ALRB No. 34
Case Nos. 78-CE-38-EC
79-CE-44-EC

ALO DECISION

The ALO concluded that Respondent violated Section 1153(a) by preventing union organizers from communicating with employees at its labor camp and by assaulting an organizer at the camp. The ALO found that Respondent's head foreman instructed its labor contractor to remove the organizers from the camp and that the contractor called the police and placed one of the organizers under citizen's arrest. The ALO further found that the contractor's foreman assaulted the organizer, that the foreman was acting as Respondent's agent, and that Respondent ratified the assault.

The ALO also concluded that Respondent violated 1153(c) and (a) by the unlawful layoff of an employee. The employee had asked for a transfer, giving the name of the union organizer as a reference. The ALO found that the motivation for the layoff was the employee's presumed association with the union.

BOARD DECISION

The Board affirmed the ALO's decision, noting that it did not rely on the ALO's analysis of agency law, since agency and ratification of the assault were clearly established.

REMEDY

The Board ordered Respondent to reinstate the laid-off employee, to cease and desist from interfering with, restraining, or coercing employees in the exercise of their Section 1152 rights, and to post, distribute and read a remedial Notice to Employees to all its employees.

* * *

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

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)
)
HIGH AND MIGHTY FARMS,)
)
Respondent,)
)
)
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Charging Party.)
)

Case Nos. 78-CE-38-E
79-CE-44-EC

Warren L. Bachtel, Esq.
for the General Counsel

Ronald H. Barsamian, Esq.
Dressler, Stoll, Hersh and Quesenbery
for the Respondent

Jesus Camberos
for the Charging Party

DECISION OF THE ADMINISTRATIVE LAW OFFICER

ARIE SCKOORL, Administrative Law Officer: This case was heard by me on September 18, 19, 20 and 21, 1979 in Blythe, California. The complaint herein, which issued on May 7, 1979, based on separate charges filed by the United Farm Workers of America, AFL-CIO, (hereinafter called UFW), and duly served on Respondent High and Mighty Farms, on June 28, 1978 and March 14, 1979, respectively alleges that Respondent committed certain violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). The General Counsel, Charging Party and Respondent were represented at the hearing. The General Counsel and Respondent filed timely briefs after the close of the hearing. Upon the entire record, including my

observation of the demeanor of the witnesses, and after considering the post-hearing briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent admitted in its answer, and I find, that it is an agricultural employer within the meaning of Section 1140.4(c) of the Act. The United Farm Workers of America, AFL-CIO, the Charging Party, is a labor organization within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleged that on or about June 26, 1978, Respondent through its agent, Sergio Laffont, prevented UFW organizers from talking to Respondent's employees at Respondent's labor camp by having the county sheriff issue a citation for trespass and on the same day at the same labor camp Respondent, through its agent, Sergio Laffont, intentionally and willfully assaulted and battered a UFW organizer, Eduardo N. Garcia, in full view of Respondent's employees at the labor camp, and on or about March 6, 1979, Respondent through its foreman, Ramon Sanchez, fired Samuel Gonzalez for his association and/or acquaintance with a known UFW organizer, Eduardo M. Garcia and for union activities.

In its answer, Respondent denies having committed the alleged unfair labor practices.

III. Background Information

Respondent High and Mighty Farms is a California corporation involved in the growing and harvesting of lettuce

and other row crops in Arizona and California. In June 1978, Respondent had contracted with James Garcia, a farm labor contractor, to provide farm workers to harvest its lettuce crop. Garcia housed these workers at a labor camp, located in the town of Ripley, that had been leased by Respondent. All of the employees living at the camp were paid and supervised by James Garcia and were working at Respondent¹'s in the lettuce harvest.

IV. The Alleged Trespass Arrest and Battery at the Labor Camp.

A. Facts

On June 26, 1978, Eduardo Garcia (hereinafter called "Calacas" which is his nickname and also to distinguish him from the labor contractor James Garcia), and Linda Manney, UFW organizers,^{1/} drove to the labor camp leased by Respondent to talk to the farm workers residing there about the UFW. Arriving at the camp, Calacas parked the car outside the camp's fence, got out and walked into the camp. Meanwhile Manney remained inside the parked car.

Calacas walked through the camp to an area where six barracks were situated. He commenced to talk to a group of 12 employees, residents of the camp, who offered him a can of beer which he accepted and began to drink. The employees agreed to meet with him in a few minutes after they had put away their harvest bags.

Meanwhile Andy Sarkesian, Respondent's head foreman, and James Garcia, Respondent's labor contractor, who were at Respondent's office, received a telephone call from a foreman

^{1/}They were accompanied by an unidentified third person (not a UFW organizer) to whom Calacas gave a ride to the camp as

who informed them that UFW organizers had entered the labor camp. Sarkesian told Garcia to go to the camp and have the union organizers removed.

Just as Calacas walked away from the barracks, Garcia arrived, approached him and told him that if he returned to the barracks he would have him arrested. Calacas told Garcia that it was the house of the workers and that he had the right to talk to them. Thereupon Calacas returned to the barracks to resume his conversation with the workers.

Garcia informed Sarkesian by radio about the situation. Sarkesian contacted the sheriff's office and requested they send a patrol car to the camp. Shortly thereafter a deputy sheriff, Officer Strickland, arrived. Garcia informed Strickland about Calacas¹ visit and, after receiving an authorization from Sarkesian over the radio, inquired of Strickland whether he (Garcia) as an agent of High and Mighty could make a citizen's arrest so Calacas could be removed from the camp.

Strickland asked the workers who were gathered near the barracks whether any of them had invited Calacas to the camp. None of them responded. Strickland informed Calacas of the trespass violation in English. Manney drove into camp, got out of the vehicle and approached Calacas and Strickland. The latter informed both of them in English, with Manney interpreting in Spanish for Calacas, that if they did not leave the labor camp Garcia would place them under a citizen's arrest. The two CJFW organizers replied that they had every legal right to be there and refused to leave the property. Garcia placed them under a citizen's arrest and Officer.

Strickland commenced to write out the two citations.

A few minutes later Sergio Laffont, a foreman for Garcia, arrived and began to talk to Calacas in Spanish.^{2/} Calacas made an insulting comment in Spanish to Laffont but made no movement whatsoever to strike him. Suddenly Laffont, without any previous indication of what he was going to do, struck Calacas on the right side of his face with his fist with such force that the blow knocked Calacas to the ground. Officer Strickland came to Calacas' assistance and helped him to his feet. Calacas¹ left eye had been injured and he was bleeding from his mouth. Officer Strickland arrested Laffont for assault and battery, handcuffed him and placed him in the patrol car.

Andy Sarkesian arrived and pointed out to Sergeant Roberts^{3/} that it was a very hot day and that it was very uncomfortable for Laffont to be kept inside the sheriff's patrol car. Whereupon Sergeant Roberts requested Officer Strickland to permit Laffont to get out of the patrol car and to take off his handcuffs. Strickland complied with this request. Strickland issued Laffont a citation for assault and battery but did not take him into custody.

Meanwhile Calacas was conversing with the workers who were still gathered outside the barracks. He showed them

^{2/}Laffont and Calacas had known each other for 15 years. They had been long-time antagonists and a violent altercation between the two had occurred 3 years previously.

^{3/}Strickland and Garcia both testified that Sergeant Roberts arrived subsequent to Laffont's assault on Calacas.

his injuries and told them what had happened to him. Sarkesian began to shout obscenities and vulgarities at Calacas and Manney to the effect that they should leave the camp immediately. Sarkesian directed some racially derogatory remarks at Calacas. Officer Strickland requested Calacas and Manney to leave the camp and they promptly did so.^{4/}

B. Analysis and Conclusion

It is well established by ALRB precedent that agricultural employees have the right to be contacted at their homes/including their residential quarters at labor camps, by union organizers. This right of home access flows from Section 1152 of the Act and does not depend on the "access rule" contained in the Board's regulations, which only concerns access at the work place. While an employee has the right to decline to speak with an organizer, the employees' employer, supervisor, labor contractor, or landlord has no right to prevent such communication. In addition, the agricultural employees' right to be contacted at their homes exists even where the organizers have not been specifically invited to visit the employees' at the camp.^{5/}

^{4/}There was some testimony that Calacas and Manney left the camp and then returned 5 to 10 minutes later. The two UFW organizers testified that once they left the camp they did not return. I credit their testimony in this respect; it appears that the witnesses believed they had left the camp when they actually had just gone to another part of the camp to look for their passenger who had accompanied them to the camp,

^{5/}See Vista Verde Farms, 3 ALRB No. 91 (1977).

The Board has held that the agricultural employees' right to be contacted by union organizers in their homes, is not only legitimate but is crucial to the proper function of the Act.^{6/}

Accordingly, it is evident from the record that Calacas and Linda Manney had the right to be in Respondent's labor camp and to converse with Respondent's employees there present. It did not matter what time of day it was, or whether all the employees had returned from work or whether they had been invited by the employees. Since there were employees present in the camp and some of them were willing to listen to them, the union organizers had a right to be in the camp and talk to the employees about the union. The employees had told Calacas they would be back, in a moment to talk with him after they got rid of their sacks and in fact one of the employees had given Calacas a can of beer.

Consequently, Respondent did not have the right to put them under a citizen's arrest or to eject them from the camp or otherwise prevent them from talking to the employees at the labor camp.

Respondent in its post-hearing brief argues that Calacas and Manney had no right to be in Respondent's labor camp or any right to converse with the employees therein. However its entire argument is based on the incorrect assumption that Calacas¹ and Manney's rights in the instant case had to be based on union organizers' rights to visit workers at the work site which is governed by the Board's regulations. As has

^{6/}Vista Verde Farms, supra.

been explained above, the right of employees to receive information from union organizers at their home, in the instant case the labor camp, and the organizers' derivative right to dispense this information to the employees there present, is not based on the Board's regulations but on Section 1152 of the Act.

In view of the foregoing, I find that Respondent interfered with the Section 1152 rights of the employees by the action of its agent James Garcia in placing Calacas and Manney under a citizen's arrest and in having them removed from the labor camp, and consequently violated Section 1153(a) of the Act.

In addition to this unfair labor practice, I must now determine whether Laffont's assault on Calacas constitutes a violation of Section 1153(a) of the Act and whether Respondent should be held responsible for such a violation.

In Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977), the Board held that physical confrontations between union and employer representatives were intolerable under the Act. The Board stated that absent compelling evidence of an imminent need to act to secure persons against danger of physical harm or to prevent material harm to tangible property interests, resort to physical violence shall be viewed by the Board as violative of the Act. Since Calacas did not make any threatening gesture toward Laffont, the latter had no imminent need to secure himself against danger of physical harm and thus his resort to physical violence against Calacas was violative of the Act.

It is true that Calacas insulted Laffont just before Calacas struck the blow but is well established that words alone

cannot constitute justification for resort to force.

Respondent argues that Laffont's battery on Calacas was merely a personal affair between the two individuals and therefore there was no connection between the incident and Respondent. Respondent points out that the two individuals had had a long standing feud and there had been a history of violence between them, and that when Laffont approached Calacas the latter insulted him, whereupon Laffont struck Calacas. Respondent also argues that since there is no evidence that any of Respondent's employees witnessed the fight, none of their rights have been violated.

I reject Respondent's argument that Laffont's assault: on Calacas was merely another episode in a personal vendetta between two longtime antagonists. Laffont was present at the labor camp at the special interest and request of Respondent's head foreman Sarkesian for the specific purpose of recognizing the UFW organizers so they could be ejected from the camp. While he was engaged in the performance of his duties in this respect he struck Calacas and consequently it is clear that Respondent is liable for such conduct by its agent Laffont.^{7/} Whether any employees directly observed the actual

^{7/}The acts of a supervisor may be imputed to an employer even though the acts were not authorized or ratified. Whitney Farms, 3 ALRB No. 68 (1977). In addition, head foreman Sarkesian's actions, after the battery, by which he expressed his concern for Laffont's condition by requesting the sheriffs to let Laffont out of the patrol car and by having his handcuffs removed plus no admonition to him about having struck Calacas, a union organizer, can be interpreted as a ratification of Laffont's resort to force. Under Section 1140.4(c) of the Act, Respondent is liable for the acts of its labor contractor, Garcia, and his supervisors and agents.

assault is immaterial since the employees were in the immediate vicinity and it is reasonable to infer that they were, or became, aware of what had happened, i.e. a union organizer had been struck in the face by their foreman and subsequently ejected from the camp. Additionally, Calacas himself informed them that he had been struck by one of their foremen. Obviously the assault and/or knowledge of it was likely to be interpreted by the employees as demonstrating Respondent's intense opposition to the UFW.

Accordingly, I find that Laffont's striking of Calacas was a violation of Section 1153(a) of the Act and that Respondent is liable for such violation.

V. Alleged Discriminatory Lay Off of Samuel Gonzalez

A. Facts

Samuel Gonzalez went to work for Respondent at the end of January 1979 and worked there as a shoveler until March 5 of the same year. On that date, Gonzalez with three other of Respondent's shovelers were taking their noon break. The four workers were lying in the shade of a pickup truck, which was parked alongside one of Respondent's fields. Gonzalez noticed that Respondent's head foreman, Andy Sarkesian, had parked his pickup truck nearby so he went over to talk to him.

Gonzalez requested some information from Sarkesian about working in one of Respondent's lettuce-harvesting crews. Sarkesian informed him there was no way he could work in the crew because Respondent had already brought crews from Calexico and they did not need anyone else. In response Gonzalez mentioned that he had experience in harvesting lettuce and

had worked for Calacas,^{8/} whereupon Sarkesian suddenly became very angry and shouted at him, "No one who worked for Calacas will work on my ranch", got into his pickup and drove away.

Later that afternoon, employee Emiliano Becerril,^{9/} while working as an irrigator, overheard foreman Ramon Sanchez say to his brother Militon Sanchez, also a foreman for Respondent, that Sarkesian had called him and told him to "stop" Samuel Gonzalez.^{10/}

At the end of the work day,^{11/} Gonzalez asked his foreman Ramon Sanchez whether he had learned that he, Gonzalez, had talked to Andy Sarkesian. Sanchez answered him in the affirmative and added that Sarkesian had told him to fire Gonzalez and to get him the hell out of there. Ramon went on to tell Gonzalez that he should not be talking to Sarkesian "because he doesn't like us, let alone you (plural)".

The next day, Gonzalez reported to work and Ramon informed him that he was laying him off for a few days because

^{8/}Gonzalez testified that he had worked for a labor contractor named Calacas two years previous. There was no evidence in the record that Gonzalez knew or had had any contact with Calacas, the union organizer.

^{9/}Emiliano Becerril is Gonzalez' father-in-law who had alerted him to an opening for a shoveler at Respondent's shortly after Becerril's son, a shoveler at Respondent's, had a disabling accident.

^{10/}Ramon and Militon Sanchez denied that Ramon ever made this comment to Militon. I credit Becerril's version of the conversation, since he remembered in detail the circumstances of the conversation and was straightforward and candid in his manner of testifying.

^{11/}Gonzalaz testified it was around 2 or 3 p.m.

of Sarkesian's reaction against him. Ramon explained that in a few days Sarkesian would be spending three to four days in El Centro at which time Ramon would recall him to work. Later that day, Gonzalez received his paycheck from Respondent. That same day he began to look for new employment since he believed he had been fired and that Ramon had told him the story about Sarkesian's visit to El Centro and a later recall to work merely to assuage his feelings.^{12/} Ramon testified that he had told Gonzalez that he was laying him off because of lack of work and had not given him any other explanation.

That same day March 6, Militon Sanchez, hired Ramiro Aguayo^{13/} as a shoveler on the same crew Gonzalez, in which had been employed. Aguayo worked steadily from that date on as a shoveler for Respondent.^{14/}

Respondent never called Gonzalez back to work. Ramon testified that he told Gonzalez that when there was more work he would let him know. Nevertheless he never recalled Gonzalez

^{12/} I credit Gonzalez version of the events of March 5 and 6 because he testified in a straightforward and candid manner.

^{13/}The Sanchez brothers testified that Militon did not inform Ramon of this new hire until the next day March 1 and that neither one had consulted with the other before the layoff of Gonzalez or the hire of Aguayo.

^{14/}Emiliano Becerril who continued to work as an irrigator for Respondent saw Aguayo every time the irrigators and shovelers would gather at a shed on Respondent's premises for work assignments from March until approximately one week before the hearing. Respondent presented no evidence to show that it ever laid off or discharged Aguayo. Becerril also testified that on March 6 there was enough work for the present crew since they were working 8, 9, 10 hours a day and also Respondent had just planted more melon seed which calls for shoveling work. This additional work due to the melon-seed planting was confirmed by Militon who testified that he hired Aguayo because there was additional work owing to the recent melon-seed planting.

because, according to Ramon's testimony, it was not his custom to recall workers by contacting them at home and he thought that if Gonzalez needed work he should call him or come to ask personally.^{15/}

Andy Sarkesian¹'s testimony in regard to the events leading up to Gonzalez's layoff is as follows:

On March 5, 1979, he drove out to the fields to look for a crew that was shredding lettuce. He noticed four shovelers lying in the shade of a pickup truck, with their shovels leaning against the pickup. He did not know whether they were High and Mighty employees and one of the four shovelers (he did not know who he was) came over to him and told him that he had talked to Ramon Sanchez and that the latter was to try to obtain employment for him in one of Respondent's lettuce crews. Sarkesian was angered by this and told Gonzalez that Ramon Sanchez had no authority to recommend or put people in crews and neither did Sarkesian have such authority. Sarkesian explained at the hearing that the reason for this company policy was that there was always friction when a High and Mighty employee works for one of these crews because he thinks he is something special because he works for High and Mighty and

¹⁵Gonzalez testified that he heard either at the unemployment insurance office where he went to apply for benefits or elsewhere that there had been a misunderstanding at High and Mighty Farms and he could return to his old job and receive wages for the work days he had already lost. He said he was reluctant to inquire at Respondent's about this because he thought that Respondent would again fire him if he spoke about Chavez. So consequently he never contacted Respondent, as was stated above, and Respondent never contacted him. Respondent did not contend nor present any evidence that it had offered Gonzalez his job back, so it appears there was no valid reinstatement offer.

consequently the farm labor contractor's foreman finds him hard to control.

When he was about to drive off, he asked Gonzalez whether he had picked lettuce before and Gonzalez replied that he had done a little bit for somebody named Calacas and that all Sarkesian had replied was, "That's a helluva recommendation". Sarkesian explained that the reason he said that was because he had expected that Gonzalez would reply to his question by referring to some well established lettuce grower by which he would be able to evaluate his experience and so when he mentioned the name "Calacas" his natural reaction was to disparage any experience gained under such an unknown labor contractor. Sarkesian testified that he had never heard of a company or labor contractor by the name of Calacas but just supposed that Gonzalez was referring to a labor contractor.

Sarkesian testified that around 4 P.M. that same afternoon^{16/} he returned to the office and conversed with Ramon Sanchez, the shovelers foreman about the four shovelers whom he had observed lying in the shade of the pickup truck. Ramon told him that they were High and flighty employees- and that it was probably their lunch break. Sarkesian replied that he thought it was later than that and if he had known that they were High and Mighty employees he would have fired them on the spot.

Sarkesian claimed he talked to Ramon about Gonzalez, one

^{16/}It must have been earlier for two reasons: 1. Gonzalez testified that Ramon told him about 3 P.M. that Sarkesian had talked to him about Gonzalez' request to work in the lettuce crew; 2. Sarkesian must have thought it was later than it really was all day long, since he thought it was 2:30 when he noticed the 4 shovelers during their noon break which they usually took at between 12 and 1 P.M.

of the four shovelers, conversing with him, but how Ramon was going to try to secure employment for him in the lettuce crew. Sarkesian added that he wanted it understood that Ramon was "never ever" to try to secure employment for one of his employees in the lettuce crew.^{17/} Sarkesian testified that he never told Ramon to fire Gonzalez or any of the other three shovelers.

There is a serious inconsistency in Sarkesian's testimony. He claimed he was not aware that any of the four shovelers was a High and Mighty employee and that, if he had, he would have fired them immediately due of their failure to fulfill their work duties at that time of the afternoon. He then explained that his anger at Gonzalez was because there was a company policy that no employee of High and Mighty could work for its labor contractor in the lettuce because of friction.

This policy rule would have had no applicability to Gonzalez unless Sarkesian knew at that time that Gonzalez was an employee of High and Mighty. If, according to Sarkesian's testimony, he knew that Gonzalez and the others were High and Mighty employees, he would have fired them immediately. The only logical explanation for him not having fired Gonzalez is that Sarkesian did not know that Gonzalez was a High and Mighty employee when he conversed with him. There is nothing in Gonzalez¹ conversation with Sarkesian which indicates that Gonzalez informed Sarkesian about his employee status with High and Mighty. He just told him he wanted to go to work in the lettuce and about having worked for Calacas. Ramon Sanchez testimony also confirms that Sarkesian was unaware that Gonzalez was a High and Mighty employee since Ramon testified that when he conversed with Sarkesian later on in the afternoon of March 5,

^{17/}Ramon in his testimony confirmed Sarkesian's conversation with him about the four shovelers but denied that Sarkesian ever mentioned anything to him about Samuel Gonzalez.

Sarkesian questioned him about whether the four shovelers were High and Mighty employees.

Since Sarkesian did not know that Gonzalez was a High and Mighty employee at the time of the conversation, his explanation that his anger was caused by Ramon's alleged attempt to break a company rule of sending a High and Mighty employee, supposedly Gonzalez, to work in the lettuce crew must be ruled out. So the only plausible explanation left to explain Sarkesian's ire at Gonzalez is the latter's mention the name of Calacas. Consequently there is an inescapable inference that Sarkesian drove back to the office later on in the afternoon, saw Ramon and, upon finding out from Ramon that Gonzalez and the other three shovelers were High and Mighty employees, told Ramon to discharge Gonzalez because the latter had told Sarkesian that he had worked for Calacas. Hence the precipitating cause of the discharge must have been Gonzalez mention of Calacas especially as no action was taken against the other three shovelers.

Analysis and Conclusion

Section 1153(c) of the Act makes it an unfair labor practice to discriminate "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".

It is well established that an employer violates Section 1153(c) of the Act when it treats an employee in a disparate manner which tends to discourage union activities.

In the instant case, I find that Andy Sarkesian, Respondent's head foreman reacted with anger when Samuel Gonzalez mentioned the name of Calacas because he thought he was referring

to Calacas the UFW organizer who had been involved in the incident at the labor camp the previous summer. His explanation that he became angry because he thought foreman Sanchez was trying to have Gonzalez transferred from his crew to the lettuce crew, which was against company policy, is wholly fallacious as has been explained above. In addition Sarkesian harbored a good deal of hostility toward Calacas and the UFW as was evidenced by his relentless endeavor to have Calacas and Manney removed from the Ripley labor camp as quickly as possible June 26, 1978. At one time during the same incident, he shouted loudly at the two union organizers, using vulgar and obscene language, that they should leave the camp premises. He also directed racially derogatory remarks at Calacas.^{18/}

The words Sarkesian blurted out to Gonzalez, "No one who worked for Calacas will work on my ranch", reveal that he did not want any worker who had that close a relationship with a known union organizer to be working at the High and Mighty Ranch. The remark itself establishes a very strong union animus and also a very strong inference that he would take steps to prevent any worker who was that closely associated with Calacas to begin or to continue to work at Respondent's ranch.

Later when he decided to have Gonzalez terminated, he took an action to prevent a person, who, at least in his mind, was closely associated with a union organizer, from continuing to work at Respondent's ranch. This action to terminate Gonzalez

^{18/}Linda Manney testified to this outburst by Sarkesian at her and Calacas during her cross-examination by Respondent. It was uncontroverted since Sarkesian never referred to it in his testimony.

was discriminatory because it was based on Sarkesian's belief that Gonzalez was closely associated with Calacas, a union organizer.

There is NLRB precedent which holds that it is a violation of Section 8(a)(3) and (1) of the National Labor Relations Act for an employer to discharge an employee because of a belief that the employee had engaged in a concerted protected activity even though the employee had not done so. See Systems Analyzer Corporation, 171 NLRB 45, 68 LRRM 1334 (1968) where the National Labor Relations Board found that the discharge of employees due to an erroneous belief by the employer that they had engaged in starting a union organizing campaign constituted a violation of Section (a)(3) and (1) of the NLRA. The Administrative Law Judge determined that the employer was motivated by a desire to forestall and discourage unionization at the plant and concluded that a discharge for that reason was obviously proscribed by the NLRA and that the fact that the employer had been mistaken in his belief was no valid defense.

In the instant case, Respondent's head foreman Sarkesian mistakenly believed that employee, Samuel Gonzalez, was associated with Calacas, a union organizer, and he was motivated by a desire to remove an employee whom he assumed to be a union activist, or at least a union sympathizer, from Respondent's work force. I also find that a discharge for such a reason is proscribed by the Act and the fact that Sarkesian was mistaken in his belief is no valid defense.

Respondent argues that it laid off Gonzalez because the shoveling work was slow and he had the least seniority among

the shovelers. This argument is not persuasive because of the following reasons:

1. The timing of the termination was exact. The day after Sarkesian's outburst against Gonzalez, Gonzalez was terminated and never called back to work.

2. The same day Gonzalez was terminated, a new employee, Aguayo was hired and replaced Gonzalez as a shoveler and was still working on the shovel crew at Respondent's one week before the hearing.

3. Emiliano Becerril, overheard Ramon Sanchez tell his brother Milton that Sarkesian had told him to "stop"^{19/} Gonzalez.

4. Gonzalez testified that Ramon informed him Sarkesian had told him to fire Gonzalez.^{20/}

5. Sarkesian's explanation of his anger i.e. Ramon's attempt to break company policy by endeavoring to transfer Gonzalez from his shovel crew to a lettuce 'crew is so internally contradictory that it does not merit any credence whatsoever.

^{19/}Respondent argues that "stop" could mean "stop him for the day". I believe that "stop" meant terminate because the next day the termination of Gonzalez took place. Also no Respondent witness including Sarkesian testified that Sarkesian had told Ramon to stop for the day or provided any basis for any other interpretation of the work than "terminate".

^{20/}Employee Cirilo Diaz testified that he overheard Ramon Sanchez say this to Gonzalez but Respondent has pointed out that at the hearing there was some confusion in Diaz' testimony whether he heard Ramon say this in English or Spanish to Gonzalez. However, I do not rely on his testimony in making this finding but rather on Samuel Gonzalez' testimony since I found him, as I mentioned before, a credible witness from his straightforward and candid demeanor.

In view of the foregoing, I find that Respondent had no legitimate business reason to discharge Samuel Gonzalez.

Accordingly I conclude that Respondent violated Section 1153(c) and (a) of the Act by discharging Samuel Gonzalez because of its belief that he had been an associate or employee of a known union activist and organizer.

ORDER

Accordingly, pursuant to Labor Code Section 1160.3, IT IS HEREBY ORDERED that the Respondent, High and Mighty Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner preventing union organizers from entering, or expelling them from, labor camps or other premises where employees live; assaulting union organizers who are attempting to communicate with its workers; or committing any other acts of interference, restraint or coercion either in the presence of employees or where it is reasonably likely that employees will learn of such conduct, and;

(b) Discharging, laying off or otherwise discriminating against employees because of their union membership, union activities, or association with union agents; and

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their 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 Samuel Gonzalez immediate and full reinstatement to his former position or a substantially equivalent

position, without prejudice to his seniority or other rights and privileges.

(b) Make Samuel Gonzalez whole for any loss of pay or other economic losses incurred by reason for his discharge, plus interest thereon at the rate of 7% per annum.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the provisions of this Order.

(d) Sign the Notice to Employees attached hereto. After its translations by a Board Agent into Spanish and any other appropriate language(s), Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice at times and places to be determined by the Regional Director. The notices shall remain posted for 90 consecutive days thereafter. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

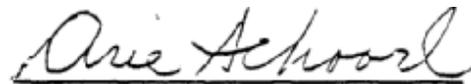
(f) Mail copies of the attached Notice in Spanish and any other appropriate language, within 20 days after the date of issuance of this Order, to all employees employed at any time during June 1978 or January, February or March 1979.

(g) Arrange for a representative of Respondent or a Board Agent to read the attached Notice in Spanish and any other appropriate language to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following

the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice of their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with the Order.

DATED: January 28, 1980

A handwritten signature in cursive script that reads "Arie Schoorl". The signature is written in dark ink and is positioned above the printed name and title.

ARIE SCHOORL
Administrative Law Officer

NOTICE TO WORKERS

After a trial in which, each side had an opportunity to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely discuss with union representatives about union affairs, and also with their right not to be discriminated against because of their union activities.

We will do what the Board has ordered, and also tell you that: The Agricultural Labor Relations Act is a law of the State of California which gives farm workers these rights:

1. To organize themselves.
2. To form, join, or help unions.
3. To choose, by secret ballot election, a union to represent them in bargaining with their employer.
4. To act together with other workers to try to get a contract or to help and 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 interferes with those rights under the Act, or forces you to do, or prevents you from doing, any of the things listed above.

Especially, WE WILL NOT:

1. Prevent or interfere with your communications with union organizers at our labor camps or premises where you live.
2. Strike or otherwise assault any union organizer who is visiting, or attempting to visit, workers at the labor camps or other premises where they live.
3. Discharge, layoff or otherwise discriminate against any employee because of his or her union activity, 'union sympathies or association with union agents.

The Agricultural Labor Relations Board has found that we discriminated against Samuel Gonzalez by discharging him. We will reinstate him to his former job and give him back pay plus seven percent interest for any losses that he suffered as a result of his discharge.

DATED:

HIGH AND MIGHTY FARMS

By: _____
Representative Title

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

DO NOT REMOVE OR MUTILATE.