

Grimmway Enterprises, Inc. d/b/a Grimmway Farms and d/b/a Grimmway Frozen Foods and General Teamsters and Food Processors Local 87, International Brotherhood of Teamsters, AFL-CIO, Fresh Fruit and Vegetable Workers, Local 78-B, UFCW, AFL-CIO, CLC. Case 31-CA-19946

January 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

On August 16, 1994, Administrative Law Judge James M. Kennedy issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Grimmway Enterprises, Inc. d/b/a Grimmway Farms and d/b/a Grimmway Frozen Foods, Arvin, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹In excepting to the finding that it discharged employee Pedro Santos for engaging in protected concerted activity, the Respondent claims, inter alia, that the judge erred in excluding testimony showing that it had a grievance procedure that Santos could have followed to present the concerns about fellow employee Ramiro Hurtado. We disagree. First, we observe that, in fact, the judge permitted the grievance procedure to be introduced into evidence. Further, in the circumstances of this case, we find that the Respondent has failed to show how testimony about the grievance procedure can have any bearing on the judge's findings concerning the protected nature of Santos' activity.

²The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Ann L. Weinman, for the General Counsel.
Jeffrey A. Green, of Di Giorgio, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried in Bakersfield, California, on February 16-17, 1994. The complaint was issued by the Regional Director for Region 31 on July 2, 1993. It is based upon a single unfair labor practice charge filed on May 20, 1993, by two labor unions, General Teamsters and Food Processors Local 87, International Brotherhood of Teamsters, AFL-CIO; Fresh Fruit and Vegetable Workers, Local 78-B, UFCW, AFL-CIO, CLC. The complaint¹ alleges that Grimmway Enterprises, Inc., d/b/a Grimmway Farms and d/b/a Grimmway Frozen Foods (the Respondent) has committed certain violations of Section 8(a)(1) of the National Labor Relations Act (the Act).

Issues

The principal issue to be decided is whether Respondent on March 19, 1993, suspended its employee Pedro Santos and thereafter discharged him on March 21 in violation of Section 8(a)(1) because he had engaged in protected concerted activity or whether Respondent discharged him because he was insubordinate.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Both the General Counsel and Respondent have filed briefs which have been carefully considered. Based upon the entire record of the case as well as my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, operates a produce processing plant at its facility in Arvin, California. It admits that it meets the Board's nonretail standard for the assertion of jurisdiction and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is a relatively large produce processor. At its Arvin plant it processes both fresh and frozen vegetables, including baby carrots, green beans, and peppers. It operates 52 weeks a year on a 5- and 6-day-per-week basis. It employs about 350 hourly employees on at least a two-shift schedule. In mid-March 1993 it had about 100-120 production persons on its night shift which operated from 6 p.m. to 2 a.m. The night-shift superintendent at that time was Manuel Singh. His assistant was Dagoberto (Beto) Pardo. Singh, like the day superintendent, reports to Max Meldrum, Respondent's vice president for operations.

It was Singh's practice on Fridays to call a midshift all-employee meeting in the cafeteria shortly after the 10:30 p.m. "dinner hour." The meeting is referred to variously as

¹The caption has been amended pursuant to a motion made at the hearing.

a safety meeting, a production meeting, an information meeting, or a scheduling meeting.

Pedro Santos was a carrot sorter who in March 1993 had been employed by Respondent for about 9 months. He testified that at the March 12 meeting an employee named Ramiro Hurtado stood up and asked Singh that he be sent to see a doctor. Santos believed, based on earlier conversations he had had with Hurtado, that Hurtado had suffered an accident some time before. That night Hurtado complained of some pain in his arm. Santos says Singh told Hurtado that he would talk to him in Singh's office. Similarly, forklift driver Javier Frausto testified that Hurtado had complained at the meeting that his arm was hurting, asking, "[P]lease could he be sent to a doctor because his arm was hurting." Frausto then testified, "The gentleman, Manuel Singh, ignored him and said, 'afterward, you and I will speak in the office.' The gentleman sat down, had no other words to say."² A short time later, Hurtado spoke to Santos at the production line, saying that Singh had not sent him to the doctor but had scolded him. Santos observed Hurtado was shaking. Hurtado told Santos that Singh had scolded him several other times.

Hurtado died within an hour of the end of his shift at 2 a.m. News of his death spread through the plant beginning Monday, March 15, after one of Hurtado's relatives came to the plant and reported he had died at 3 a.m. on Saturday. Santos and Frausto both testified that after they learned of Hurtado's death, a group of employees discussed the situation. They decided to ask Singh at the next Friday meeting why he hadn't sent Hurtado to a doctor. Santos agreed to be their spokesman.

Singh testified that Santos came to him on Wednesday to speak about Hurtado. Santos denies that such a meeting occurred. As will be seen, I credit Santos' denial that he met with Singh on Wednesday about Hurtado or anything else.

On Friday, March 19, Singh conducted a regular meeting shortly after the 10:30 p.m. break. At the end of the meeting he asked for questions. There is a dispute about what happened next. Santos testified:

A. I stood up. I asked permission to speak to Mr. Manuel Singh. I asked why didn't he send to the doctor Mr. Ramiro Hurtado.

Q. What did Mr. Singh say?

A. "Hey, hey, are you trying to say that I killed him?"

. . . .

A. "No. I want to tell you that if you would have sent him to the doctor perhaps the doctors would have attended to the gentleman. Perhaps he would have not died."

Q. Then what did Mr. Singh say?

A. The meeting ended. "and you, screw your mothers, and you go to the office."

Frausto's testimony is similar:

Q. (By Ms. Weinman) Did Mr. Santos speak at the next safety meeting?

A. Yes.

Q. What did he say?

A. That *we wanted to know* that if Mr. Manuel Singh had taken the gentleman into account or would have sent him to the doctor as the gentleman had wanted, perhaps he would not have died like that. Nonetheless, we were not accusing him, we were just saying why had he not paid attention.

Q. What did Manuel Singh say?

A. To Mr. Santos he told him if he was accusing him of death. Mr. Pedro Santos said, "*No, but I and all of my co-workers want to know why you ignored him.*" Manuel Singh did not respond to anything.

Q. Did Mr. Singh say anything after that?

A. Yes.

Q. What did he say?

A. He became angry and left quite angry and he said, "The meeting has ended," and he left, and before leaving he said, "Mother fucker."

Q. To who?

A. To all of us. We were all there. [Emphasis added.]

Singh's testimony is different. He first testified that at the March 12 meeting, Hurtado only asked to see him about a problem he was having with the personnel office authorizing him to see a medical specialist. He said he asked Hurtado to meet with him after the meeting in the production office and that Hurtado did so. He says the meeting was short and Hurtado told him he intended to bring some paperwork with him on Monday or Tuesday and that Singh agreed to wait until then to pursue the issue. Even so, Singh acknowledges that he asked Hurtado, "[D]oes he feel okay, is he okay, is he feeling any pain, if something happened, and he said, 'No.' . . . At that time I said, 'Well, do you feel okay or is there anything I can do, something medical-wise.' And he said, 'No, I'd just like to bring you those documentations on Monday or Tuesday.'" It is apparent that something about Hurtado's demeanor caused Singh to make an inquiry about Hurtado's health at that moment.

With respect to the March 19 meeting, Singh, supported by some assistants, testified that Santos simply became disruptive at the end of the meeting and continually accused Respondent of being dishonest in its treatment of Hurtado and in other matters. He testified:

Q. (By Mr. Green) Were you also asked about Mr. Hurtado?

A. Yes, I was.

Q. And how did you—what was the question with regard to Mr. Hurtado?

A. He says—the question was how come I didn't send him to the doctor the week before that, and I did not really want to get into it, because it was a personal matter.

Q. And how did you respond to that question?

A. I said if there's any more questions, my door is always open to my office and we—that's basically how I respond to all the questions that are personal. On Fridays I give the opportunity to the employees to come to my office if they want to talk. Like I would say, the door is always open and if they have something to say

²Many of the witnesses testified in Spanish through a court certified interpreter. The translations which are quoted may appear awkward in English due to hastiness of the interpreter's word-for-word instant conversion from one language to the other.

or talk about, a comment, question, a dislike, or something, they—some employees do go after.

Q. With regard to the—specifically the Question with regard to Ramiro Hurtado . . . do you recall how you responded to that question?

A. I would really—I wouldn't—I'd say, like I said, any personal questions, sir, it's a personal question. If there's any more information needed, they can come up to my office.

. . . .

Q. What happened next in the meeting?

A. I started to say to the employees, if we—if you all too feel that if we have talked about these questions in a group form or on a one-on-one basis, I got to the word "honestly" and that's when the meeting got disrupted by Pedro Santos.

Q. and can you describe what you mean when you say it was "disrupted"?

A. Pedro Santos stood up, started talking, looking around at the employees. I really don't know what he was saying. He just—I couldn't get—I couldn't get a word edgewise in.

Q. Did Mr. Santos at that time specifically ask you any questions?

A. Specifically, no; when he got up, no.

Q. Was Mr. Santos speaking in a calm voice or was it a high-pitched high voice?

A. It was—it was—it was higher than mine. It was up in a high voice.

Q. And when you say "high," in terms in loudness?

A. Yes.³

Q. Was Mr. Santos doing anything with his body while he was speaking?

A. Yes. He was turning around. He had his arms up, just looking around, talking not to me, he was talking to the employees.

Q. Were any other employees able to ask questions?

A. No.

Q. What did you do?

A. At that time I noticed that the meeting was not productive. I tried to calm Mr. Santos down. He wouldn't listen. I then told the employees, "Okay. Let's go back to work." I made a gesture with my arms, crossed my arms, "Okay. The meeting's over. Let's go back to work."

Q. How long can you estimate that—did Mr. Santos disrupt the meeting before you ended the meeting?

A. I would say a minute and a half, two minutes; somewhere in that area.

Q. And could you display the motion of your arms again as you gestured that evening.

A. Going like this, crossed my arms this way. (Indicating.)

MR. GREEN: If I can for the record, he had both his arms up and he crossed them in front of him and then uncrossed his arms.

JUDGE KENNEDY: In a standard stop motion.

MR. GREEN: A standard stop motion.

Q. BY MR. GREEN: Do you recall during the meeting that Mr. Santos said that if you had sent Mr. Hurtado to the doctor that he may have been alive at that time?

A. No.

Q. Do you ever recall saying, "Hey, hey, are you trying to say I killed him"?

A. No.

Q. At the end of the meeting did you say verbally the Spanish phrase, "Chinguen sus madres"?

A. No.

Q. And what do you understand that phrase to mean?

A. It's like, excuse—excuse me, "Mother fucker."

Q. And in gestures, did you intend to convey that same sentiment?

A. No.

Q. After you crossed your arms and announced that the meeting was over, what did you do?

A. I walked out of the cafeteria Beto Pardo was right behind me and I asked Beto Pardo to bring Pedro Santos to the office.

Q. Was that to your office or the production office?

A. To my office.

Q. And why did you want Mr. Santos? To do what your office?

A. To come and talk to him *about his question* that was brought up and also I wanted on—speak to him on if there was a problem or something I can help him with. [Italics supplied.]

At this point there is some additional discrepancy in the recollections. Both Santos and Frausto recall that leadman Alejandro Padilla caught the employees in the cafeteria as they were making their way toward the stairs. They recall Padilla, who was using a walkie-talkie to speak to Singh, asking Santos to go to the office to speak to Singh. Singh denies using the radio that night, but a written record which he made shortly after the incident refers to his using the walkie-talkie.

Nonetheless, Santos testified that the coworkers who were with him stepped in, saying that Santos would not go alone to the office for they were fearful for his safety, given the anger which Singh had just exhibited. The testimony varies but Padilla reported that between five and eight employees wanted to come with him. Singh and Pardo do not disagree. Santos says that he, himself, said nothing while this was going on, but when Padilla reported that a group wanted to accompany Santos to the office he heard Singh say to Padilla, "By himself or nothing."

Santos interpreted that remark as meaning that he was not being ordered to go to the office, so he declined and went on to his work station. His interpretation is actually supported by the testimony of Ignacio (Nacho) Rivera, a leadman called by Respondent. Rivera recalls a conversation at the Santos' work station between Pardo and Santos which took place a little later. During that discussion Rivera reports that Pardo told Santos he "could" go to the office to speak to Singh, language which also suggests that Santos was being given the option of going or not.

As reports came to Singh that Santos was not coming to the office, he determined that Santos was being insubordinate. In addition, Pardo advised that Santos had in effect told him (and perhaps others) that they should mind their own

³Santos denies speaking in anything other than a calm manner.

business or they would “regret it.” Santos denies making any such statement, but Singh and the others interpreted this alleged remark to be a threat. Deciding that they had given Santos clear instructions which he was defying, Singh decided to suspend him for 3 days if he did not come to the office. Pardo then went to the line and spoke to Santos. Santos says Pardo simply told him he had been suspended for 3 days and that he would have to leave the premises. Santos said he would not leave until he had been given something in writing confirming such a suspension. This resulted in a standoff which took about half an hour to resolve. Singh called the police when Santos would not leave. Eventually, after discussing it with the police, Singh issued Santos a written notice of suspension and Santos left.

Singh later filed a report with Meldrum and on March 22 they decided to discharge Santos upon his return after the suspension. He was discharged for “insubordination” the next day per the decision. No other explanation was given.

III. ANALYSIS AND CONCLUSIONS

I have not attempted to describe all of the testimonial variances and inconsistencies found in this record. Suffice it to say that all of the witnesses, except Santos, are vulnerable to a charge that their testimony is internally inconsistent or that their memory does not comport with whatever objective facts may be found. That does not mean, however, that their testimony on salient points is automatically rejected. I have above placed some testimony in italics for the purpose of highlighting it, principally to demonstrate that the elements of a prima facie case are in place here. That testimony comes in part from Singh himself whose own testimony can in part be seen to corroborate Santos and Frausto. Many of the testimonial frailties which can be pointed out are irrelevant to the main issue to be decided, whether or not Respondent, principally through Singh, was motivated to first suspend and later discharge Santos because he had, or was perceived as about to have, engaged in an activity protected by Section 7 of the Act.

Indeed, the issue of motive is largely one to be found in the testimony of the principal decision maker, Singh. It is certainly not found in Santos or Frausto. Nor is it found in Singh’s assistants. It must begin, however, with the facts as they arose and end with the manner in which Singh perceived them and reacted.

Before analyzing the evidence of Singh’s motive, it is appropriate to first look at the law of protected concerted activity. The Supreme Court, in *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962), set forth the initial standards.⁴ In that case a group of employees decided that it was too cold to work in the building housing the machine shop in the which they were employed; temperatures were well-below freezing, between 11 degrees and 22 degrees. The employees discussed the situation among themselves and decided to leave in order to force corrective action. The Board and the Court held that the mutual aid and protection clause of Section 7 of the Act (the italicized portion of the statute in the footnote) protected their conduct and that the employer’s dis-

charge of the employees was unlawful under Section 8(a)(1).⁵

In *Meyers Industries*, 281 NLRB 882 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), the Board refined the nature of concerted activity to differentiate between individual activities and group activities. There, the question before it was whether a single truck-driver’s refusal to drive an unsafe vehicle was a concerted act within the meaning of Section 7. The Board held that it was not, at least where he was not invoking a collectively-bargained right. The Board contrasted the facts with the Supreme Court’s decision in *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984), where an employee had invoked a contract right.

There is, of course, no question that raising questions of common concern at meetings with company officials is usually a concerted act, particularly when the first person plural is used by the employee. See *Colders Furniture*, 292 NLRB 941 (1989), enf. 907 F.2d 765 (7th Cir. 1990). That is true even where the employee has not actually been appointed the group spokesman. The Board will usually regard that step as an essential preliminary to the inducement of group action. See *Whittaker Corp.*, 289 NLRB 933 (1988). *Whittaker*, like *Colders Furniture*, is also a first person plural case where the employee spoke up at a company meeting. See also *Autumn Manor*, 268 NLRB 239, 244 (1983). Those cases protect what might otherwise be regarded as ambiguous conduct by the employee.

Here the testimony is both clear and uncontradicted. After learning of Hurtado’s death shortly after he requested medical assistance, a group of employees decided they needed to know more about the circumstances so they could determine whether they needed to take steps to prevent a similar happenstance. They appointed Santos to take the initial step of asking Singh for more information about what Singh had done after Hurtado asked for assistance. Standing by itself, that is concerted activity. Furthermore, Singh knew well before suspending Santos that more than one person was involved. Frausto’s testimony makes that quite clear. In describing Santos’ question about Hurtado, Frausto says Santos spoke to him in first person plural terms: “[W]e wanted to know that if Mr. Manuel Singh had taken the gentleman into account or would have sent him to the doctor as the gentleman had wanted, perhaps he would not have died like that. [W]e were just saying why had he not paid attention . . . Pedro Santos said, ‘No, but I and all of my co-workers want to know why you ignored him.’” This is the first person plural described in *Colders Furniture*, supra. Subsequently, when Singh began to pursue Santos, he received several reports to the effect that Santos would not come to the office unless he was accompanied by a number of other employees.

⁵Sec. 7 of the Act states:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3). [Emphasis added.]

⁴Also, *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683 (3d Cir. 1964), and numerous other cases.

Clearly, he knew Santos was not acting alone—others were standing with him.

He also understood that those other employees were likewise concerned about the Hurtado matter. He said he wanted Santos to come to the office “[t]o come and talk to him about his question that was brought up.” Since the only question which Santos had ever asked during this meeting was about Hurtado, it is clear Singh recognized that both Santos and his coworkers were concerned about that inquiry. At another point in his testimony though it is a bit disorganized, Singh acknowledged that the questions were “in a group form.”

Thus, at the outset, it is clear that the *Washington Aluminum Co.* standards have been met. A group of employees had decided it was in their best interests to find out how Singh had handled Hurtado’s request. They appointed Santos to do that. Without question, that conduct places Santos and his group in the *Washington Aluminum* category, not the *Meyers II* category. Respondent argues that Singh could not have known that Santos was acting on behalf of other employees who had appointed him their speaker. However, the evidence is to the contrary. Not only does Frausto’s testimony so show, but so does that of Pardo, Padilla, and Rivera. Singh’s purported failure to recognize that fact does not provide Respondent with a defense, for a reasonable person would have perceived it properly.

Yet I believe Singh did understand it. His reaction far exceeds that of simply dealing with a matter of perceived insubordination. His claim was that he simply wanted to pursue the “question” with Santos further. If that was all, he could have waited until another break, after all, the processing line was about to resume running, an important part of the Company’s production. Instead, even before anyone told Santos he was suspended, Singh gave directions which prevented the entire production process from restarting, an unusual occurrence. That clearly suggests Singh was concerned about what influence Santos might be having on others. In my view, Singh knew Santos was raising a matter of common concern to the entire work force. Since he knew that, it is hard to credit Respondent’s argument that Singh did not understand that Santos was not acting alone.

What followed next must be seen as a continuation of Respondent’s decision to pursue Santos for having engaged in the effrontery of standing up for employees who wished to learn how Singh had handled Hurtado’s request for a doctor.⁶ Singh clearly became perturbed. That is apparent whether or not one accepts the evidence regarding his insulting profanity or rejects it. He had clearly done something to cause the employees to mistrust his behavior. He had either insulted them all, or he had, by his own testimony, been less than candid with them about the Hurtado matter.⁷ When he sent Padilla

⁶In this regard, I specifically reject Singh’s testimony that Santos had spoken to Singh about Hurtado a few days earlier. He even says that he told Santos during the March 19 meeting that he had already spoken to him about Hurtado earlier that week. First, if I credit that he said any such thing, it would be additional evidence that he knew Santos was speaking for a group, thereby undermining his denial of that fact. Yet on rebuttal Santos denied that any such thing was mentioned during the meeting. Furthermore, no other witness was asked to corroborate Singh here, undoubtedly because they cannot.

⁷Santos had seen the “shaking” which Hurtado was suffering shortly after Hurtado had met with Singh, and was aware that

to Santos, both he and his coworkers recognized that something was afoot. They intervened with Padilla, who relayed their request to come with Santos. Instead of agreeing, or suggesting a time when they could all meet, Singh sent a message to Santos via Padilla which allowed him to interpret the message as giving him the option of going to Singh’s office or not. Then, when Santos exercised the perceived option to decline, Singh declared Santos’ conduct to be insubordination, ultimately resulting in the suspension.

These facts do not support Respondent’s conclusion that Santos was behaving insubordinately. Instead, they show Santos to have attempted to avoid a confrontation, an attempt which was ultimately unsuccessful. They do not show that Santos ever disobeyed a direct order to go to Singh’s office. At worst, all Santos and his fellows did was attempt to negotiate a group meeting (something which Respondent asserts it has no problem with conducting, but did not allow for here). That meeting itself was for the purpose of mutual aid and protection. The employees did not want to send Santos to an uncertain fate at the hands of an angry supervisor. Instead, they obtained the supervisor’s apparent permission for Santos to decline, a liberty which he exercised, but a license for which he paid with his job. It is quite clear that good humor was not a part of Singh’s demeanor that night. His lack of tolerance was no doubt fed by his perception that the employees were upset with his handling of the Hurtado matter and his perception that they were demonstrating some group strength on that subject. His inability to cut Santos out of the herd was the final straw. He needed to nip that kind of solidarity as quickly as it arose, as it threatened his authority.⁸ For that reason he decided to remove Santos from the premises. Santos’ supposed insubordination never occurred; insubordination was only Singh’s trumped-up excuse to suspend and subsequently discharge him. Santos’ refusal to go to the office is inseparably intertwined with the protected conduct in any event. See *Millcraft Furniture*, 282 NLRB 593, 594–596 (1987).

Accordingly, I conclude that the General Counsel has demonstrated that Respondent, on March 19 suspended Santos because he had engaged in activity protected by the mutual aid and protection clause of Section 7 of the Act; similarly, it discharged Santos on March 23 for the same reason. Furthermore, Respondent’s defense does not in any way rebut the General Counsel’s evidence. Accordingly, I conclude that these acts violated Section 8(a)(1) of the Act.

IV. REMEDY

Having found Respondent to have engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. As Respondent has discriminatorily discharged its employee Pedro Santos, it

Hurtado had said he had been “scolded” instead of being handled sympathetically. Santos and his fellows had good reason to mistrust Singh.

⁸The employees’ request that Singh explain his behavior with respect to Hurtado may also have forced him to expose that he had done nothing for a dying man, an admission he could not make. I must say that his explanation to me that Hurtado simply wished to advise him that he was bringing some papers to him early the next week seems lame. Yet he would not even say that to the assembled employees that night. The story is most suspect.

will be required to offer him immediate reinstatement to his previous job or, if that job is no longer available to a substantially equivalent job and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition it shall be ordered to remove from its files any reference to its unlawful suspension and discharge of Santos and notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

Based on the foregoing findings of fact, I make the following

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent's employee, Pedro Santos, on March 19, 1993, engaged in concerted activity for the mutual aid and protection of employees within the meaning of Section 7 of the Act when, pursuant to an agreement reached with his fellow employees, he asked his/their superintendent to explain the procedures he followed regarding another employee's request to be seen by a physician.

3. On March 19, 1993, by suspending its employee, Pedro Santos, for engaging in activity protected by Section 7 of the Act, and on March 23, 1993, by discharging Santos for the same reason, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Based upon these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Grimmway Enterprises, Inc. d/b/a Grimmway Farms and d/b/a Grimmway Frozen Foods, Arvin, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending and/or discharging employees because they have engaged in activities protected by Section 7 of the Act, specifically acting in concert with fellow employees for their mutual aid and protection by inquiring about the procedures which it follows in dealing with employee requests for medical assistance.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately offer Pedro Santos full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits

⁹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to Santos' unlawful suspension and discharge and notify him in writing that this has been done and that neither the suspension nor the discharge will be used against him in any way.

(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 backpay due under the terms of this Order.

(d) Post at its plant in Arvin, California, copies of the attached notice marked "Appendix"¹⁰ (in both English and Spanish). Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees the right to act together for their mutual aid or protection.

WE WILL NOT suspend and/or discharge employees because they have engaged in activities protected by Section 7 of the Act, such as acting in concert with fellow employees for their mutual aid and protection by inquiring about the procedures which we follow in dealing with employee requests for medical assistance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL offer Pedro Santos immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination, including interest.

WE WILL remove from our files any reference to Santos' unlawful suspension and discharge and notify him in writing

that this has been done and that neither the suspension nor the discharge will be used against him in any way.

GRIMMWAY ENTERPRISES, INC. D/B/A
GRIMMWAY FARMS AND D/B/A GRIMMWAY
FROZEN FOODS