Farm Builders Division of American Bioculture, Inc. ***and*** **Larry Manning.** Case 20–CA–8932

June 30, 1975

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND PENELLO

On March 19, 1975, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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 to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order as modified herein.

The Administrative Law Judge found that the unlawful interrogations of employees Martin and Singleton in late January and early February 1974 also unlawfully created the impression that the employees' union activities were under surveillance. We do not agree. There is no evidence in the record that any employee believed or was given the impression that Respondent was engaged in surveillance, and we do not find that as a matter of law every interrogation or threat also constitutes an unlawful impression of surveillance. Accordingly, we shall delete from the Administrative Law Judge's recommended Order and notice all reference to surveillance or creating the impression thereof. However, inasmuch as we find that the other unfair labor practices committed by Respondent, particularly the unlawful discharge of Manning, were serious in nature and struck at the very heart of rights intended to be protected by the Act, we will issue a "broad" cease-and-desist order requiring Respondent to cease and desist in any manner from infringing upon employee rights.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that Respondent Farm Builders Division of American Bioculture, Inc., Phoenix, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(b) and reletter subsequent paragraphs accordingly.

2. Add the following as paragraph 1(d):

"(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form labor organizations, to 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, or to refrain from engaging in such activities."

3. Substitute the attached notice for that of the Administrative Law Judge.

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] We agree with the Administrative Law Judge that employee Larry Manning was discharged for union activity. In finding that Respondent had knowledge of Manning's union activity prior to his discharge, we rely on employee Singleton's testimony that he told Supervisor Carter that Manning was planning a meeting with union representatives. We further rely on Carter's testimony that, after this conversation with Singleton, he told District Manager Ayala of union activity among the employees during the same discussion in which it was decided to terminate Manning.

[3] *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532, 536–537 (C.A. 4, 1941); *California Lingerie, Inc.*, 129 NLRB 912, 915 (1960).

APPENDIX

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

WE WILL NOT interrogate our employees concerning their union activities.

WE WILL NOT threaten our employees with discharge for engaging in union activities.

WE WILL NOT discharge our employees for engaging in union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights 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 or to refrain from engaging in such activities.

WE WILL offer Larry Manning full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, with

restoration of all his rights and privileges, and WE WILL make him whole for any wage losses he may have suffered in the period between the date we discharged him for engaging in union activities and the date we reinstate him.

FARM BUILDERS
DIVISION OF
AMERICAN BIOCULTURE,
INC.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On January 9, 1975, I conducted a hearing at Sacramento, California, to try issues raised by a complaint issued on November 25, 1974,[2] on the basis of a charge filed by Manning on February 4. The complaint alleged that Farm Builders Division of American Bioculture, Inc.,[1] violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (hereafter called the Act), by giving its employees the impression it was maintaining surveillance of their union activities, by interrogating its employees concerning their union activities, by threatening to discharge an employee because of his union activities, and by discharging Manning because of his union activities.

The Company conceded it discharged Manning, denied it discharged him for engaging in union activities, and denied it committed the other unfair labor practices alleged. The Company therefore denied committing any violations of the Act.

The issues are whether or not the Company gave its employees the impression it was maintaining a surveillance of their union activities, whether it interrogated its employees concerning their union activities, whether it threatened to discharge an employee because of his union activities, and whether it discharged Manning because of his union activities or for cause.

The parties appeared by counsel at the hearing and were afforded full opportunity to produce evidence, examine and cross-examine witnesses, argue, and file briefs. Briefs have been received from the General Counsel and the Company.

Based upon my review of the entire record,[3] observation of the witnesses, perusal of the briefs and research, I enter the following:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the Company admitted, and I find that the Company at all times pertinent was engaged in commerce and a business affecting commerce and Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,[4] was a labor organization, as those terms are defined in Section 2(2), (5), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Company sells, installs, and services soil treatment systems. Its customers are farmers. Its home office is located in Phoenix. The Northern California divisional office is located in Woodland, California. The Company employs salesmen to sell its systems and servicemen to install and maintain them. At times pertinent, it employed Manning, Warren Singleton, and Bruce Martin as servicemen in the Northern California division.[5] The immediate supervisor over the Company's servicemen working out of the Northern California divisional office was Robert Carter and the district manager of that office was Richard Ayala, at times pertinent.[6] The salesmen and servicemen worked out of their own homes in their respective territories during the week; they reported once weekly (each Friday) to the divisional office for a general meeting.

Singleton was hired by the Company on March 18, 1973, and was discharged on August 1 for tardiness. Martin was hired on May 5, 1973, and was laid off on March 15. Manning was hired on June 26, 1973, and was discharged on February 1.[7]

At the time of their hire, each of the servicemen was provided with a pickup truck for use in their employment. Their jobs entailed transporting equipment between the regional office and the farms where it was to be installed plus installing and connecting it up. This entailed building an earthen pad, setting up a doughboy pool consisting of a frame and liner to contain between 2,500 and 3,500 gallons, connecting plumbing to a water source and the farm irrigation system, installing a pump, and connecting the pump to a power source. They were also required to maintain and repair the equipment. Upon hire, they were required to sign a document wherein they agreed to use the vehicle only on company business and not to carry any passengers in it.

The first concerted action among the servicemen to better wages, hours, and working conditions occured in September 1973, when Manning, Carter, and Singleton prepared a joint memorandum to Carter requesting improvements in their wages, hours, and working condi-

[1] Hereafter called the company.

[2] All subsequent date hereinafter refer to 1974 unless otherwise mentioned.

[3] The General Counsel's posthearing motion to correct the transcript is granted. The transcript is hereby corrected.

[4] Hereafter called Local 150.

[5] It also employed seven additional servicemen in June 1973 and was down to a total of six in January.

[6] The Company conceded that Carter and Ayala were supervisors and agents of the Company acting on its behalf at all times pertinent.

[7] Manning previously worked for the Company out of Bakersfield, California, between March 7 – August 1, 1972.

tions.[8] The memorandum was forwarded to Phoenix and resulted in a conference with a few officials from Phoenix at a later date, but no grant of the requested improvements.[9]

B. *The December 1973 Renewal of the Prohibition Against Personal Use of Vehicles*

At one of the December 1973 regular weekly meetings of the service and sales personnel at the regional office, a bulletin from the Phoenix headquarters was circulated reiterating company policy that no passengers were to be carried in company vehicles and they were not to be personally utilized. The bulletin went on to say that employees who failed to observe the policy would be subject to discharge. The servicemen were requested to read the bulletin and sign it.

Manning asked Carter to be excused from application of the policy.[10]

Carter said he could not act on Manning's request to be excused from the policy and from signing the bulletin, but took Manning's request to Ayala. Ayala stated there would be no exceptions, the company policy must be complied with by all. Carter so informed Manning. Manning then stated he guessed he would have to sign and did so.

C. *The Alleged January 10 Impression of Surveillance and Employee Interrogation*

Martin testified that on January 10 Carter approached him at the shop, said he heard the servicemen were thinking of a union, and asked Martin what he knew and thought about the subject. Martin testified he replied the idea was impractical.

Carter denied the interrogation, stating he had no conversations that early with any of the servicemen concerning any union organizational efforts.

Carter's denial is credited. By Manning and Martin's testimony, Manning made his initial suggestion to Martin that they contact a union on January 18 (see later findings).

I therefore shall recommend that those sections of the complaint alleging that the Company violated Section 8(a)(1) of the Act in early January by interrogating an employee concerning his union activities and giving him the impression the company was maintaining a surveillance of his union activities be dismissed.

D. *The January 18 Meeting*

The regular Friday meeting of service and sales employees was held at the Company's regional office on January 18. Manning, Martin, and Singleton attended the meeting. During a break in the meeting, Manning conferred with Singleton and Martin and suggested to them that the servicemen ought to secure union representation; Manning asked Martin and Singleton if they would back him up if he contacted a union. Martin agreed to back him, while Singleton stated he would go along with whatever the other two decided to do.[11]

After the general meeting, Carter conducted individual employee evaluation interviews with the servicemen. At the Manning interview, Carter noted, on the form provided for recording such interviews, Manning's lack of mechanical ability. While Manning did not protest the evaluation too strenuously, he contended that he made up for his lack of mechanical ability in other ways — by his steadiness, reliability, and working hard. Manning then complained to Carter about alleged deficiencies in safety and other procedures followed by the Company in its business, producing a list. Manning complained, *inter alia,* about servicemen making electrical hookups of the pumps where a considerable amount of power was involved and suggested that work should be done by a licensed electrician. Carter did not dispute Manning's claims. They discussed Manning's financial difficulties and Manning suggested he would like to be transferred to Texas, that he contemplated moving his family to Bakersfield, that he contemplated saving rent by sleeping at the company shop, etc. Carter asked Manning if he was asking for a transfer to Texas because he couldn't get along with Weston.[12] Manning denied that was his reason for requesting a transfer, stating he wanted to move closer to where his grandparents lived (Oklahoma). Carter expressed his concern during that conference over Manning's continued use of a company vehicle for personal business, to which Manning replied that Carter knew he had to use the company vehicle for that purpose, since he had no other means of transportation.

Singleton subsequently contacted Carter in the yard and asked to confer with him. They went to Carter's office and Singleton asked Carter what he thought of the servicemen securing union representation. Carter's reaction was negative. In the course of the conversation, Singleton

[8] The record does not disclose whether the three made any attempt to contact other servicemen working out of the Northern California regional office for support or signatures.

[9] Manning testified that about this time a purchasing agent for the parent corporation, Crowdis, in a conversation in the yard outside the Northern California regional office outside the presence of any other persons, referred to Manning's personal use of the company vehicle as one of the side benefits he was receiving. It does not seem likely that a purchasing agent would either possess or exercise authority to make such an assurance; Manning's testimony appears incredible under these circumstances and is not credited.

[10] Manning had originally, upon hire, indicated to Carter he expected use of the company vehicle for his personal business; he informed Carter he did not have a personal vehicle. Carter pointed to the policy and offered to aid Manning in securing a personal vehicle. Carter on several occasions brought vehicles available on economical terms to Manning's attention, but Manning indicated he was not interested and did not make a purchase. Carter offered Manning a used truck he had been working on (as a sideline he repaired and sold vehicles) at a price of $25. Manning declined to make the purchase. During the period between Manning's June hire and the December meeting, Manning was utilizing the company vehicle both to transport his wife and son and for various personal errands, such as grocery shopping, going to church, visiting friends, etc. While Carter was aware of this, he continually attempted to persuade Manning to purchase a personal vehicle to conduct his personal affairs

[11] No evidence was presented concerning whether any of the other servicemen were approached by Manning. Manning did contact Local 150, but his January 25 discharge aborted any further organizational efforts among the servicemen.

[12] Dan Weston was the salesman assigned to the Chico area. Manning was the serviceman for that area.

informed Carter he and Martin had agreed to back Manning's suggestion that they contact a union.[13]

At approximately 5 p.m. the same day, Martin was in the regional office, sitting at a secretary's desk outside Ayala's office filling in a timecard. He overheard a conference between Ayala and Carter in which Carter informed Ayala of Manning's continued personal use of a company vehicle, Manning's complaints concerning various company practices, Manning's financial difficulties, Manning's statement he would have to continue personal use of the company vehicle since he could not afford to purchase one, Manning's intention to move his family to Bakersfield and possibly stay at the shop, Manning's request for a transfer, and Singleton's report that he and Martin had agreed to support Manning's making contact with a union.[14]

Inasmuch as Martin's testimony is substantially corroborated by Ayala and Carter, it is credited — including Martin's testimony that Ayala and Carter referred to Manning's plan to contact a union on his, Martin and Singleton's behalf. The latter is credited not only on the basis of Martin's straightforward testimony, but also because it would be unlikely that Carter would fail to bring up a matter both he and Ayala were so concerned about, that Ayala interrogated Martin further about it on January 25 (see later findings), and Carter admittedly interrogated both Martin and Singleton about early February (see later findings), namely, what efforts they were making to continue Manning's plan for securing union representation.

E. *The Manning Discharge*

In accordance with their January 18 decision, on the following Monday (January 21) Carter prepared a letter addressed to Manning advising him that he was recommending that Manning be terminated, effective February 1. On January 22 Ayala also prepared a letter addressed to Manning referring to the Carter letter, stating he concurred with Carter's recommendation, and advising Manning he would be terminated on February 1. The two letters stated Manning was being terminated because of his continued use of a company vehicle to carry passengers and conduct personal business despite repeated remonstrances and advice to cease such use and in clear violation of the terms of the documents he signed upon hire and in December 1973; his statement he was going to move his family to Bakersfield and sleep at the Woodland shop, since the Company did not want to be responsible for splitting his family and his financial irresponsibility; and Weston's complaints over his work.

In the course of the next regular Friday meeting (January 25), Carter informed Manning he was terminated, effective February 1. At Manning's insistence, Carter handed him the two documents prepared by Carter and Ayala on January 21 and 22 setting out their reasons for deciding to terminate him. Manning requested that Weston be called in and this was done. Manning asked Weston what his complaints were. Weston replied that he needed a man in Chico 24 hours a day.[15] Manning stated he would remain in Chico. Carter commented that it no longer mattered, the Company did not want to be responsible for breaking up Manning's family and the discharge was final.

F. *The Alleged January 25 Impression of Surveillance, Interrogation, and Discharge Threat*

Subsequent to the meeting, Martin told Carter he thought the reasons given in the Carter letter for Manning's discharge were false. Carter expressed anger and invited Martin outside. Martin declined the invitation. Martin was subsequently called to Ayala's office where Ayala stated he considered Manning's action in going to the Union to be disloyal and Martin would be the next to go. Ayala then asked Martin what his views were concerning union representation, to which Martin replied he thought such representation was impracticable and did not favor it.[16]

On the basis of the foregoing, I find and conclude that on January 25, Ayala threatened Martin with discharge, interrogated him concerning his union activities and views, and conveyed to Martin the impression the Company was maintaining a surveillance of his union activities. I further find and conclude that by such threat, interrogation, and impression, the Company violated Section 8(a)(1) of the Act.

G. *The Alleged February Employee Interrogation and Impression of Surveillance*

Carter admitted that during the first February meeting at the Regional Office, he confronted Martin and Singleton and asked them what they were planning to do about securing union representation and when they replied they were no longer pursuing the matter, he advised them to put any grievances they might have in the suggestion box.

In view of Carter's admission, I find and conclude that Carter interrogated Martin and Singleton concerning their union activities, gave them the impression he was maintaining a surveillance thereof, and thereby violated Section 8(a)(1) of the Act.

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[13] Since it was Singleton who sought Carter's advice concerning union representation, I find that this exchange did not constitute unlawful interrogation or convey an impression of company surveillance of Singleton's union activities.

[14] Ayala and Carter corroborated Martin's testimony in all respects other than his testimony that Carter discussed Singleton's report that he and Martin authorized Manning to contact a union on their behalf. This they denied. They elaborated on the subject of Manning's alleged work deficiencies, stating they not only discussed his mechanical shortcomings, they also discussed complaints by Weston and a large grower in the Chico area (Lewis) regarding Manning's failure to work at and complete a large order at the Lewis farm within the time scheduled therefor. Ayala and Carter agreed they decided at that meeting to terminate Manning, with Ayala commenting that Manning had not shaped up and therefore should be shipped out (both Ayala and Carter were ex-Navy).

[15] Apparently referring to Manning's statement he was going to move his family to Bakersfield and he was going to move into the Woodland shop.

[16] Ayala conceded he questioned Martin concerning his views about the value of union representation, whether he felt he needed such representation and what grievances he had, and that Martin replied such representation was not desirable in an operation the size of the regional office. Carter confirmed that Martin challenged the reasons stated in his letter for Manning's discharge. In view of these partial admissions and Martin's forthright testimony, Martin's testimony concerning the entire conversation is credited.

H. *Analysis and Conclusions Concerning the Manning Discharge*

While it is clear that Carter and Ayala were disturbed over Manning's continued use of a company vehicle to carry passengers and his burdening them with his personal problems, I find and conclude that the event which triggered their decision to discharge Manning was their learning from Singleton that Manning (acting on his, Martin, and Singleton's behalf) was going to contact a union with a view towards securing union representation for the servicemen. This conclusion is predicated upon Ayala's expressed view on January 25 that he considered Manning's act in seeking out a union a disloyal act (accompanied by his threat to discharge Martin because of his role therein), Carter's February interrogation of Singleton and Martin concerning any continued interest in union representation, and Ayala and Carter's reference to Manning's efforts to seek out a union in the course of the January 18 conference when they decided to terminate Manning.

CONCLUSIONS OF LAW

1. At all times pertinent the Company was engaged in commerce and in a business affecting commerce and Local 150 was a labor organization, as those terms are defined in Section 2(2), (5), (6), and (7) of the Act.
2. At all times pertinent Carter and Ayala were supervisors and agents of the Company acting on its behalf.
3. The Company violated Section 8(a)(1) of the Act by Ayala's January 25 interrogation of Martin concerning his union activities, threat to discharge him therefor, and conveying to him the impression the Company was maintaining a surveillance of those activities.
4. The Company violated Section 8(a)(1) of the Act by Carter's February interrogation of Singleton and Martin concerning their union activities and creation of the impression Carter was maintaining a surveillance thereof.
5. The Company violated Section 8(a)(1) and (3) of the Act by its January 25 discharge of Manning for engaging in union activities.
6. The Company did not otherwise violate the Act.
7. The aforesaid unfair labor practices affect commerce.

THE REMEDY

Having found that the Company engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that the Company be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act. It shall be recommended that the Company be ordered to cease and desist from interrogating its employees concerning their union activities, conveying the impression it is maintaining a surveillance of its employees' union activities, maintaining such surveillance, threatening to discharge its employees for engaging in union activities, and discharging its employees for engaging in union activities.

It shall also be recommended that the Company be ordered to offer Manning immediate and full reinstatement to his former job, or a substantially equivalent job if his former job no longer exists, without prejudice to his seniority rights and other privileges, and to make him whole for any wage losses he may have suffered by payment to him of the sum of money he would have earned from the date of his discharge to the date he is reinstated, less any net earnings he may have received in the period. His lost wages shall be computed in accordance with the formula prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest at 6 percent per annum computed in accordance with the formula prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

It shall be further recommended that those portions of the complaint alleging unfair labor practices other than those found heretofore be dismissed.

Upon the basis of the foregoing findings of fact, conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following:

ORDER[17]

Farm Builders Division of American Bioculture, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union activities.

(b) Giving the impression it is maintaining a surveillance of its employees' union activities and maintaining such surveillance.

(c) Threatening to discharge its employees for engaging in union activities.

(d) Discharging or otherwise disciplining its employees for engaging in union activities.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Offer Manning immediate and full reinstatement to his former job, or if his former job no longer exists, to a substantially equivalent job without prejudice to his seniority and other rights and privileges, and make him whole in the manner set forth in the "Remedy" section of this decision.

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records necessary for the determination of the amount of backpay and other payments and obligations due under this order.

(c) Post at its premises copies of the enclosed Notice marked "Appendix A." Copies of said notice, on forms furnished to the Company by the Regional Director for Region 20 and signed by an authorized representative of the Company, shall be posted immediately upon the receipt thereof, and be maintained for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such

[17] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

notices are not altered, defaced or covered by any other material.

(d) The Regional Director for Region 20 shall be notified in writing within 20 days from receipt of this decision, what steps the Company has taken to comply herewith.[18]

The complaint is dismissed insofar as it alleges violations of the Act other than those found above.

[18] In the event that the Board's 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."