STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARAKELIAN FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 78-CE-23-F 78-CE-23-1-F 79-CE-1-F 79-CE-8-F 79-CE-19-F 9 ALRB No. 25

DECISION AND ORDER

On February 1, 1981, Administrative Law Judge (ALJ)[1/] Beverly Axelrod issued the attached Decision in this proceeding. Thereafter, Arakelian Farms (Respondent) and General Counsel each timely filed exceptions and a supporting brief, and Respondent filed a brief in reply to the General Counsel's exceptions.

Pursuant to the provisions of Labor Code section 1146,[2/] the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided

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[1/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code. tit. 8, § 20125, amended eff. Jan. 30, 1983.)

[2/] All section references herein are to the California Labor Code unless otherwise stated.

to affirm the ALJ's rulings,[3/] findings,[4/] and conclusions as modified herein and to adopt her proposed Order, as modified.

Respondent's Bargaining Obligations

General Counsel has excepted to the ALJ's conclusion that Respondent did not violate its duty to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW) by failing to execute a fully agreed upon collective bargaining agreement. The ALJ's conclusion is primarily based upon witness credibility resolutions and will not be disturbed. The ALJ's finding that, as of November 22, 1978, the parties were extremely close to agreement but had not yet reached final agreement on all aspects of the proposed contract is supported by the relevant evidence.

However, we find no merit in Respondent's contention that its withdrawal of tentative agreements to the majority of the articles in the proposed agreement on November 22, 1978, was not a violation of section 1153(e) and (a) of the Agricultural Labor Relations Act (Act).

[3/] Respondent excepted to the ALJ's ruling that the charge in Case No. 78-CE-23-F was not invalid due to technical defects in service. As the allegation based on that charge (that Respondent refused to sign a fully agreed upon collective bargaining agreement) is herein dismissed, we find it unnecessary to rule on Respondent's exception.

[4/] Both Respondent and General Counsel have excepted to various resolutions of witness credibility made by the ALJ. To the extent that an ALJ's credibility resolutions are based upon the demeanor of the witnesses, they will not be disturbed unless a clear preponderance of the relevant evidence demonstrates that such resolutions are incorrect. (Adam Dairy dba Rancho dos Rios (1978) 4 ALRB No. 24; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531].) We have reviewed the evidence and find the ALJ's resolutions of witness credibility to be supported by the record viewed as a whole.

Section 1153(e) of the Act requires an agricultural employer to bargain collectively in good faith with a labor organization certified by this Board as the representative of the employer's agricultural employees. To bargain in good faith under the ALRA means that, while the parties need not agree, they must negotiate with the view of reaching an agreement, if possible. (AS-H-NE Farms (1980) 6 ALRB No. 9; Martori Bros. Distributing (1982) 8 ALRB No. 23.) To determine whether a party has bargained in good faith requires an assessment of all the factors in light of the totality of circumstances. (McFarland Rose (1980) 6 ALRB No. 18; Masaji Eto (1980) 6 ALRB No. 20; NLRB v. Virginia Electric and Power Co. (1941) 314 U.S. 469 [62 S.Ct. 344].)

Respondent and the UFW negotiated by a process of tentative agreements on individual articles that would become binding only on the completion of an entire contract. Such a technique is common in collective bargaining. (NLRB v. Shannon and Simpson Casket Co. (9th Cir. 1953) 208 F.2d 545 [33 LRRM 2270].) However, contrary to Respondent's arguments, the mere fact that such agreements are tentative or conditional, and hence not binding contractual obligations, does not give a party the right to unilaterally withdraw from such tenative agreements without good cause. Such withdrawals may constitute evidence of bad faith bargaining, regardless of whether the tentative agreements constituted binding agreements under traditional contract law. (American Seating Co. v. NLRB (5th Cir. 1970) 424 F.2d 106 [73 LRRM 2996]; see also NLRB v. Alterman Transport Lines, Inc. (5th Cir. 1979) 587 F.2d 212 [100 LRRM 2260].)

Respondent's decision to withdraw from its prior tentative agreements to a majority of the contract articles, on the advice of its new negotiating team and in order to obtain more favorable terms, does not present the changed economic conditions or other factors necessary to demonstrate good cause for the withdrawals. (O'Malley Lumber Co. (1978) 234 NLRB 1171 [98 LRRM 1166]; Philip Carey Mfg. (1963) 140 NLRB 1103 [52 LRRM 1184]; NLRB v. Randle-Eastern Ambulance Service (5th Cir. 1978) 584 F.2d 720 [99 LRRM 3377].) Except for the fact that Respondent and the UFW were closer to a complete collective bargaining agreement following years of negotiation, the circumstances which existed at the time tentative agreements were reached on most of the articles of the proposed contract had not altered as of the time Respondent withdrew from those tentative agreements. We find Respondent's wholesale and unilateral withdrawal from its prior tentative agreements constituted bad faith bargaining on Respondent's part. (San Antonio Machine Corp. v. NLRB (5th Cir. 1966) 363 F.2d 633 [62 LRRM 2674]; Birmingham Plastics, Inc. (1975) 221 NLRB 141 [90 LRRM 1482].)

Accordingly, we affirm the ALJ's findings on that issue and conclude that Respondent violated section 1153(e) and (a) of the Act by failing and refusing to bargain collectively in good faith with the UFW as of November 22, 1978,[5/] and we shall order Respondent to make its employees whole for all losses of pay and other economic losses they suffered as a result of that violation.

[5/] General Counsel asserts that Respondent's bad faith was manifest at an earlier date. We agree with the ALJ that General Counsel failed to meet her burden of proof on that issue.

Discriminatory Refusals to Rehire Employees

The ALJ concluded that Respondent, in order to reduce the proportion of UFW supporters in its work force, violated section 1153(c) and (a) by discriminatorily refusing to rehire former employees to its 1978-79 pruning season and by hiring a labor contractor crew (the Atad crew) perceived as hostile[6/] to the UFW, to prune its wine grapes. The ALJ, utilizing a "group analysis", found that all former employees of Respondent from the towns of Huapamacato or Changitiro, Mexico, were viewed by Respondent as supporters of the UFW. Applying Kawano, Inc. (1978) 4 ALRB No. 104 (see also J. R. Norton (1982) 8 ALRB No. 76), the ALJ recommended that all former employees from those two towns who worked for Respondent during the previous harvesting season and who timely expressed an interest in reemployment for the next pruning season and were denied rehire should be reinstated and made whole for their lost wages. We find merit in Respondent's exceptions to the ALJ's findings and conclusions for there is insufficient evidence to support a finding that Respondent altered its usual hiring practices to render it difficult or impossible for returning workers from the two Mexican towns to be rehired or that Respondent manifested animus toward those Mexican residents, or that there was other

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[6/] The ALJ found the Atad labor contracting crew to have a history of strikebreaking activity at three other ranches involved in labor disputes with the UFW. She noted that the exorbitant commission paid to the Atad crew by Respondent was not adequately explained by David Arakelian. Coupling that evidence with the Atad crew's connection to Alpha Agency and the fact that the decertification and rival-union petitions arose primarily from within that crew, the ALJ concluded that crew was opposed to the UFW and that Respondent knew of its opposition to the UFW.

evidence justifying a group-type analysis.

In Kawano, Inc., supra, 4 ALRB No. 104, statements and acts of the employer and several of its foremen supported the finding that the employer had dismantled its raitero system (a process of recruitment) to make it difficult or impossible for pro-union employees to be rehired. In J. R. Norton, supra, 8 ALRB No. 76, the evidence established that supervisors changed their usual hiring practices in order to make it difficult or impossible for the group members to apply, and that such changes were specifically aimed at the group identified. In the instant matter, however, not only is the record devoid of supervisory statements directed against a group, but there is little or no evidence of changed practices. Respondent's seniority system was begun in 1975 or 1976, and the practice of teaching pruning was discontinued in 1976. Accordingly, we find that a group analysis is not appropriate on this record.

Treating separately each individual alleged to have been discriminatorily refused rehire, the General Counsel has the burden of proving that the employee made a proper application for work, at a time when work was available, and that Respondent failed or refused to rehire the employee because of his or her union support or other protected concerted activity. (Sam Andrews' Sons (1980) 6 ALRB No. 44; Royal Packing Co. (1982) 8 ALRB No. 74; Ukegawa Brothers (1982) 8 ALRB No. 90.)

Of the 12 employees found to be discriminated against, Hippolito Aguilar testified that he applied for work in November 1978, for employment on behalf of himself and his three sons (Jorge, Luis and Ramon) and returned twice to renew his applications. He

was denied employment each time for himself and his sons. Arakelian and Louis Linian (a foreman for Respondent) testified that Hippolito Aguilar never applied for pruning work. Respondent admitted that the Aguilar family are competent pruners and had engaged in activities in support of the UFW which were known to Respondent. The ALJ found that Respondent failed to hire the Aguilars, known supporters of the UFW, in order to provide more hours to the Atad crew, known for its opposition to the UFW. Respondent's rebuttal, that they never applied for work, was found to be pretextual by the ALJ. As those findings were based primarily on the ALJ's resolution of witness credibility, we affirm them and will order that those members of the Aguilar family be offered reinstatement and compensated for any wages and benefits lost as a result of Respondent's discrimination against them.

Roberto Muniz Garibay (Muniz) testified that he called Arakelian to ask for work on January 16, 1979, and was told to apply to foreman Eugene Esau and that when he did so, Esau told him Arakelian had ordered that he not be hired. Arakelian testified that following the phone call, Muniz never applied, but the ALJ credited the testimony of Muniz. Muniz' union activity was organizing on behalf of the UFW and he had attended negotiating sessions and his activities were known to Respondent. The ALJ has ascribed an unlawful motive to Respondent for refusing rehire to UFW adherents. As the General Counsel has adequately established a prima facie case, and as Respondent's defense was discredited by the ALJ, we conclude that Respondent refused to rehire Muniz in violation of 1153(c) and (a) of the Act.

Rafael Arroyo Padilla testified that he was a member of the large group tested for pruning ability and that Esau admitted to him that he knew how to prune. Esau denied making that statement, but the ALJ credited Rafael Arroyo Padilla's testimony. The ALJ found that Padilla attended negotiating sessions in October 1978, and was active in union organizing in 1975, and that a reason for Respondent's failure to hire regular employees for pruning was to increase the hours available to the Atad crew and consequently reduce UFW support at the ranch. We affirm the ALJ's findings and her conclusion that Respondent's failure to rehire Padilla was a violation of section 1153(c) and (a) of the Act.

The ALJ found that Prudencio Arroyo was discriminatorily denied rehire along with Rafael Arroyo Padilla and for the same reason. Prudencio did not testify at the hearing. Although he had worked in Respondent's 1978 harvest, there is no indication that he had ever worked for Respondent, or any other grower, as a pruner. The extent of his union activities while at Arakelian Farms appears to have occurred contemporaneously with the UFW's election campaign in 1975. The only record evidence in support of Prudencio's application for work in December of 1978 is a reference to his name among the workers whom Rafael Arroyo Padilla and Felipe Vega recalled seeing there at that time. Melquidas Vega, on the other hand, the admitted source of at least Arroyo's account of the events of December 4, named about 15 workers he recalled seeing on that date but Prudencio's was not among them. Melquidas' omission of Prudencio's name of course is not conclusive as to whether or not he was present. However, the testimony of

Prudencio's brother, Rosendo Arroyo, cannot be ignored.

Rosendo testified (pursuant to subpoena) that five members of his family, including Prudencio and himself, were deported to Mexico on October 20, 1978. Rosendo further testified that he was the first member of his family to again venture out of Mexico, and that he did not do so until August 1979, nine months after Prudencio allegedly applied for work at Respondent's Livingston ranch office.

In Broadmoor Lumber Co. (1977) 227 NLRB 1123 [95 LRRM 1117], the National Labor Relations Board stated that allegations in a complaint should be dismissed when the testimony presented by the General Counsel "has been rebutted by directly conflicting evidence presented by Respondent." Similarly, in S. Kuramura, Inc. (1977) 3 ALRB No. 49, we held that the General Counsel has not met his burden of proof when "we are faced with a direct conflict in testimony ... and there is no additional evidence to shed light on the truth of the allegation." We therefore dismiss the allegations in the complaint as to Prudencio Arroyo.

We reverse the ALJ's findings as to Ricardo Castoro, Jesus Garibay, Salvador Savala (also known as Jose Garcia), Javalino Vega and Pedro Vega, for Respondent's business justification for refusing rehire (i.e., that these workers were not qualified pruners) stands uncontradicted. Accordingly, Respondent has met its burden of proof on this issue. (Royal Packing (1982) 8 ALRB No. 74.)

The ALJ recommended dismissal of the allegations as to Eduardo Arroyo, Galdino Arroyo, Logano Garibay, Constantino Hurtado, Vidal Hurtado and Daniel Solorio, because they did not work during the 1978 harvest operation. General Counsel excepted to the ALJ's

finding as to those six employees on the basis that they made an application for work when work was available. However, we affirm the ALJ's findings and conclusions here as we find that General Counsel has failed to adequately establish the other elements of a prima facie case as to these six individuals.

Amalgamated Farm Labor Union (AFLU)

In May of 1978, the AFLU was formed as part of a larger organization--the Multi Filipino Service Center, Inc. (MFSC). While the exact relationship between AFLU and MFSC was not clarified, the Atad labor contractors were involved with the directing of MFSC and friendly with the leadership of AFLU. In January 1979, AFLU decided to organize among Respondent's employees and on January 19, 1979, filed a petition for certification as representative of Respondent's employees. The support for AFLU was apparently derived exclusively from members of the Atad crew. The Regional Director dismissed the petition on January 25, 1979, and the next day AFLU picketed and engaged in a strike at Respondent's ranch.

Respondent reacted to the limited picketing by laying off all of its nonstriking employees for a period of three days. The ALJ concluded that the layoff constituted unlawful support and assistance to a labor organization (AFLU) and therefore violated section 1153(b).[7/] The ALJ also found that Respondent's reaction to the limited picketing (i.e., the cessation of operations)

[7/] Section 1153 of the Act provides that it is an unfair labor practice for an agricultural employer:

> (b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

discriminated against the nonstriking employees of Respondent on the basis of their union activities (i.e., prior support for the UFW). Therefore, she concluded that Respondent had also violated section 1153(c) and (a). However, she found that, since Respondent did not begin bargaining with AFLU, its conduct did not amount to unlawful recognition of AFLU in violation of section 1153(f). Both Respondent and General Counsel excepted to the ALJ's analysis.

The ALJ found that the AFLU strike activity was to protest the dismissal of the petition and to pressure Respondent into obtaining a quick election. Following the picketing by AFLU members at the labor camp on the morning of January 26, the supervisor of the Atad contractor crew, Fred Rayray, informed David Arakelian that the Atad workers would not be coming to work because of the picketing. The pickets (there were four in number) then transferred their attention to Respondent's ranch where they picketed from mid-morning to noon in a peaceful manner with apparently no interaction between the pickets and the non-Atad employees.

David Arakelian testified that after learning of the brief picket line at the labor camp and then seeing the pickets later at his offices, he was alarmed and consulted with his new advisor for labor relations, Lee Brewer of Alpha Agency. Arakelian then decided to shutdown operations to avoid escalation of the picketing. Simultaneously, Respondent filed suit in Superior Court for a Writ of Mandate to have the Regional Director's dismissal of the AFLU petition overturned and to require an election be held. The petition alleged Respondent was suffering irreparable harm because "the employees of [Respondent] have commenced a strike and picketing

activities at [Respondent's] ranch, which have halted all pruning activities.". The ALJ found that Arakelian made the decision to seek a writ on Thursday, January 25, the day preceding the picketing.

On January 27 and 29, three pickets returned for several hours each day to Respondent's operation. No Atad worker came to work and the nonstriking employees were continued on layoff status. On January 29, the petition for the writ was denied and the next day Atad employees returned, the laid-off employees were recalled and no further picketing occurred.

The ALJ found Respondent's conduct, in the face of the dismissal of AFLU's petition for certification and AFLU's picketing, to be unlawful assistance to AFLU. She based her findings on the following reasons: (1) Respondent was fully aware of AFLU's organizational activities; (2) Arakelian was aware of AFLU support petitions being circulated during working hours and did not order the activity to be halted; (3) the court action was aimed at supporting AFLU's attempt to get an election in which the UFW might be ousted, and would have been interpreted by the other employees as employer support for AFLU; (4) the layoff of nonstriking employees, known to Respondent as UFW supporters, was not based on fear of confrontation but rather was calculated to give an appearance of strength to AFLU and to intimidate the UFW; (5) the hiring of the Atad crew was to reduce the UFW support in the bargaining unit and to give AFLU a base on which to operate at Respondent's premises; and (6) Respondent refused to rehire UFW supporters.

To establish a violation of section 1153(b), there must be a finding that "the degree or nature of the employer's involvement

with the labor organization has impinged upon the free exercise of the employees' rights under section 1152 of the Act to organize themselves and deal at arm's length with the employer." (Bonita Packing Co. (1977) 3 ALRB No. 27; Miranda Mushroom Farm, Inc. (1980) 6 ALRB No. 22.) We have applied this section of the Act when an employer has given expanded access to one union during organizational activities (Sam Andrews' Son (1977) 3 ALRB No. 45; Dave Walsh Company (1978) 4 ALRB No. 84); urged a vote for one union over another through threats or collaboration with the favored union (George Lucas and Sons (1978) 4 ALRB No. 86; Louis Caric & Sons (1978) 4 ALRB No. 108); or assisted in the formation of an independent rival labor organization (Miranda Mushroom Farms, supra, 6 ALRB No. 22). While we have concluded that the ALJ's finding of group discrimination was unwarranted herein, the record otherwise supports the ALJ's conclusion that Respondent became unlawfully intertwined with AFLU organizational activity and otherwise manifested support for the rival union. We therefore conclude that Respondent violated section 1153(b) and (a) by its support and assistance for AFLU.

Subsidiary to the above charge of unlawful domination or support of AFLU, the General Counsel also alleged that Respondent violated section 1153(f) by its support and recognition of AFLU. The ALJ rejected that allegation on the grounds that no evidence was presented showing Respondent bargained or signed a contract with AFLU. General Counsel excepted to that conclusion.

Section 1153(f) of the Act provides that it is an unfair labor practice for an agricultural employer:

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> To recognize, bargain with, or sign a collective bargaining agreement with any labor organization not certified pursuant to the provisions of this part.

No evidence was presented that Respondent bargained with or signed a collective bargaining agreement with AFLU. Rather, General Counsel argued that the actions of Respondent amounted to recognition of AFLU. (See, ILGWU v. NLRB (1961) 366 U.S. 731 [81 S.Ct. 16]; Morris, The Developing Labor Law (1971) p. 145.)

Although we have never found an instance of an employer acting in violation of 1153(f), we stated in Nish Noroian (1982) 8 ALRB No. 25, that a purpose of 1153(f) is to establish that the essential precondition for a union's recognition by an employer is certification through a secret ballot election. (Id., at p. 13. See also Harry Carian Sales (1980) 6 ALRB No. 55.)

We do not agree with the ALJ that in order to prove a violation of section 1153(f), the General Counsel must prove that an agricultural employer bargained with or executed a contract with a union not certified by this Board as the exclusive representative of its agricultural employees.

In the present instance, where Respondent ceased operating and then petitioned a superior court to allow an election between those labor organizations, no violation of section 1153(f) has been established. Respondent's misguided attempt to elevate AFLU's status constituted unlawful assistance but it did not amount to an unlawful recognition of AFLU as a representative of its work force.

We otherwise affirm the ALJ's findings and conclusions and we conclude that Respondent's layoff of its regular, non-labor-contract employees, from January 26 to 30, because of their support

for the UFW violated section 1153(c) and (a) of the Act. We hereby dismiss the allegation that Respondent violated section 1154.6 of the Act by hiring the labor contractor crew, and the allegation that Respondent violated section 1153(c) and (a) by its cessation of operations from February 12 through March 7, 1979.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Arakelian Farms, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire, laying off, ceasing operations, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in union activity or other concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) Failing or refusing to meet and bargain collectively in good faith with the United Farm Workers of America, AFL-CIO (UFW), the certified bargaining representative of Respondent's agricultural employees.

(c) Rendering unlawful aid, assistance or support to the Amalgamated Farm Labor Union or any other labor organization.

(d) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed them 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 to the following-named employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights or privileges:

Hippolito Aguilar	Ramon Aguilar
Jorge Aguilar	Roberto Muniz Garibay
Luis Aguilar	Rafael Arroyo Padilla

(b) Make whole the above-named employees for all losses of pay and other economic losses they have suffered as a result of the discrimination against them, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(c) Make whole all agricultural employees laid off by Respondent from about January 26, 1979, to about January 30, 1979, for all losses of pay and other economic losses they have suffered as a result of the discrimination against them, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(d) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its agricultural employees with respect to said employees' rates of pay, wages, hours, and other terms and conditions of employment and if agreement is reached, embody such agreement in a signed contract.

(e) Make whole all agricultural employees employed

by Respondent for all losses of wages and other economic losses they have sustained as the result of Respondent's refusal to bargain with the UFW during the period from November 22, 1978, to January 25, 1980, and thereafter until such time as Respondent commences to bargain in good faith with the UFW.

(f) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay and makewhole periods, and the amounts of backpay, makewhole, and interest due under the terms of this Order.

(g) Sign the Notice to Agricultural Employees attached herto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(h) Provide a copy of the attached notice in the appropriate language to each employee hired by Respondent during the twelve-month period following the date of issuance of this Order.

(i) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time between November 22, 1978, to January 25, 1980, and thereafter until such time as Respondent commences to bargain in good faith with the UFW.

(j) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for

60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(k) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined 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 the employees may have concerning the Notice or 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 in order to compensate them for time lost at this reading and during the question-and-answer period.

(l) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: May 12, 1983

ALFRED H. SONG, Chairman

JEROME R. WALDIE, Member

MEMBER McCARTHY, Concurring and Dissenting:

I dissent from the majority decision insofar as it finds that Respondent violated the Agricultural Labor Relations Act (Act) by its layoff of all pruning crews for a three-day period in response to strike activity by a rival union and the further findings that Respondent discriminatorily refused to rehire former employees during the same pruning season.

Layoff. Where my colleagues and I differ with regard to the layoff matter is both in the initial characterization and the ultimate resolution of an issue that has been surrounded by doubts since the outset. While I am not prepared to conclude that Respondent's conduct was beyond the reach of the Act, neither am I persuaded that either the Administrative Law Judge (ALJ) or the majority has as yet propounded a statutorily viable legal principle in support of their findings.

Refusals to Rehire. Until 1974 Respondent was willing to take inexperienced pruners, providing they had worked for

Respondent in the harvest operations, and offer them on-the-job training. That practice was discontinued and replaced with a hiring policy that was strictly followed in all subsequent pruning seasons. First hiring priority was given to workers who had worked for Respondent in the prior pruning season. Second priority was accorded those workers who had been employed during the immediately preceding harvest season and who, in addition, could demonstrate, to Respondent's satisfaction, their ability to prune.

It is undisputed that Respondent commenced the hiring of pruners for the relevant 1978-79 season on December 4, 1978. All potential hirees who had previously applied at the office were advised to report to the ranch on that date at 7 a.m. The majority finds that five harvest workers made proper applications for work as pruners at the beginning of the season at a time when work was available, that each of them was qualified to perform the work he/she sought, and that they were discriminatorily denied rehire because of their union activities. The majority has also found that a sixth former employee applied for work after the season had commenced and that he likewise was denied further employment because of his union activities. My disagreement with each of these findings is discussed seriatim below.

Rafael Arroyo Padilla. In 1974, Rafael Arroyo Padilla worked for Respondent as a grape harvester and for a short time later that same year as a pruner-trainee. There is no record evidence that he ever again performed pruning tasks for any grower. He did not work for Respondent in 1975 although he was very active on Respondent's premises that year as a non-employee organizer

for the UFW. Notwithstanding that activity, Arroyo was subsequently rehired by Respondent in the 1976, 1977 and 1978 harvest seasons.

Arroyo testified that he had heard from other workers that hiring for the 1978-79 pruning season would commence on December 4, 1978. He reported to Respondent's office on that date along with 20 to 30 other applicants. He testified further concerning the events which occurred at that time, including David Arakelian's announcement to the assembled applicants concerning the Company's hiring practices. However, Arroyo admitted in his testimony that he had no personal knowledge and did not actually hear anything Arakelian said. He explained that he stood apart from the group and conceded that his entire account was based essentially on a report he received from another applicant, namely, Melquidas Vega.

Arroyo nevertheless quoted Arakelian as having announced to the workers that he would first hire those applicants who had worked for Respondent in the 1977 pruning season; the second group of hirees would be drawn from workers who had just completed the 1978 harvest and who knew how to prune.[1/] Arroyo said about 18 to 23 of the workers who were present met one or the other of those qualifications and were immediately hired, including Vega, who had worked as a pruner in the previous pruning season.

Arroyo also testified that Arakelian then advised all remaining applicants that they could apply again at a later date. Arroyo said he and seven other workers returned eight days later

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[1/] Because of my disposition of this issue, I do not find it necessary to address the hearsay nature of Arroyo's testimony.

and were informed by foreman Eugene Esau that although work was available, the foreman first wanted to test each applicant's ability to prune. Consequently, the workers were given new pruning shears and then directed to a vineyard where each of them was instructed to prune one vine while Esau observed their work. After about fifteen minutes, according to Arroyo, Esau called out, "Stop right there. Give me all your shears." Arroyo stated that while some of the other applicants clearly did not know how to prune, Esau had said to him, "You know how to prune, Rafael." Esau flatly denied having made such a statement,[2/] insisting instead that none of the applicants knew how to prune and in fact "ruined the vines." Esau said he told the group, "You'll have to learn [how to prune] and we'll still give you a chance if you can learn." None of the applicants thereafter returned to seek work as pruners.

Respondent contends that Arroyo did not present himself at the ranch at any time during the relevant pruning season and suggests that the whole of his testimony is a fabrication. Indeed, there are several notable discrepancies in Arroyo's account when compared to the version submitted by Vega, the admitted source of the basis of Arroyo's testimony. For example, although Arroyo admitted that he had not actually heard Arakelian address the workers, he also insisted that Arakelian cannot speak Spanish and

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[2/] The ALJ failed to resolve the direct conflict in testimony. However, she did credit Arroyo's testimonial claim that he had pruned before and then concluded that "he knew how to prune by virtue of his having pruned in the past." As a practical matter, even if the ALJ were qualified to make such a judgment, her subjective assessment would have no bearing on Respondent's particular requirements with respect to the skills or expertise of even experienced pruners.

that he therefore utilized as an interpreter foreman Luis Linan. As discussed below, Linan, during all times pertinent herein, was either in the hospital for surgery or had just been released for further recuperation at home. Under intense cross-examination by Respondent, Arroyo finally suggested that he may have confused Linan with his own foreman, that is, Manuel Valdez. Given Linan's visible supervision of the overall ranch operations during Arroyo's prior employment, it is difficult to imagine how he would mistake someone else for Linan, particularly his immediate foreman. Vega, on the other hand, testified that Arakelian did not need an interpreter and in fact addressed the group directly in Spanish. Another contradiction in the testimonial accounts concerns the location where Arroyo and other applicants were later required to demonstrate their pruning skills. While Arroyo had described the test field as just 20 to 30 feet in front of Respondent's office, Vega testified that the field was on Magnolia Avenue, a considerable distance from the office.

Viewing General Counsel's case in the best possible light, and assuming that Arroyo personally applied for work on two separate occasions, General Counsel has not established that, "but for" Arroyo's union activities <u>three years</u> earlier, he would have been hired as a pruner in the relevant season. Since Arroyo was rehired in the 1976, 1977, and 1978 harvests, even after his active role in the election campaign as an organizer for the UFW in a unit of Respondent's employees, it strains the imagination to understand how the majority can conclude that, absent any evidence that he had ever pruned except during a short training period four years

earlier, he was not hired in that capacity in 1978 solely because of his long-past union activities.

On the basis of the above record evidence, it is clear, and I would find, that General Counsel has not proved a prima facie case of discrimination against Arroyo and that the allegation in the complaint to that effect should be dismissed.

Hipolito Aguilar. Mr. Aguilar worked in Respondent's grape harvests each year since 1965. Some time after 1975, his family, including sons Luis, Jorge, and Ramon, joined him in the harvest. In 1978, only Aguilar, his wife, and a daughter harvested for Respondent. The sons picked grapes that year for Bacchus Farms, a neighboring grape grower, for whom the entire Aguilar family had always worked during the pruning season. Aguilar said he decided to seek work with Respondent as a pruner for the first time in 1978. He was not hired in that capacity but did resume work with Respondent in the subsequent harvest season.

In November 1978, following completion of the harvest, Aguilar went to the home of ranch supervisor Luis Linan to learn when Respondent expected to commence pruning and to ask for work for himself and his three sons. Linan had incurred a back injury in October of that year which required surgery in late November, followed by a 10-day period of hospitalization and then home recuperation through December and possibly longer. Aguilar said Linan explained to him that he would not be involved in the pruning operations at all that season and told him he should apply at Respondent's office.

Aguilar testified that he did not thereafter apply at

Respondent's office but did make three visits to the home of foreman Eugene Esau. He said Esau was not able to give him much information on the first visit but advised him that he should return in about two weeks. Aguilar said he was informed by Esau on a return visit that pruning had started but with just a few workers who had pruned for Respondent the year before. Aguilar said Esau told him Respondent expected to hire more workers and asked him whether he knew how to prune. Aguilar testified further that on his third and final visit to Esau's home, Esau told him that David Arakelian was looking for people who knew how to prune and suggested he return in about two or three days to the office "because David was going to come and see how many more people he would be taking." Aguilar did not follow Esau's advice.

The entire Aguilar family, as they had in years past, worked for Bacchus Farms throughout the 1978-79 pruning season. Aguilar said he conceded to Luis Linan and David Arakelian, at the time he signed up for the 1979 harvest in August of that year, that although Esau had told him he didn't know what the job situation would be and that he should make application at the office, he did not do so because he was working for another grower at the time and, further, that Esau had not guaranteed him employment as a pruner.

The ALJ found merely that Aguilar requested pruning work in a discussion with foreman Esau in November 1978, but overlooks Aguilar's own testimony that Esau had told him both that he should apply at the office and that David Arakelian, not Esau, would be hiring workers in the forthcoming pruning season. It is abundantly clear that Aguilar did not make a proper application for work. Even

had Aguilar made a proper application for work at a time when work was available, there is no evidence that he, or his sons, were qualified to be hired by Respondent. None of them had ever pruned for Respondent. The fact that they had worked as pruners for other growers does not in itself necessarily support an inference that they would have met Respondent's requirements in that regard. Under these circumstances, I cannot understand how the majority can justify its finding that, "but for" Mr. Aguilar's minimal union activity some three years before, not only he, but three other members of his family would have been hired in the 1978-79 pruning season. I would dismiss the allegation in the complaint concerning the Aguilar family, based on the General Counsel's failure to establish a prima facie case.

Roberto Muniz. Roberto Muniz Garibay (Muniz) left for Mexico following completion of Respondent's 1978 harvest operations. He returned to California on December 28 of that same year. He had not worked for Respondent as a pruner since 1975.

One evening in early January 1979, he telephoned David Arakelian at his home to inquire whether there might be any pruning work for Nicasio Garibay and himself.[3/] Muniz testified that Arakelian told him he wasn't sure whether work was available but

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[3/] With regard to the phone call by Muniz to Arakelian, Respondent relies on the following exchange between Muniz and UFW counsel Dianna Lyons to suggest that it had been "set-up" by the UFW in an orchestrated attempt to allege and "prove" a violation of the Act. Muniz testified initially that he made the call from his house, in the presence of three other of Respondent's employees. He said "they" called the operator in order to ascertain Arakelian's home phone number. However, on redirect examination by the UFW, Muniz modified his prior testimony to state that Dianna Lyons herself was present and helped him get Arakelian's home telephone number.

suggested that Muniz make direct contact with Esau at the ranch the following morning.

Garibay alone went to the ranch two days later and was hired by Arakelian even though there were only about four days remaining in the pruning season.

Muniz testified that he did not report to the ranch because he had just gone to work for another farming operation. Instead, according to his testimony, he went to Esau's house in the afternoon of the day after he had spoken with Arakelian but could not find the foreman at home. He said he later telephoned Esau and was told that Arakelian didn't have a job for him because he had a lot of people.[4/] Esau denied that Muniz had that conversation with him. The ALJ, without more, merely "credit[ed] the testimony that Robert Muniz requested work from Eugene Esau in January 1979."

Muniz also testified that in the past he had always gone directly to the ranch to learn whether work was available and that he had never before telephoned a foreman at home. When asked about his union activities, Muniz said he had supported the UFW in the preelection period in 1975 and had since attended three negotiations sessions. He suggested that while his union activities and those of Garibay's were about equal, he pointed out that only Garibay had attended the most recent negotiations sessions with Company representatives preceding Garibay's hire in January of 1979.

In order to establish a prima facie case of discrimination in violation of Labor Code section 1153(c) and (a), General Counsel

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[4/] The majority misconstrues Muniz' testimony by finding that, "Esau told him Arakelian had ordered that he not be hired."

must prove that Respondent would have hired Muniz "but for" his union activities (which were minimal and very remote in time). But here, as in Royal Packing Co. v. ALRB (1980) 101 Cal.App.3d 826,

> What is lacking, however, is substantial evidence from which the Board could draw the inference of a causal nexus ... that [the employee] would not have been discharged 'but for' his union activities or that his union activities were a 'moving' or 'substantive' cause of his discharge.

Given Muniz' own account of Garibay's much more recent union activities (in relation to his own), the fact that Garibay was promptly hired when he applied at the ranch (as both employees had been advised to do), and the fact that Muniz did not follow that advice and did not thereafter apply for work at the ranch, there is simply no basis for finding that Respondent discriminated against Muniz or would have hired him "but for" his union activities. I would dismiss the allegation based on the General Counsel's failure to establish a prima facie case.

Dated: May 12, 1983

JOHN P. McCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we, Arakelian Farms, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing to bargain in good faith with the exclusive representative of our employees, the United Farm Workers of America, AFL-CIO (UFW); by failing to rehire six former employees for the 1978-1979 pruning season; and by shutting down operations from January 26-30, 1979, in the midst of pruning operations in order to give unfair aid and assistance to the Amalgamated Farm Labor Union (AFLU). The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

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

WE WILL NOT lay off or refuse to rehire any employee because he or she joins, assists or favors the UFW or any other labor union.

WE WILL NOT fail or refuse to bargain on request with the UFW as the representative of our agricultural employees.

WE WILL NOT give unlawful aid or support to the AFLU or any other labor organization.

WE WILL, on request of the UFW, meet and bargain in good faith with the UFW about a contract because the UFW is the representative chosen by our employees.

WE WILL reimburse each employee employed by us at any time on or after November 22, 1978, during the period when we were failing to bargain with the UFW in good faith, for any money he or she may have lost, plus interest, as a result of our failure to bargain.

WE WILL pay Hippolito Aguilar, Jorge Aguilar, Luis Aguilar, Ramon Aguilar, Roberto Muniz Garibay and Rafael Arroyo Padilla any money they may have lost, plus interest, as a result of our failure to rehire them for the 1978-1979 pruning season.

WE WILL pay each of the employees we unlawfully laid off from about January 26, 1979, to about January 30, 1979, any money they may have lost, plus interest, as a result of that layoff.

Dated: ARAKELIAN FARMS

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California, 93215. The telephone number is (805) 725-5770.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Arakelian Farms
(UFW)

9 ALRB No. 25
Case Nos. 78-CE-23-F,

ALJ DECISION

In October 1975, the United Farm Workers of America, AFL-CIO (UFW) was certified as the bargaining representative of Respondent's (Arakelian Farms) agricultural employees. For nearly three years the parties bargained toward a contract. In September 1978, the UFW thought a contract had been reached and submitted a version of the contract for ratification to Respondent's workers. Meanwhile, Respondent hired a new negotiator and at the next bargaining session attempted to continue bargaining. However, the UFW permitted only question-and-answer sessions over what it viewed as a final, ratified agreement. On November 22, Respondent withdrew a majority of its tentative agreements to the contract proposals and submitted alternatives to most of the articles in the contract. The parties ceased meeting in late November 1978.

In December 1978, Respondent hired a new labor contractor, Atad, to participate in the pruning of the grapevines and denied hire to some of its regular employees. A petition for certification of the Amalgamated Farm Labor Union (AFLU) was circulated among the Atad workers and received signatures from the labor contractor crew. That petition was dismissed by the Regional Director on January 25, 1979. Four members of AFLU picketed for a short time outside the labor camp of the Atad crew and at an entrance to Arakelian Farms on January 26, 1979. Respondent thereafter shutdown all operations for three days and filed for a writ of mandamus in the Merced Superior Court to force an election on the petition by AFLU. Respondent alleged the picketing by AFLU and the shutdown of operations required that an election be ordered. The court denied Respondent's writ and review of the court's decision was also denied. Operations reopened on January 30, and pruning continued. Several unfair labor practice charges were filed by the UFW and a complaint issued charging that Respondent, by the above summarized actions, violated sections 1153(a), (b), (c), (d), (e) and (f) as well as 1154.6 of the Agricultural Act (Act). The ALJ found that Respondent violated section 1153(e) by its unilateral withdrawal of its tentative agreements to the contract proposals. She concluded, however, that Respondent did not refuse to sign a fully executed collective bargaining agreement, finding that several articles were still undecided at the time of the refusal.

The ALJ concluded, using a group discrimination analysis, that Respondent's refusal to rehire employees and to instead utilize the Atad contracting crew was a violation of section 1153(c) as to those employees denied rehire. She found that Respondent discriminated against all employees from two towns in Mexico because of their prior UFW support, and that Respondent hired the Atad crew because of its prior anti-UFW activity.

The ALJ also found that Respondent's cessation of operations from January 26-30, 1979, violated section 1153(b) and (c) as it tended to intimidate UFW supporters, and to give a legitimacy to AFLU's organizational activity that it would otherwise lack, and that the cessation of operations discriminated against non-Atad employees in retaliation for their prior UFW support.

The ALJ recommended dismissal of the charge that Respondent hired Atad with the intent of having them vote in an election, and that Respondent discriminated against its employees for laying off workers at the end of the pruning operations.

BOARD DECISION

The Board affirmed the rulings, findings and conclusions of the ALJ as modified. The Board found that the use of a group analysis was unwarranted absent changed practices directed at the group, anti-group statements or other retaliation by Respondent's supervisors or other factors justifying deviation from an individual analysis. The Board also amended the ALJ's analysis of the question of whether Respondent had violated the Act by either recognizing, bargaining with, or signing a contract with a labor organization not certified by the Board, but agreed that Respondent had not violated this provision of the Act.

DISSENT

Member McCarthy declined to join in the finding that Respondent violated the Act when it laid off all pruning crews for three days. He also would find no evidence that Respondent unlawfully refused to rehire any employees because of their past union activities.

* * *

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

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STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

* * * * * * * * * *

ARAKELIAN FARMS,	*	Case Nos. 78-CE-23-F
		78-CE-23-1-F
Respondent,	*	79-CE-1-F
		79-CE-8-F
and	*	79-CE-19-F
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	*	
	*	
Charging Party.		
	*	

* * * * * * * * * *

Judy Weissberg, Esq., of Fresno, Calif.
for the General Counsel

Littler, Mendelson, Fastiff & Tichy, by
George J. Tichy II, Esq., and Robert
K. Carrol, of San Francisco, Calif.,
for Respondent

Diana Lyons, Esq., of Sacramento, Calif.,
for the Charging Party

DECISION OF
ADMINISTRATIVE LAW OFFICER

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I. STATEMENT OF THE CASE

BEVERLY AXELROD, Administrative Law Officer: These cases were heard before me during thirty-one days of hearing: July 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 30, 31, August 1, 2, 1979 (Modesto, California); October 18 and 24, 1979 (Patterson, California); October 25, 1979 (San Francisco, California); October 30, 31, November 1, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 1979 (Patterson, California); December 14, 1979 (San Francisco, California.[1/] The complaint was issued on January 25, 1979, and was amended three times. The complaint alleges violations of Sections 1153(a), (b), (c), (d), (e) and (f), and Section 1154.6 of the Agricultural Labor Relations Act, herein called the Act, by Arakelian Farms, herein called Respondent. The complaint is based on five charges and amended charges filed in 1978 and 1979 by United Farm Workers of America, AFL-CIO, herein called UFW. There are several disputed procedural issues raised by Respondent concerning the filing and serving of the charges and the investigation of the complaint; these issues and the somewhat complex procedural history of these cases are discussed in Section IV of this decision, infra. The order consolidating cases was issued May 4, 1979. The Third Amended Consolidated Complaint was issued on June 26, 1979. I denied a motion by General Counsel at the hearing to amend the complaint a fourth time to add an additional party-respondent. (Tr. XI: 4)

All parties were given full opportunity to participate in the hearing,

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[1/] Three volumes of the Reporter's Transcript were originally misnumbered. These have been corrected as follows: Volume XX (November 1, 1979) (originally misnumbered XXI); Volume XXVII (November 14, 1979) (originally misnumbered XVII); and Volume XXVIII (November 15, 1979) (originally misnumbered XXX). Thus numbered, the Transcripts now read in the normal chronological order. References to the Transcript will be abbreviated "Tr.", followed by the volume and page(s). References to General Counsel's exhibits are abbreviated herein "GCX", references to Respondent's exhibits are abbreviated here "RX", and references to the Charging Party's exhibits are abbreviated herein "CPX".

and after the close thereof the General Counsel and Respondent each filed an extensive brief in support of its respective position.

In view of the number of alleged violations of the Act, I have found it preferable to proceed by initially summarizing and outlining the allegations, and then discussing my findings of fact and conclusions of law together as to each of the alleged violations in turn.

Based upon the entire record, including my observations of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I have found and concluded that some of the alleged violations of the Act have been proven, while others have not been proven, all as stated in the following sections of this decision.

II. SUMMARY OF THE ALLEGATIONS

The General Counsel alleges that in 1978 and 1979 Respondent engaged in a pattern of anti-UFW activities involving ten violations of the Act (paragraph reference is to the paragraph in the Third Amended and Consolidated Complaint, GCX: 1S):

1. Respondent in late 1978 repudiated and refused to execute an agreement on a contract with the UFW. (Paragraph 9)

2. Respondent in late 1978 refused to rehire twenty (20) named persons because of their support for and activities on behalf of the UFW. (Paragraph 10)

3. Respondent in late 1978 hired the Rose Arad labor contractor for the primary purpose of employing workers to vote in decertification and representation elections. (Paragraph 11)

4. In January 1979, Respondent through the Arad labor contractor solicited employees to sign a decertification petition against the UFW. (Paragraph 12)

5. On January 19, 1979, Respondent, through the Arad labor contractor, assisted and supported a union on Respondent's premises, the Amalgamated Farm Labor Union (herein AFLU), by soliciting employees to sign authorization cards for the AFLU. (Paragraph 13)

6. On January 26, 1979, Respondent supported an AFLU strike. (Paragraph 14)

7. On January 16, 1979, Respondent engaged in surveillance of employees who were talking with UFW representatives. (Paragraph 15)

8. On January 26, 1979, Respondent laid off (pruning) employees for three days in order to support an AFLU strike. (Paragraph 16)

9. In February 1979, Respondent laid off employees for twenty-two days because of their support for the UFW and because the employees had filed charges and given testimony to the Agricultural Labor Relations Board (ALRB). (Paragraph 17)

10. In April 1979, Respondent refused to rehire two employees because of their support for the UFW. (Paragraph 18)

The General Counsel alleges that individually and in several overlapping combinations, the above ten incidents violated seven different sections of the Act:

Violation of §1153(e): Refusal to bargain in good faith with the UFW, as shown by all the above incidents except surveillance of employees.

Violation of §1153(b): Dominating and supporting a labor organization (the AFLU), as shown by incidents No. 3 (hiring Atad labor contractor for purposes of voting); No. 5 (soliciting AFLU authorization cards); No. 6 (supporting AFLU strike), No. 8 (three-day layoff during AFLU strike); and No. 9 (twenty-two day layoff).

Violation of §1153(f): Recognizing an uncertified union (the AFLU), as shown by incidents No. 5 (soliciting AFLU authorization cards); No. 6 (assisting

AFLU strike), and No. 8 (three-day layoff during AFLU strike).

Violation of §1153(c): Discriminatorily discharging and/or refusing to rehire employees because of their UFW support, as shown by incidents No. 2 (refusal to rehire employees for the pruning season in late 1978), No. 8 (layoff of employees for three days on January 26, 1979), No. 9 (layoff of employees for 22 days in March, 1979), and No. 10 (refusal to rehire two employees in April, 1979).

Violation of §1153(d): Discriminatorily discharging employees for ALRB activities, as shown by incidents No. 8 (layoff of employees for three days on January 26, 1979), and No. 9 (layoff of employees for 22 days in March, 1979).

Violation of §1153(a): The General Counsel alleges that all the above violations would also be derivative violations of §1153(a), and that in addition §1153(a) was specifically violated by interference with protected activities as shown by incident No. 7 (surveillance of employees).

Violation of §1154.6: Hiring employees for the purpose of voting, as shown by incident No. 3 (hiring of Atad labor contractor).

Respondent denies that any of its actions violated the Act. In addition it argues that the ALRB does not have jurisdiction over the subject matter of the alleged violation of §1153(e) (refusal to bargain) because the UFW was not the certified representative of employees at Respondent's business at the time in question, and because of procedural defects both in the serving of the charges relating to the alleged violation of §1153(e) and in the investigation of the complaint.

III. JURISDICTION

Respondent Arakelian Farms is a partnership engaged in agriculture at its

premises in Merced County, California, and at all times material was an agricultural employer within the meaning of §1140.4(c) of the Act.

The UFW was at all times material a labor organization within the meaning of §1140.4(f) of the Act.

IV. THE PROCEDURAL ISSUES

A. Filing and Service of the Charges

There are five charges which form the basis for the complaint. The final two charges are not involved in Respondent's procedural challenge: Charge 79-CE-8-F (layoff of employees) was duly served on February 1, 1979, and filed on February 5, 1979; and Charge 79-CE-19-F (refusal to rehire two employees in April, 1979) was duly served on June 15, 1979 and filed on June 18, 1979.

Respondent's challenge is only to the first charge, 78-CE-23-F. I will describe the procedural history of this charge, and of the second charge (78-CE-23-1-F) and the third charge (79-CE-1-F), since discussion of these latter charges relates to the challenge to the first charge.

On October 27, 1978, the UFW filed Charge No. 78-CE-27-S, duly served on Respondent on October 31, 1978. This charge alleged a "refusal to execute a contract that was previously agreed to by the parties," in violation of §§1153(e) and (a) of the Act. This charge was filed with the Sacramento Regional Office of the ALRB. On November 6, 1978 the UFW notified the Sacramento Regional Office by letter that the UFW was requesting that this charge be withdrawn without prejudice so that it could be forwarded to the "appropriate region," Fresno. (GCX:36,p.1). On November 8, 1978, the Sacramento Regional Director transferred the charge "permanently" to the Fresno Regional Office, (GCX:36,p.2), and on November 8, 1978, it sent the UFW and Respondent notice

that the charge had been withdrawn without prejudice. (GCX:36,p.4).

On the same date, November 8, 1978, the Fresno Regional Director sent a letter to Respondent stating that there was now a charge filed in Fresno against Respondent and asking for cooperation. A copy of the Fresno charge was enclosed. (GCX:36,p.6). The letter referred to the charge with a Fresno number, 78-CE-27-S. The enclosed charge was the identical charge, now transferred to Fresno, that was served and filed originally in Sacramento. The Sacramento case number, 78-CE-27-S, was crossed out, and the Fresno number, 78-CE-23-F, was written in on the charge. (GCX:1A).

On November 13, 1978, Respondent wrote a letter to the Fresno Regional Office acknowledging that a charge had been filed against Respondent in Fresno and stating that Respondent was changing its representation and would advise the ALRB of whom it had selected as its representative for this matter. (GCX: 36,p.7).

On January 16, 1979 the UFW filed a second charge, Charge 78-CE-23-1-F. (GCX:1B). This charge stated that it amended charge 78-CE-23-F. (GCX:1B,p.3). This amended charge referred to four specific incidents said to violate §§1153 (a), (c), and (e) of the Act: (1) hiring a person to circulate a decertification petition "in an attempt to terminate Employer's duty to bargain"; (2) fostering the filing of a decertification petition, also in an attempt to "terminate the Employer's duty to bargain in good faity (sic)"; (3) discriminatorily failing to rehire workers in order to prepare for a decertification election, again in order to terminate the duty to bargain; and (4) surveillance of employees in restraint of their §1152 rights. Charge 78-CE-23-1-F was duly filed and served on Respondent on January 16, 1979.

On February 1, 1979, the UFW served on Respondent the third charge, Charge 79-CE-1-F. (GCX:1F). This charge was duly filed on February 5, 1979. This

charge added four more allegations, asserting violations of §§1153(a)(b)(c)(d)(e) and (f): (1) dominating and supporting the AFLU; (2) laying off workers to support an AFLU strike; (3) recognizing the AFLU; and (4) laying off workers who had filed charges with the ALRB. The charge also alleged that Respondent "continue(s) to refuse to bargain collectively in good faith with the UFW," in violation of §1153(e).

Respondent's specific challenge is only to the first charge, 78-CE-23-F. Respondent argues that since the amended charge 78-CE-23-1-F, in specifying four new incidents, did not repeat or refer to the specific allegation in the original charge, Charge 78-CE-23-1-F superseded the original charge; therefore, Respondent argues, the allegation of refusal to execute a contract, contained in the first charge, is no longer in the case. Respondent also argues that Charge 78-CE-23-F is invalid on another ground, that it was never served on Respondent.

Before discussing these arguments, I would note that in its Post-Hearing Brief Respondent overstates the effect of its challenge to Charge 78-CE-23-F. Respondent states that if Charge 78-CE-23-F is invalid for either of the two above-mentioned reasons, the ALRB no longer has subject-matter jurisdiction over the alleged violation of §1153(e). This is not the case, as §1153(e) prohibits the refusal "to bargain collectively in good faith." The specific allegation of refusal to execute a contract is one of a number of alleged incidents which are said by General Counsel to constitute a refusal to bargain in good faith. It is undisputed that charges 78-CE-23-1-F and 79-CE-1-F were duly filed and served, and these (plus the final two, also undisputed, charges in this case) allege the nine other incidents outlined in the previous section of this decision. These incidents are alleged in sum to constitute a violation of §1153(e). Charge 78-CE-23-1-F specifically lists three of the incidents as

constituting refusals to fulfill Respondent's "duty to bargain," in violation of §1153(e); Charge 79-CE-1-F contains a general allegation of continuing refusal to bargain in good faith, and also the specific incidents involving alleged support of the AFLU which would be part of the allegation of refusal to bargain in good faith with the UFW. Therefore, even if the refusal to execute a contract were not before me, I would still validly have before me all the other incidents alleged in the complaint to violate §1153(e). Further, these incidents individually and in several combinations are also alleged to violate other subsections of §1153 (and §1154.6), and would properly be before me in that regard as well. Thus, were Respondent's challenge to Charge 78-CE-23-F to prevail, the alleged violations of the Act would all still be before me except for the testimony concerning the refusal to execute an agreed-upon contract.[2/]

In any event, I find Respondent's challenge to Charge 78-CE-23-F to be without merit for several reasons. First, the amended charge 78-CE-23-1-F did not supercede or replace the original charge, as Respondent argues, on the ground that it failed to repeat the original allegation. The applicable regulation, 8 Cal. Admin. Code §20210, specifies:

> 20210. Amendment of Charge. An amendment to a charge must be in writing and contain the same information as a charge. An amended charge must refer, by docket number, to the charge to which it is related, and must be filed and served on the charged party in the same manner as the original charge. The Board may disregard any error or defect in the charge which does not substantially affect the rights of the parties.

The requirement for an amended charge is thus that it contain all the information required of "a charge", clearly a reference to the general

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[2/] Respondent, in addition to challenging Charge 78-CE-23-F, also challenges the complaint itself on the ground that it was not properly investigated. This issue is discussed in the next sub-section, infra.

information (name, address, etc.), specified in §20202 of the regulations ("Form and Content of a Charge");[3/] and that it "refer by docket number to the charge to which it is related." Charge 78-CE-23-1-F meets these requirements in every respect. Charge 78-CE-23-1-F merely added several incidents charged as violations of §1153(e) of the Act, the section said to have been violated in the original charge. Respondent cites no case or other authority, nor could I find such, supporting the proposition that the specific allegation of the original charge must be repeated or else it is removed from the case.

Respondent next argues that Charge 78-CE-23-F is invalid because it was never served on Respondent. I find Respondent's argument here unpersuasive. Although the procedural history of the charge was not smooth, I find two separate technical grounds on which proper service can be found. In any event, I place primary reliance on the fact that Respondent had timely actual notice of the charge and suffered no prejudice by any technical defects in service. I discuss these three grounds in order.

As a first technical ground for finding service, I find that although it went through two case numbers, there was only one charge and it was properly served the first time. It is undisputed that the initial Sacramento-numbered version (78-CE-27-S) was properly served on October 31, 1978. This charge was withdrawn in order to transfer it to Fresno. The identical charge, with the Fresno number now written on it, was then sent to Respondent on November 8, 1978 by the Fresno Regional Director. At the same time Respondent was sent a letter notifying it of the withdrawal of the Sacramento-numbered charge. Thus, as a practical matter there was only one charge, transferred from Sacramento

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[3/] Section 20202 of the regulations requires that a charge contain names and addresses of the parties, a short statement of the facts, the section of the Act alleged to be violated, and a proof of service.

to Fresno.

As a second technical ground for finding service, I find that even if the Fresno charge is viewed as a separate, new charge, it substantially meets the alternative service provision of the regulations. Section 20206 of the regulations (8 Cal. Admin. Code §20206) states: "In addition [to service by a party], the regional director may serve a copy of the charge on the charged party." On November 8, 1978, the Fresno Regional Director sent a copy of Charge 78-CE-23-F (GCX:36,p.6) to Respondent. On November 13, 1978, Respondent replied to the Fresno office acknowledging that the charge had been filed. (GCX:36,p.7). Section 20400 of the regulations states that service of a charge by the Regional Director should be by registered mail, and there is no indication that such was done here; however, I find that this requirement was met here since its purpose--to insure receipt of the charge--was completely satisfied when Respondent acknowledged the filing of the charge in its letter of November 13th. On this ground, the date of service of the charge would be on November 8, 1978.

My primary reliance is on the fact of actual notice of the charge and no prejudice to Respondent. The Fresno Regional Director's letter of November 8, 1978, contained a copy of the charge, with both the old Sacramento number lined through and the new Fresno number written on it. (GCX:1A). On the same date the Sacramento Regional Office sent notice that the Sacramento-numbered charge had been dismissed without prejudice. When Respondent received these letters it made no attempt to question them; to request a clarification, or to object that it was under the impression the charge was withdrawn. Instead, on November 13th, Respondent sent a letter to the Fresno office acknowledging filing of the Fresno charge. Respondent points to no actual or possible prejudice. In its brief, the only point Respondent makes is that after October

31 (the date the Sacramento-numbered version was served) and before November 8 (when the Fresno-numbered charge was sent to Respondent), the UFW agreed to, and participated in, two bargaining sessions with Respondent. These were held November 1 and 7. Respondent states that from this it concluded that the charge had been withdrawn. Post-Hearing Brief for Respondent, pp. 9-10. However, Respondent in no way shows any prejudice due to its alleged confusion about the charge for this brief period. There is nothing in the entire record showing actual prejudice. At the most, Respondent may have been confused for this nine-day period about the current status of the charge, until it got the Fresno letter. By its own letter of November 13, 1978, Respondent shows that it had actual notice of the Fresno-numbered charge by that date. A line of cases holds that even where an alleged violation is not pleaded at all, the ALRB may rule on the violation if it was fully litigated. Anderson Farms. Co., 3 ALRB No. 64; Prohoroff Poultry Farms, 3 ALRB No. 87; Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54. In the present case, Respondent had actual notice of Charge 78-CE-23-F at least by November 13, 1978, two months before the complaint was even filed. The complaint pleaded the allegations of that charge. The hearing did not commence until six months after the complaint was filed. The matter was fully and extensively litigated over the several months of hearing in this case. Respondent shows no prejudice or possible prejudice. In these circumstances, I find that any purely technical objections to service of the charge were waived by Respondent's receipt of the charge and acknowledgment of it. In view of this timely actual notice and no prejudice, I find Respondent's challenge to Charge 78-CE-23-F to be without merit.

B. The Investigation of the Complaint

Respondent contends that the complaint was not adequately investigated, as required by §20220 of the regulations (8 Cal. Admin. Code §20220), which

provides that "after investigation" the General Counsel shall issue a complaint if there is reason to believe that the Act has been violated.

There was testimony in this case to show that the complaint was investigated. However, I need not evaluate this evidence because I find that, absent a claim of personal bias or conflict of interest, the extent of the investigation of the complaint is within the discretion of the General Counsel.

Section 1149 of the Act provides that the General Counsel "shall have final authority, on behalf of the board, with respect to the investigation of charges and issuance of complaints ...." The Act and regulations do not set forth any particular standards for what constitutes proper investigation. Respondent's contention here appears to be a novel one. If such general challenges to the sufficiency of the investigation of the complaint were allowed, the Board would have to fashion standards, case by case, for exactly what constitutes adequate investigation. Hearing time would be taken up with examination of the internal workings of the Board agents and the General Counsel staff. In similar circumstances, the courts have held that the investigation of charges by the National Labor Relations Board, (again, absent a showing of bias or conflict of interest), is not subject to challenge at the hearing stage. Stephens Produce Co..v NLRB, 515 F. 2d 1373 (8th Cir. 1975); Altemose Construction Co. v NLRB, 514 F. 2d 8 (3rd Cir., 1975). Once the complaint is issued the function of the hearing is to determine whether the testimony and evidence substantiate the allegations in the complaint. I therefore conclude that since no showing of personal bias or conflict of interest has been made here, Respondent is precluded from contesting the adequacy of the investigation of the complaint. Accordingly, I deny Respondent's contention that the complaint should be dismissed on grounds that it was not adequately investigated.

V. OVERVIEW OF OPERATION OF ARAKELIAN FARMS

A. Operation of the Ranch

In this section I briefly describe the operation of Respondent's business. Details concerning specific work operations will be given during the discussion of the alleged violations of the Act to which they pertain.

Respondent Arakelian Farms, located in Livingston, Merced County, California is a partnership of eight partners. (TR. XII: 77-78). Respondent's ranch has a total of 800 acres, on which nine varieties of wine grapes are grown. (TR. VIII: 38).[4/]

The operations of Respondent's business are directed by owner-partners David Arakelian and Frank Gullo. (Tr. VIII: 42-43).[5/]

There are cycles of seasonal work at the ranch during the year, the different operations occurring at slightly varying times from year to year due primarily to the effects of weather. (Tr. VIII: 41). The grapes are usually harvested from late August to late October or early November. (RX:8). Then the grape vines are pruned, after the wind and the first hard frosts blow the leaves off the vines. Generally the pruning begins in November and goes through February. (Tr. VIII: 40-41). In some years nursery work (planting new plants), grafting, suckering, and cutting scion roots are performed following pruning. (Tr. XXIX: 44). In all years, the tying of the vines is the next major operation after the pruning. This work generally is done in March and April.

[4/] The varieties are: Barbera (200 acres), Thompson Seedless (120), French Colombard (80), Mission (50), and the remaining acreage containing Ruby Cabernet, Grenache, Valdepenas, Chenin Blanc, and Zinfandel grapes. (Tr. VII: 38-40). Respondent also has five acres planted with almonds. (Tr. VIII: 40). No work concerning almonds is involved in the alleged incidents in this case.

[5/] The remaining partners are Katherine Arakelian Kazarien, Ronald Arakelian, Majken Arakelian, two members of Frank Gullo's family, and one other member of David Arakelian's family. (Tr. XII: 77-78).

(Tr. XXIX:45) After the grapes mature and ripen over the summer, the work cycle begins again with the harvesting of the grapes in the fall.

Respondent employs approximately 100 employees during the harvesting season, and approximately 70 employees during the pruning work. (CPX:15,p.3; GCX:22A; RX:11,p.2) Respondent's fiscal year is the calendar year. (Tr. VIII:45) Respondent has been in business approximately sixty years. (GCX:24)

B. Respondent's Supervisors

The operations of Respondent's business are directed by owner-partners David Arkelian and Frank Gullo. The General Counsel alleges that at the material times herein, the following people were supervisors for Respondent within the meaning of §1140.4(j) of the Act: Eugene Esau, Louis Linan, Chester Dodd, Manuel Valdez, and Virgil "Buddy" Ratzloff.

Respondent in its answer to the complaint admits that Eugene Esau was a supervisor. (GCX:1Q,Par.5) There is also no dispute on the record in this case that Louis Linan is a supervisor within the meaning of the Act. (See Tr. VIII:90, XII:114,126,127, XXIX:46 (D. Arakelian); Tr. XXVII:121 (F. Gullo); Tr. XXV:94 (E. Esau); Tr. VII:56, VIII:30-33 (R. Vega)). David Arakelian testified that Mr. Linan was "our supervisor." (Tr. XII:126) Respondent's Post-Hearing Brief repeatedly refers to Mr. Linan as if he were a supervisor along with Eugene Esau, as contrasted with the other employees whom Respondent specifically argues (see discussion below) were not supervisors. (See, e.g., Post-Hearing Brief for Respondent, pp. 146-50, 151-3, 159, 176-8). Respondent makes no argument in its Brief that Mr. Linan was not a supervisor. I find that Louis Linan was a supervisor within the meaning of §1140.4(j) of the Act.

There is a dispute about the three remaining employees, Chester Dodd, Manuel Valdez, and Virgil "Buddy" Ratzloff. All three were called "lead men" at Respondent's business, and I shall use that term herein. (Tr. XII:114,122,127)

There is no real dispute about what the lead man's actual functions were, but rather the dispute is over whether these functions show the lead men to be supervisors within the meaning of the Act.

There was clear testimony from David Arakelian and supervisors Eugene Esau and Louis Linan as to the functions of the lead men, and I take my findings from this testimony.[6/]

The functions of all three lead men were the same. (Tr. XII:122,127; Tr. XXV:69-70,85-86,120-21) They were used during the pruning and harvesting seasons, and occasionally during grafting work, suckering, and tying as well. (Tr. XII:120-21,125-26) The crews of employees would report for work in the morning. About four or five employees would constitute a crew, and each crew would be given a number. The crews would go out into the fields, and one of the lead men would go into the field along with a group of ten crews. (Tr. XII:125-26)

The lead men had two functions. One was administrative: marking down hours worked, providing toilet facilities and water, giving starting times, and calling the lunch break. (Tr. XII:114) The other function of the lead men consisted of overseeing the quality of the work done by the employees.

With regard to this latter function, Respondent's owner and supervisors testified that the lead men were competent and experienced employees at the type of work the employees were doing. (Tr. XXV:85-86) The three lead men were not given their own row of vines to prune or harvest, as was the case for the rest of the employees; instead, their job was to go up and down the rows and make sure that the work was being done according to proper quality

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6/ The testimony concerning the three lead men is found at: Tr. XII:112-128 (D. Arakelian); Tr. XXV:117-128 (E. Esau); and Tr. XXV:65-86 (L. Linan).

standards. (Tr. XII:114-117) There was extensive testimony by David Arakelian and supervisors Esau and Linan that Respondent relied on the experience and good judgment of the three lead men to see if the work was being done properly, and to instruct and correct the employees if it was not. This function was described many times, all amounting to the same description of the lead men's functions:

> "A: He basically goes around, explains a little bit here, might give a little advice to this or that to one of the pruners.
> Q: About how they ought to be pruning?
> A: Well, maybe just, you know, help a little, explanation (sic), make your cuts a little closer or explain the work."
> (Tr. XII:118; D. Arakelian)

> "Ordinarily they're in charge of making sure that the work is done to standard, yes."
> (Tr. XII:125; D. Arakelian)

> "Well, he's checking pruners to see if they're doing the work right. If he says we want pruning this way, so many spurs, that's what we want."
> (Tr. XXV:66; L. Linan)

> "Q: If a workers (sic) isn't pruning correctly, you rely on [the lead man] to be able to tell that, don't you? He goes around and checks the work and you rely on his judgment in order to be able to determine if the pruning is not being done properly, don't you?
> A: Yeah, that's right."
> (Tr. XXV:85; L. Linan)

> "Q: Buddy Ratzloff, Manuel Valdez, and Chester Dodd are all experienced pruners, aren't they?
> A: They all know how to prune, yes.
> Q: And they're all experienced in the harvest also?
> A: That's correct.
> Q: So you and Louis Linan and Mr. Gullo and Mr. Arakelian rely upon their presence in the fields and their judgment so that you will find out about any problems that occurred during the day?
> A: That's correct.
> Q: And thus far their judgment has been pretty good, hasn't it?
> A: That's right."
> (Tr. XXV:127-28; E. Esau)[7/]

7/ In the same vein as the quotes in the text, see also Tr. XXV:117-118, 120-121 (E. Esau); Tr. XII:119, 123 (D. Arakelian).

Under Respondent's management scheme, David Arakelian and Frank Gullo were responsible for running the business. (Tr. VIII: 42-43) Under them were the two "overall" supervisors, Eugene Esau and Louis Linan, who had general responsibility for Respondent's ranch operations. (Tr. XII:112-114)[8/] Under these two overall supervisors were the three lead men. (Tr. XXV:66-67, 118) David Arakelian had ultimate responsibility for setting the quality standards for work. (Tr. XII:119) These standards were then directed through the overall supervisors to the three lead men. (Tr. XXV:66-68,118; Tr. XII: 112-114) David Arakelian and supervisors Esau and Linan all testified that, as a practical matter, they had to place great reliance on the three lead men for judging the quality of work and instructing the employees, because the lead men were the only ones who were out in the fields with the crews all day long:

> "Q: [N]ow when Manuel is working as a lead man of the pruning crew, he's with that crew all day?
> A: That's right.
> Q: And you come out there and talk to Manuel for ten or fifteen minutes?
> A. That's right.
> Q: Once a day?
> A: That's right."

(Tr. XXV:66; L. Linan)

> "Q: [When the lead man] is in charge of the crew, he is the only person out there with the crew, taking care of it?
> A: That's correct.
> . . .
> Q: And he is out there all day with the crew, is that correct?
> A. That's correct.
> Q: Now when the workers are doing work under [the lead man] and they need to know exactly how to do the work, its [the lead man] who tells them how to do the work?
> A: In the field, yes.
> Q: And if a worker is not doing the work properly, it's [the lead man] who tells them how to do it right?

8/ See also Tr. VII:90; Tr. XII:126,127; Tr. XXVII:121; Tr. XXV:94; Tr. XXIX: 46; concerning the responsibility of Supervisor Linan.

A: That's correct."
(Tr. XXV:118; E. Esau).

"Q: And you rely upon his ability to [explain the work] because you can't be out there all the time then?
A: Well, I come out every day and check the pruning.
Q: But during the time you are not there, you rely upon people such as Buddy [Ratzloff], for example, upon Buddy to make these sorts of explanations and give this sort of advice to the workers so they'll do the pruning the way you want it?
A: Basically true, yes."
(Tr. XII:119; D. Arakelian)

Thus, the overall quality standard was determined by David Arakelian, and he relied on the judgment and experience of the lead men to oversee and instruct the employees and to determine that the work was being done to standard. David Arakelian and supervisors Esau and Linan went to see the lead men in the fields, usually once each day for a few minutes, to discuss the quality of the work and to see if there were any problems. Mr. Arakelian and the overall supervisors would get the opinion of the lead men as to the quality of work being done. For the bulk of the day the lead men were the only people out in the fields judging the quality of the work. The extent of this reliance on the field men can be seen in the statement of supervisor Linan that, if an employee repeatedly did not do the work correctly, Linan went to the field and talked to the employee: "I say that I have [the lead man] out there in charge and do it like the way [the lead man] tells him to cut it down." (Tr. XXV:67)[9/]

In addition to their administrative duties and their responsibility for determining the quality of the work, the lead men also played a role in giving permission for an employee to miss a day of work for illness or other reason. Although the testimony is somewhat vague on this point, it seems fairly clear that often the employees would call the lead man (or notify him at work) to

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9/ "Q: And if it should be necessary for you to come out and talk to the workers, you just tell them to do as [the lead man] tells you, and they do it; is that right? A: That's right." (Tr. XXV:68; L. Linan).

ask for permission to miss work. (Tr. XXV:69,119) The lead man gave the permission. Supervisor Linan testified at one point that the lead men gave permission and then notified the overall supervisors (Tr. XXV:69), but at another point both he and supervisor Esau stated that the lead man would first check with the overall supervisor and then give permission. (Tr XXV:60-71,119) In either event, if a person wanted to leave work he usually asked the lead man, and the lead man "tells me and I say that's all right." (Tr. XXV: 70-71; L. Linan)

The decision on hiring and assigning crews was made by the owners and the overall supervisors, (Tr. XXV:128); the lead men would be given specific employees in their crews if they so requested. (Tr. XXV:128)

There was no direct evidence of the exact ratio of regular employees in the fields to lead men. However, the record and evidence indicate that the lead men each oversaw as many as forty employees at a time. This is shown by the testimony of David Arakelian that one lead man went out to the fields with ten crews of four to five employees each. (Tr. XII:125-26) Further, there is no testimony about other lead men besides these three, and Respondent's work force ranged from about 70 employees to 120 employees, depending upon the season. (CPX:15,p.3; GCX:22A; RX:11,p.2). This would indicate supervision of approximately twenty-five to forty employees for each of the lead men.

The lead men performed their regular jobs when they were not leading crews.[10/] It is not clear how often the three worked as lead men. David Arakelian estimated at one point that one man (Virgil Ratzloff) worked as a lead man about 20% of the time. However, I find this estimate to be misleading. I specifically find on the record in this case that at the times material

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10/ Virgil Ratzloff was a tractor driver (Tr. XII:114); Chester Dodd was an irrigator and driver (Tr. XII:122). Manuel Valdez' work was not specified.

herein the primary identity of the three men was as lead men. First, the testimony discussed in this section indicates that during the pruning and harvesting seasons the lead men went out to the fields on a daily basis to oversee the crews. Thus, David Arakelian's estimate may only mean that since these lead men also worked during some times of the year when it was not pruning or harvesting season, part of their time was spent doing this other work. The incidents alleged in the complaint primarily occurred during the pruning season of 1978-79, and during this time the three men were almost always functioning as lead men. Further, the evidence shows clearly that the three men were paid their higher lead man salaries, discussed immediately below, for all hours that they worked, with no distinction made for the type of work they did on a particular day.

In 1978-79 Virgil Ratzloff received a regular monthly salary of approximately $850 a month, as opposed to the hourly rates all other field employees received. (Tr. XXV:121) During late 1978 to early 1979, (the period of time during which most of the alleged incidents occurred) payroll records show: that Chester Dodd received an hourly wage fifty-five cents above the regular employee rate, and Manuel Valdez received a rate thirty cents over the regular rate; and that this rate was paid for every hour worked by the men. Specifically, Payroll Journals for the period September 25, 1978 through May 30, 1979 show that Chester Dodd received an hourly wage of $3.55 and Manuel Valdez 3.30, when the going rate was $3.00 per hour; these rates were raised on May 9, 1979, with the going rate becoming $3.25 and the two lead men receiving $3.80 and $3.60 respectively.[11/] I note that at one point in his testimony

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[11/] General Counsel's Exhibit 22B.

supervisor Linan possibly indicated that the higher rates for Chester Dodd and Manuel Valdez might have also been because they were tractor drivers. (Tr. XXV: 65) However, I reject this brief and unclear statement because of the clear evidence (including other testimony of supervisor Linan) that Mr. Dodd, Mr. Valdez, and Mr. Ratzloff received the higher rate as lead men, (Tr. VIII:47; Tr. XXV:65,121-122) and because the undisputed payroll records show that Mr. Dodd and Mr. Valdez received only one pay rate for all the hours they worked.

Neither Mr. Ratzloff, Mr. Dodd, nor Mr. Valdez were called as witnesses at the hearing.

With the above facts in mind, I now turn to the legal standards for determining whether the lead men were supervisors within the meaning of the Act.

Section 1140.4(j) of the Act defines a supervisor:

> The term "supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Board set forth the general guidelines by which this section should be interpreted in Dairy Fresh Products Co., 3 ALRB No. 70 (1977):

> The statute is worded in the disjunctive. Any one of the above factors can qualify an employee for supervisor status. "Even a person who spends most of his time in normal production or maintenance duties may be a supervisor if he exercises or is merely authorized to exercise any of the functions mentioned in the statutory definition. To be classified as a supervisor, a person need have only one or more of the types of authority mentioned, not all."

3 ALRB No. 70, p. 5 (quoting from Gorman, Robert. Basic Text on Labor Law).

Applying these guidelines, I conclude that the "lead men" were supervisors within the meaning of the Act. I do so because of the following factors:

1. The lead men were in charge of twenty to forty employees. For most of the day (except for the few minutes when David Arakelian or one of the two overall supervisors came by), they were the only persons in charge of the work of the employees.

2. David Arakelian and his two overall supervisors testified that they relied on the judgment of the lead men to determine the quality of the work being done by the regular employees. The lead men gave their opinions to David Arakelian and the two overall supervisors as to the quality of work the employees were doing.

3. The lead men instructed the employees on proper work techniques, and corrected the employees if something was being done incorrectly.

4. If an employee was repeatedly doing work incorrectly, an overall supervisor would talk to the employee and tell him or her to do the work the way the lead man said to do it.

5. David Arakelian and the two overall supervisors had the power to fire employees.[12/] The precise role of the lead men in the discharge of an employee was never stated clearly; when pressed on the point, supervisor Linan's testimony was vague.[13/] However, the evidence does show: (a) that the lead men gave their opinion to David Arakelian and the two overall supervisors as to the quality of work an employee did; (b) that Mr. Arakelian and the two overall supervisors relied on the judgment of the lead men; (c) that Mr. Arakelian and the two overall supervisors usually agreed with the judgment of the lead men;[14/] and (d) that the lead men were in the field with

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12/ See, e.g., Tr. XXV:114, (E. Esau), for power of an overall supervisor to fire.

13/ See Tr. XXV:67, (L. Linan).

14/ Tr. XII:120; Tr. XXV:127-28.

the employees all day long, their information on the employees thus being more complete than that of Mr. Arakelian and the overall supervisors. From these, I find that the opinion of the lead men as to the quality of work of an employee was effectively the power to recommend discharge.

6. The lead men were paid a higher salary than the regular employees.

From these six factors, I conclude that the lead men were supervisors within the meaning of the Act. I find this case very close to the Board's decision in Anderson Farms Co., 3 ALRB No. 67 (1977):

> Chappa assigns the workers on the machines, making sure that the proper number of workers is on each machine. [The head supervisor], who hired Chappa, testified that Chappa's duties included overseeing the sorters to insure that they are sorting tomatoes the way that [the head supervisor] wants them to be sorted. Taking his instructions directly from [the head supervisor], Chappa gets on the machines to check the sorter's work and the quality of the tomatoes, reporting any problems to [the head supervisor]. [The head supervisor] stated that Chappa would report a worker to him if the worker is not working properly and [the head supervisor] himself would then talk to the worker. If Chappa reports that the worker is still not performing his job properly after being given a second chance, the worker would be fired by [the head supervisor]. Chappa accordingly has the authority to recommend discharge and the responsibility to direct the work of the tomato sorters.

(3 ALRB No. 67, p. 14)

In this case I find clear, undisputed evidence that the three lead men had the responsibility to direct the work of the regular employees, and I also find for the reasons noted that they effectively had the authority to recommend discharge. Accordingly, I find them to be supervisors within the meaning of §1140.4(j) of the Act.

In sum, I find that Eugene Esau, Louis Linan, Chester Dodd, Manuel Valdez and Virgil "Buddy" Ratzloff were, at the material times herein, supervisors

within the meaning of the Act.[15/]

C. Respondent's Bargaining Representatives

During the course of contract negotiations between Respondent and the UFW, Respondent employed Paul Doty, and later Leland Brewer and Kenneth Huggins, as bargaining representatives for Respondent. Their actions, and the scope of their authority, are discussed in Section VI of this decision, infra.

D. Respondent's Employees (Alleged Discriminatees)

The complaint lists twenty named alleged discriminatees. I find the following twenty persons to have been agricultural employees within the meaning of §1140.4(b) of the Act:[16/] Hippolite Aguilar (GCX:22B, 9/25/78, p.4, #9049);

15/ Manuel Valdez and Virgil Ratzloff were not named in the complaint; however, their status was fully litigated, with David Arakelian, Eugene Esau and Louis Linan all testifying that Mr. Valdez and Mr. Ratzloff's functions as lead men were the same as Chester Dodd's. Tr. XII:122, 127; Tr. XXV:69-70, 85-86, 120-121. During the hearing, the general counsel sought to amend the complaint; the main amendment sought was to add an additional party (Leland Brewer); it also sought to add Mr. Ratzloff as a supervisor/agent. I denied the motion to amend the complaint. However, it is clear from the discussion that my ruling was that I would not add Mr. Brewer as an additional party. Tr. XI:1-4. Since Mr. Ratzloff and Mr. Valdez' status was fully litigated without prejudice to Respondent, it is proper for me to make a finding as to them. Anderson Farms Co., 3 ALRB No. 64, Prohoroff Poultry Farms, 3 ALRB No. 87, Highland Ranch, 5 ALRB No. 54.

16/ Following each person I have noted one payroll record entry from the 1978 grape harvest (GCX:22B), giving the date of the entry, the page, and the number for the employee. Six of the alleged discriminatees did not work during the 1978 harvest, and for them I have listed one entry from work history summaries prepared by Respondent (RX:9A,9B,9C), giving the last date of work for the employee. Where a person was known by other or additional names, these are noted in parentheses. On January 1, 1979, all employees at Respondent's ranch were assigned new numbers, (Joint Exhibit No. 1).

Jorge Aguilar (GCX:22B, 9/25/78, p.4, #9045); Luis Aguilar (GCX:22B, 9/25/78, p.11, #9211); Ramon Aguilar (GCX:22B, 9/25/78, p.4, #9047); Eduardo (Gerardo) Arroyo (RX:9C, 12/17/74); Galdino Arroyo (RX:9C, 11/71); Prudencio Arroyo (GCX:22B, 9/25/78, p.12, #9220); Rafael Arroyo (Padilla) (GCX:22B, 9/25/78, p.13, #9226); Ricardo Castoro (GCX:22B, 9/25/78, p.6, #9071); Jesus Garibay (GCX:22B, 9/25/78, p.11, #9210); Longeno Garibay (RX:9A, 9/16/78); Constantino Hurtado (RX:9A, 6/19/75); Vidal Hurtado (RX:9A, 9/25/74); Roberto Muniz (Garibay) (GCX:22B, 9/25/78, p.9, #9102);[17/] Salvador Savala (Jose Garcia) (GCX:22B, 9/25/78, p. 13, #9228);[18/] Daniel Solorio (RX:9C, 10/8/76); Javalino (Avelino) Vega (GCX:22B, 10/05/78, p.7, #9225); Melquiades Vega (GCX:22B, p.9, #9101); Pedro Vega (GCX:22B, 9/25/78, p.11, #9214); and Rosendo Vega (GCX:22B, 9/25/78, p.2, #9018).

VI. REFUSAL TO BARGAIN (§1153(e))

A. The Issues

The UFW Was certified as bargaining representative for Respondent's agricultural employees in October 1975. For three years, until November 1978, the UFW and Respondent bargained over a contract.

The General Counsel urges two separate theories to show that Respondent refused to bargain in good faith:

The first theory is that by October 1978 a complete contract had been agreed to by the parties, and Respondent refused to sign it. This refusal to execute an agreed-to contract would be a *per se* refusal to bargain in good faith.

17/ Roberto Muniz was added in the Second Amended Complaint (GCX:1M). His name was inadvertantly left out of the Third Amended Complaint (GCX:1S).

18/ I find that Salvador Savala used the name Jose Garcia during some of his employment with Respondent. (Tr. XV:35; Tr. XVIII:34)

The second, more general theory, is that even if a complete contract was not agreed to, there was agreement on virtually all issues by October 1978. At that time, General Counsel argues, Respondent's actions both at the bargaining table and outside of the bargaining show that Respondent ceased to bargain in good faith.

For the reasons discussed below, I find that the issue as to whether a complete contract was agreed to is a close one, but that a complete agreement was not reached. However, I also find that the evidence is substantial and highly persuasive that, as of November 1978, Respondent did refuse to bargain in good faith with the UFW.

B. The Bargaining

On October 18, 1975, the ALRB conducted a representation election at Respondent's ranch. The election was won by the UFW, and on October 27, 1975, the Board certified the UFW as exclusive bargaining representative for Respondent's agricultural employees. (RX:7)

On November 20, 1975, Respondent and the UFW began collective bargaining. Over the course of the next three years there were a total of 37 negotiation sessions, the last one occurring on November 7, 1978.[19/]

19/ The dates and places of the negotiation sessions were: (Tr. XX:27-34) 11/20/75 (Arakelian Farms offices); 12/16/75 (Airport Marina, Fresno); 11/20/75 (Airport Marina, Fresno); 1/22/76 (Sheraton Inn, Fresno); 2/10/76 (Sheraton Inn, Fresno); 3/3/76 (Divine Gardens, Turlock); 3/15/76 (Diving Gardens, Turlock); 5/24/76 (Fresno); 8/24/76 (Divine Gardens, Turlock); 8/31/76 (Divine Gardens, Turlock); 9/14/76 (Divine Gardens, Turlock); 10/12/76 (Divine Gardens, Turlock); 10/29/76 (Divine Gardens, Turlock); 11/9/76 (Turlock library); 11/16/76 (Turlock library); 11/24/76 (Turlock library); 11/29/76 (Turlock library); 12/14/76 (Turlock library); 2/2/77 (Airport Marina, Fresno); 2/15/77 (Turlock library); 2/16/77 (Turlock library); 2/25/77 (Paul Doty's office, Fresno); 2/28/77 (Paul Doty's office, Fresno); 3/2/77 (Paul Doty's office, Fresno); 4/25/77 (Paul Doty's office); 4/27/77 (Turlock library); 4/28/77 (Turlock library); 5/24/77 (Paul Doty's office, Fresno); 6/1/77 (Paul Doty's office); 10/27/77 (Paul Doty's office); 11/8/77 (Paul Doty's office); 11/23/77 (Paul Doty's office); 9/7/78 (Masonic Hall Livingston); 9/22/78 (Masonic Hall, Livingston); 9/28/78 (Masonic Hall, Livingston); 10/4/78 (Masonic Hall); 11/1/78 (Paul Doty's office); 11/7/78 (Airport Marina, Fresno).

At the bargaining sessions the UFW was represented by a lead negotiator and assistants from the UFW, and by a committee composed Respondent's employees.[20/] During the period from November 20, 1975, until September 7, 1978, the UFW had two principal lead negotiators, Sylvan Schnaittacher and later David Martinez.[21/] They were assisted by Barbara O'Hanlon, Tanis Ybarra, and Gilbert Padilla, who occasionally acted as lead negotiators in Mr. Schnaittacher or Mr. Martinez' absence.[22/] On two occasions Cesar Chavez, president of the UFW, came to the negotiations as lead negotiator.[23/] On September 7, 1978, Ken Fujimoto became the UFW's lead negotiator (assisted by Gilbert Padilla), and Mr. Fujimoto remained as the lead negotiator from that time on.[24/]

Respondent was represented at the negotiations by David Arakelian and Frank Gullo. In January 1976, Respondent retained attorney Paul Doty as its chief negotiator, (Tr. XXVI:5-7, Tr. XXVII:142-143), and Mr. Doty attended the negotiation sessions from January 22, 1976 through November 1, 1978.[25/]

20/ See stipulation (Tr. XX:27-34), for representation on behalf of the UFW at each of the sessions.

21/ See note 20, supra.

22/ See note 20, supra.

23/ See note 20, supra.

24/ See note 20, supra. Mr. Fujimoto was the lead negotiator at the sessions of 9/7/78, 9/22/78, 9/28/78, 10/4/78, 11/1/78, and 11/7/78.

25/ The representation on behalf of Respondent at the bargaining sessions was (Tr. XX:27-34); 11/20/75 (David Arakelian, Frank Gullo); 12/16/75 (Frank Gullo). 1/22/76 (Paul Doty, David Arakelian, Frank Gullo); 2/10/76 (Paul Doty, David Arakelian, Frank Gullo); 3/ 3/76 (Paul Doty, David Arakelian, Frank Gullo); 3/15/76 (Paul Doty, Frank Gullo); 5/24/76 (Paul Doty, David Arakelian, Frank Gullo); 8/24/76 (Paul Doty, David Arakelian, Frank Gullo); 8/31/76 (Paul Doty, David Arakelian, Frank Gullo); 9/14/76 (Paul Doty, David Arakelian, Frank Gullo); 10/12/76 (Paul Doty, David Arakelian, Frank Gullo); 10/29/76 (Paul Doty, David Arakelian, Frank Gullo); 11/9/76 (Paul Doty, David Arakelian, Frank Gullo); 11/16/76 (Paul Doty, David Arakelian, Frank Gullo); 11/24/76 (Paul Doty, David Arakelian, Frank Gullo); 11/29/76 (Paul Doty, David Arakelian, Frank Gullo); 12/7/76 (Paul Doty, David Arakelian, Frank Gullo); (continued)

In late October 1978, Respondent decided to change its negotiator, and it hired Leland Brewer to take over as chief negotiator (Tr. IX:41-46,54-59; Tr. XXVIII:29). Mr. Doty, not wanting to serve in a dual-negotiator capacity, resigned as of the November 1, 1978 session. At that session, attended by Mr. Doty, Mr. Brewer, and Mr. Brewer's assistant, Ken Huggins (along with David Arakelian and Frank Gullo), Mr. Doty stated to the UFW representatives that his role as Respondent's negotiator was ending, and that Mr. Brewer (assisted by Mr. Huggins) was now Respondent's negotiator. (Tr. XXV:155-157; Tr. XXVI:66; Tr. XXVIII:30-31). Mr. Brewer remained Respondent's negotiator from that point on.[26/]

When Mr. Doty was hired as Respondent's negotiator, he wanted Mr. Arakelian and Mr. Gullo to make the basic policy decisions regarding proposals and counter-proposals, and Mr. Arakelian and Mr. Gullo felt similarly. (Tr. XXVI:6-9; Tr. XXVII:142-143) Thus, Mr. Doty made proposals and counter-proposals, but only with the approval of Mr. Arakelian and/or Mr. Gullo. (Tr. XXVI:6-9, 108; Tr. XXVII:142-143; Tr. XXVIII:66) Other than this basic understanding, there is

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(Note 25 Cont'd) 12/14/76 (Paul Doty, David Arakelian, Frank Gullo).

2/2/77 (Paul Doty, Frank Gullo); 2/15/77 (Paul Doty, David Arakelian, Frank Gullo); 2/16/77 (Paul Doty, David Arakelian, Frank Gullo); 2/25/77 (Paul Doty, David Arakelian, Frank Gullo); 2/28/77 (Paul Doty, David Arakelian, Frank Gullo); 3/2/77 (Paul Doty, David Arakelian, Frank Gullo); 4/25/77 (Paul Doty, Frank Gullo, David Arakelian); 4/27/77 (Paul Doty, David Arakelian, Frank Gullo); 4/28/77 (Paul Doty, David Arakelian, Frank Gullo); 5/24/77 (Paul Doty, David Arakelian, Frank Gullo); 6/1/77 (Paul Doty, David Arakelian, Frank Gullo); 10/27/77 (Paul Doty); 11/8/77 (Paul Doty, David Arakelian, Frank Gullo); 11/23/77 (Paul Doty, David Arakelian, Frank Gullo).

9/7/78 (Paul Doty, David Arakelian, Frank Gullo); 9/22/78 (Paul Doty, David Arakelian, Frank Gullo); 9/28/78 (Paul Doty, David Arakelian, Frank Gullo); 10/4/78 (Paul Doty, David Arakelian, Frank Gullo); 11/1/78 (Leland Brewer, Ken Huggins, Paul Doty, David Arakelian, Frank Gullo); 11/7/78 (Leland Brewer, Ken Huggins, David Arakelian).

26/ See note 25, supra.

nothing in the record to indicate any limitations on the authority of Mr. Doty to speak and act as negotiator for Respondent.

The understanding that Mr. Doty would consult with Mr. Arakelian and Mr. Gullo before making proposals and agreements was shared by the UFW's negotiators; they assumed that Mr. Doty's proposals and statements were made with the approval of Mr. Arakelian and/or Mr. Gullo. (Tr. II:33-38; Tr. IV:31-38) It was also understood by both parties that Mr. Doty was authorized to, and frequently did, communicate with UFW representatives outside of the regular negotiation sessions. (Tr. IV:69-71; Tr. V:104; Tr. XXVI:121; Tr. XXVIII:61)

At the first major bargaining session between Respondent and the UFW, attended by Mr. Doty, February 10, 1976, Mr. Doty and the UFW's lead negotiator, Sylvan Schnaittacher, discussed the overall ground-rules for the negotiations. The basic ground-rules agreed to were: (1) that when verbal agreement had been reached on an issue, that issue would be set aside; and (2) that there would be no final agreement on a contract until there was agreement as to all issues. (Tr. XX:28; Tr. XXVI:9-11; Tr. XXVII:143-146)

These basic ground-rules were discussed by Mr. Doty with Mr. Fujimoto, the UFW's lead negotiator from September 7, 1978, onwards, at the session on September 7th. The two men knew each other, having participated in a previous negotiation at Valley Vineyards Services (VVS). They agreed that the ground-rules used at VVS would be used in Respondent's negotiations. These rules, similar to those that had been used in Respondent's negotiations, were: (1) that when oral agreement was reached on an issue the issue would be set aside, and it would be considered bad faith to reopen the issue unilaterally. The issue could be reopened by agreement of both the parties; (2) that there would be no complete agreement on a contract until there was agreement on all the issues. (Tr. II:23-41; Tr. IV:125-126; Tr. XXVI:17-18; Tr. XXVIII:1-2; Tr. XXIX:126) Respondent argues that there was no agreement against unilateral

reopening of issues, because Mr. Fujimoto reopened certain issues. (Brief for Respondent, p.63, n.23) However, I credit Mr. Fujimoto's testimony on this point (Tr. II:23-41; Tr. IV:125) that it was agreed by both parties that Mr. Fujimoto could reopen those issues. I also find that the rule against unilateral reopening of verbally agreed-to issues was the one followed, because of the unbroken history of setting aside and not reopening such issues during the first years of the negotiations (discussed immediately below).

During the three years of negotiations there were approximately 51 issues which were discussed by the parties. There is no real dispute that during the period of bargaining between November 1975 and September 1978, verbal agreement had been reached on a majority of the issues. I find that verbal agreement was reached as to the following 29 issues, and that the issues were set aside and were not reopened.[27/] Following each issue is the Article covering the issue in the October 1978 "Agreement" document (GCX:12A), which the General Counsel alleges constituted the entire agreed upon contract. I discuss my finding as to whether there was a complete contract below; however, I find here that the language in the cited Articles of GCX:12A does embody the verbal agreements reached as to the following 29 issues.

1. Grievance and Arbitration Procedure. (Article 5) (Tr. XIII: 111; Tr. XXI:91)

2. Right of Access to Company Property. (Article 6) (Tr. II:53; Tr. XIII:113; Tr. XXVI:132; Tr.XXX:42)

3. Discipline and Discharge. (Article 7) (Tr. II:53; Tr. XIII: 114; Tr. XXVI:132; GCX:2; CPX:9)

27/ A number of these issues were reopened for the first time on November 22, 1978, by Respondent's new negotiator, Leland Brewer. I discuss my finding regarding this attempted reopening below.

4. Discrimination. (Article 8) (Tr. XIII:115; CPX:9)

5. Worker Security. (Article 9) (Tr. II:55; Tr. XIII:115; Tr. XXVI:133; CPX:9)

6. Leaves of Absence. (Article 10) (Tr. XXI:81)

7. Maintenance of Standards. (Article 11) (Tr. XIII:117; Tr. XXI:81)

8. Health and Safety. (Article 13) (Tr. XIII:118; Tr. XXI:91; Tr. XXX:43; CPX:9)

9. Union Label. (Article 14) (CPX:9; Tr. XXI:81)

10. New or Changed Classifications. (Article 15) (Tr. XIII:119; Tr. XXX:43; CPX:9)

11. Hours of Work and Overtime. (Article 16 and Supplemental Agreement)[28/] (CPX:40; Tr. XXI:81).

12. Reporting and Standby Time. (Article 17) (Tr. XIII:123; CPX:40)

13. Rest Periods. (Article 18) (Tr. XIII:80; Tr. XXVI:169; CPX:19; CPX:40)

14. Bereavement Pay. (Article 21) (GCX:4; CPX:30; CPX:36; Tr. XXI:81)

15. Jury Duty Pay. (Article 22) (Tr. XIII:80; Tr. XXVI:133-134); CPX:40)

16. Travel and Out-of-Town Allowance. (Article 23) (CPX:9; Tr. XXI:81)

17. Records and Pay Periods. (Article 24) (Tr. XIV:12; CPX:9)

18. Income Tax Withholding. (Article 25) (Tr. XIV:12; Tr. XXVI: 133; CPX:9)

28/ Agreement was reached except as to irrigators, discussed below.

19. Credit Union Withholding. (Article 26) (Tr. II:60; Tr. XXVI:133)

20. Juan De La Cruz Farm Workers Pension Fund. (Article 28) (Tr. XIII:79; Tr. XIV:26; Tr. XXI:81)

21. Camp Housing. (Article 31) (Tr. XXI:49; CPX:9)

22. Bulletin Boards. (Article 32) (Tr. II:57; Tr. XIII:79; Tr. XXI:50; Tr. XXVI:133; CPX:9)

23. Location of Company Operations. (Article 35) (Tr. XXI: 57,81; CPX:9)

24. Modification. (Article 36) (Tr. XXI:57-58; CPX:9)

25. Savings Clause. (Article 37) (Tr. XXI:58; CPX:9)

26. Successor Clause. (Article 38) (Tr. XXI:60; CPX:9)

27. Management Rights. (Article 39) (CPX:9; Tr. XXI:81)

28. Job Descriptions. (Appendix A) xx (Tr. XXI:63; CPX:19)[29/]

29. Maps of Company Property. (Appendix) (Tr. XXI:70)[30/]

September 7, 1978 was the first session after a nine-month hiatus in the bargaining, and marked the entry of Mr. Fujimoto as the UFW's lead negotiator. Mr. Fujimoto and Mr. Doty were the chief negotiators at bargaining sessions on September 7, 22, 28 and October 4, 1978. Mr. Doty and Mr. Fujimoto also communicated by telephone and by letter during this period of time. (Tr. XX:33-34; Tr. II:78; Tr. III:14-16,30,52-61; Tr. IV:35-40, Tr. V:77, 104; Tr. XXVI:17-52; 121,181; Tr. XXVIII:1-2; GCX:3-11; CPX:24,27-30,35-38; RX:5)

The evidence is clear that verbal agreement was reached as to four more issues during this period of time, and that the language in GCX:12A embodies those verbal agreements:

29/ Agreement was reached except for the issue of irrigators and pruners, discussed below.

30/ Agreement was reached except for the issue of the Zinfandel acreage, discussed below.

1. Vacations. (Article 19) (Tr. XXVI:47; Tr. XIII:124-125)

2. Holidays. (Article 20) (Tr. XXVI:47; Tr. XIII:80)[31/]

3. Robert F. Kennedy Farm Workers Medical Plan. (Article 27) (Tr. XXVIII:5-6; contributions are to be on a monthly basis: Tr. XXVII:12-13)

4. Work Evaluation Period. (Appendix B) Respondent admits that an agreement was reached on a 5-day period, and I so find. (Tr. III:16,60; Tr. IV:35; Tr. XXVIII:9; CPX:27) Respondent denies that any set language was agreed to, but I find that there was agreement to use the language of a prior negotiation, the M. Caratan contract, familiar to Mr. Fujimoto and Mr. Doty. (Tr. III:16-17,60)

Regarding an additional group of eight issues, I find that verbal agreement was also reached as to them during this period of time. I make these findings because there is substantial evidence showing that verbal agreement was reached and the issues were put aside. Further, on September 14, 1980, Mr. Doty sent a letter to Mr. Fujimoto (CPX:4) listing the unresolved issues and stating that agreement on those unresolved issues would (with some loose ends as to language) be agreement on all articles of the contract. None of the eight issues in the below-listed group was included in this letter as being unresolved. Similarly, on September 28, 1980, Mr. Doty gave to Mr. Fujimoto a proposal listing Respondent's positions on unresolved issues, and none of the eight issues is included. (RX:5)[32/] Therefore, I find that verbal agreement was reached on the following eight issues, as embodied in the language of the

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31/ Agreement was reached on all holidays except Citizen's Participation Day, discussed below.

32/ General Counsel introduced an exhibit, (GCX:8), similar to RX:5, but containing some additional language. There is a dispute as to which exhibit is accurate, but even under Respondent's Exhibit 5 none of the eight issues are included. Accordingly, I treat RX:5 as the accurate exhibit.

corresponding Articles in GCX:12A, and that the issue was then set aside.[33/]

1. Recognition. (Article 1) (CPX:9; Tr. II:52)

2. Union Security. (Article 2) (Tr. II:52; Tr. XXI:77; Tr. XXVI:132-133)[34/]

3. Supervisors. (Article 12 and Letter) (Tr. XXX:43; Tr XXI:81)

4. Martin Luther King Fund. (Article 29) (Tr. XIII:74; Tr. III: 68; Tr. XXI:47,81; Tr. XXVI:55-56; CPX:9)

5. Piece-Rate and Hourly Wages. (Article 33) (Tr. III:58,68; Tr. XXI:50,56; Tr. XXVI55-56,136)[35/]

6. Subcontracting. (Article 34) (CPX:9; Tr. XXI:56,94)

7. Reporting on Payroll Deductions and Fringe Benefits. (Article 30) (CPX:9; Tr. XXI:49,81)

8. Local Demands. (Appendix B) (Tr. XXVI:169; CPX:30)

I have found the evidence persuasive that verbal agreement was reached on all the above-mentioned total of 41 issues. The real dispute in this case centers around the remaining 20 issues: (1) Seniority (specifically seniority lists and the recall of temporary workers); (2) Mechanization; (3) Hiring; (4) Herbicide spraying premium; (5) Irrigators and pruners; (6) Status of Mennonites; (7) Citizen's Participation Day; (8) Grape Harvest Procedures; (9) Zinfandel harvest rates; and (10) Duration of the agreement and the related issue of 1981 harvest rates.

33/ The attempt of Respondent on November 22, 1978 to re-open these issues is discussed below.

34/ The disputed side letter regarding Mennonites is discussed below.

35/ There was agreement to the Article, but there are four disputed sub-issues, discussed below: 1981 harvest rates, Zinfandel Rates, Chemical Spray Premium and Irrigators-pruners.

The disputed document alleged by General Counsel to be a complete agreed-to contract comes into play in connection with these remaining issues. The evidence shows that Mr. Doty prepared a written document on approximately October 20, 1978, containing language on many of the bargaining issues. (Tr. XXVI:58-59) I shall refer to this document as the "October Agreement" document, (GCX:12A). It is disputed as to which of two documents introduced into evidence is the actual alleged October Agreement document, GCX:12A or CPX:5; however, I find the two are virtually identical. CPX:5 does not contain the letter on Local Demands and the Article (32) on Bulletin Boards, both minor issues as to which I have already found verbal agreement was reached by the parties. I therefore find that GCX:12A is the alleged October Agreement. I exclude any handwritten notes on the document, and find the agreement to consist of only the type-written body of the document.

It is undisputed that Mr. Doty and Mr. Fujimoto met in Mr. Doty's office on October 20, 1978, two weeks after their last negotiation session on October 4th. It is also undisputed that at the meeting on October 20th, Mr. Doty discussed the substance of the October Agreement document with Mr. Fujimoto. (Tr. XXVI: 60-61, 92, 121) Mr. Doty testified that the document had not been approved by Mr. Arakelian and/or Mr. Gullo, that he told Mr. Fujimoto this, that therefore he was not authorized to give Mr. Fujimoto a copy, and that he did not give Mr. Fujimoto a copy. (Tr. XXVI:58-61,92) Mr. Fujimoto testified that Mr. Doty gave him a copy, and said that it looked like they had a deal. (Tr. III:69; Tr. V:59)

Mr. Fujimoto did obtain a copy in some manner, and he took it back to Respondent's ranch where the UFW employees voted to "ratify" it. (Tr. III:85, 122; Tr. VI:5; Tr. XII:6,56) On December 6, 1978 the UFW sent a copy of the

October Agreement document and a letter to Mr. Arakelian, stating that the October Agreement document had been ratified by the members and signed by Cesar Chavez, and requesting that Mr. Arakelian sign the document. (GCX:17) Mr. Brewer, Respondent's negotiator, responded in a letter of December 21, 1978, refusing to sign the document. General Counsel's position is that the October Agreement document embodies the agreement between the parties, and that it covers and resolves the remaining ten disputed issues mentioned above. Thus, there had been a complete agreement, but Respondent backed out at the last minute by refusing to sign the draft of the agreement.

Between the meeting on October 20th between Mr. Doty and Mr. Fujimoto and the sending of the UFW letter on December 6th, the UFW agreed to have two meetings with Respondent, on November 1st and 7th. Mr. Fujimoto testified that these were not bargaining sessions, but were simply question-and-answer sessions about the agreement; Respondent's witnesses testified that they were bargaining sessions. (Tr. III:80-94,143-148; Tr. IV:18-22; Tr. VI:11-22,38; Tr. XXV:153-157; Tr. XXVI:66; Tr. XXVII:2-6,14-15, 67-74; Tr. XXVIII:7-8,30-35)

Between October 20th and the first of these sessions, Respondent hired Mr. Brewer as its negotiator. (Tr. IX:41-46,54-59; Tr. XXVII:29) On November 22nd, after the two sessions, Mr. Brewer sent to Mr. Fujimoto a document and letter, (GCX:15,16), containing a new proposal. This proposal attempted to change almost twenty of the issues on which I have found there had already been verbal agreement.[36/] The UFW ignored this proposal, and on December 6th, it sent to Respondent the letter requesting Respondent to sign the October Agreement document.

36/ Changes or deletions were made regarding: Recognition, Union Security, Grievance and Arbitration Procedure, Right of Access, Worker Security, Maintenance of Standards, Supervisors, Health and Safety, Classifications, Hours of Work, Vacations, RFK Medical Plan, Juan De La Cruz Pension Fund, Subcontracting, Management Rights, Grape Harvest, Probationary Period, Local Demands.

Regarding these events during October-December, I find, first, that the proposal from Mr. Brewer on November 22nd went against the agreed ground-rules of the bargaining, in that it unilaterally sought to reopen virtually half the verbally agreed to issues. Accordingly, I do not consider it a good faith proposal. I discuss my findings and conclusions regarding Respondent's good faith bargaining in Section VI(E) infra.

Second, I find that the October Agreement document did not fully eliminate the disputed issues between the parties because some of the remaining ten issues were still not agreed to. Thus, although I find the evidence very close on most of these remaining issues, and I find that there was agreement on the overwhelming majority of issues in the bargaining, nonetheless under the second ground-rule there was still no complete agreement because agreement had not been reached as to all the issues. In making my findings, I have found it unnecessary to consider whether Mr. Doty did in fact give a copy of the document to Mr. Fujimoto, and if so whether Mr. Doty's apparent authority covered the document. Even if Mr. Doty, within the scope of his authority, gave Mr. Fujimoto a copy, I find that the language of the document does not include certain disputed issues, and thus was not a complete agreement. In this connection, I note that Mr. Fujimoto testified that Mr. Doty said during the October 20th meeting that "it looks like we have a deal." (Tr. II:69; Tr. V:59) However, I find that even if Mr. Doty did say this, it was simply a reflection of his reasonable optimism at that point that the parties were on the verge of complete agreement, with only a very few issues left to be resolved out of the more than fifty covered by the bargaining.

Specifically, I find that the following four issues were not completely agreed to by the parties:

1. Zinfandel harvest rates. I find that the October Agreement

document does not include rates for the twenty acres of Zinfandel grapes purchased by Respondent in January 1978. I find that this issue was discussed on October 4, 1978 when Mr. Doty realized that there were no piece rates for this new acreage. (Tr. XXVI:50) This issue was not resolved and remains open. (Tr. XXVIII:7-8)

2. Premium pay for herbicide spraying. I find that there was no agreement as to whether such premium rates would apply, and if so what specific chemicals would be included. (Tr. XXVI:169; Tr. XXVII:9-10; Tr. XXVIII:22-23) Mr. Doty testified that there was an agreement for such pay, (Tr. XXVI:169), Mr. Fujimoto testified that there was to be no such premium pay. (Tr. V:26) I find that this issue was not resolved, and was not included in the October Agreement document.

3. Status of Mennonites. I find that there was agreement in principle that the UFW would provide written assurance of the good union standing of Mennonites at Respondent's ranch (allowing them to receive union benefits). Tr. XXVI:137) However, I find that the UFW never included a letter of understanding on this issue. Thus, I find that the issue remains open, to the extent that the UFW has not yet provided the letter of understanding on this issue.

4. Seniority. I find that there was agreement on the overall seniority article (Article 4). (Tr. III:61) I find that the UFW accepted Respondent's proposal for hiring temporary seasonal workers. (Tr. III:61; GCX:4; GCX:12A, Letter re: Hiring) I find it insignificant that the alphabetical sequence of the Seniority Article paragraphs does not contain paragraphs lettered "B" and "C"; the Article can be re-lettered for proper sequence and I find that there were no substantive omissions. However, I find that there is one remaining open issue concerning seniority. The UFW is obligated to provide seniority lists, and these have not been provided. (Tr. XXV:173-174) Thus I find that

the seniority issue is still unresolved, to the extent that the UFW has not yet provided seniority lists.

Regarding the remaining six disputed issues, I find that agreement was reached as to five of them:

1. Grape Harvest Procedure. (Letter of Understanding) I find the UFW agreed to Respondent's proposal. (GCX:4; GCX:12A) Letter re: Grape Harvest.

2. Irrigators and Pruners. I find that the UFW agreed to Respondent's proposal concerning job descriptions for pruners and irrigators, and also to the break-time for irrigators. (GCX:12A, Letter of understanding re: Job Descriptions; Supplemental Agreement re: Article 16, Hours of Work and Overtime)

3. Mechanization. (Article 40, Letter of Understanding) I find that agreement was reached as to the Article on mechanization. (Tr. III:59; Tr. XIII:79; GCX:4). I also find that the UFW accepted the Respondent's side letter regarding mechanization, giving up its initial insistance that the word "harvestors" be made singular. (Tr. XXVI:47-48; GCX:12A, Letter of Understanding re: Mechanization)

4. Hiring. (Article 3, Letter of understanding) I find that the Article on hiring was agreed-to by the parties. (CPX:9; Tr. II:52). I find that the remaining disputed issue, the hiring of temporary workers, was agreed to by the UFW. (Tr. III:61; GCX:4; GCX:12A, Letter re: hiring)

5. Citizen's Participation Day. I find that it was agreed by the parties that there would be such a holiday (Tr. XIII:125-126), and that it would be the third Sunday in January (Tr. XXVI:170). Although Respondent later expressed some concerns about this holiday, I find that it was never mutually agreed by the parties that the issue would be reopened.

The final issue is the duration of the agreement, and the related issue of 1981 harvest rates. I find that the parties generally considered the agreement to be for three years. (CPX: 40; GCX:12A; Tr. XXVI:29) This would mean an agreement from 1978 through 1980. However, there was a brief discussion that rates for the 1981 year (referred to as the "last year") had yet to be agreed to. (Tr. XXVIII:26) Were this the only open issue, I would find that the agreement was for three years, from 1978 through 1980. However, since I have found above that there are four other issues remaining to be resolved, I will consider the duration of the agreement also to be open. I do so also in light of the current date and the possibility that the parties may want to extend the duration of any agreement reached.

In sum, I have made the following findings concerning the bargaining:

A. It was agreed that once issues were verbally agreed-to, those issues would be set aside and could not in good faith be unilaterally reopened.

B. It was agreed that there would be no complete contract until all the issues had been agreed to.

C. I find that there was verbal agreement on the following 46 issues, and that the language of GCX:12A embodies the agreement on these issues:

1. Recognition
2. Union Security
3. Hiring
4. Grievance and Arbitration
5. Right of Access to Company Property
6. Discipline and Discharge
7. Discrimination
8. Worker Security
9. Leaves of Absence
10. Maintenance of Standards
11. Supervisors
12. Health and Safety
13. Union Label
14. New or Changed Classification
15. Hours of Work and Overtime
16. Reporting and Standby Time

17. Rest Periods
18. Vacation
19. Holidays
20. Bereavement Pay
21. Jury Duty Pay
22. Travel and Out-of-town Allowance
23. Records and Pay Periods
24. Income Tax Withholding
25. Credit Union Withholding
26. Robert F. Kennedy Medical Plan
27. Juan De La Cruz Pension Fund
28. Martin Luther King Fund
29. Reporting on Payroll Deductions and Fringe Benefits
30. Camp Housing
31. Bulletin Boards
32. Wages
33. Subcontracting
34. Location of Company Operations
35. Modification
36. Savings Clause
37. Successor Clause
38. Management Rights
39. Mechanization
40. Maps of Company Property
41. Job Descriptions
42. Work-Evaluation Period
43. Local Demands
44. Grape Harvest Procedure
45. Irrigators and Pruners
46. Citizen's Participation Day

D. I find that there was not full agreement on the following five issues:

1. Zinfandel Harvest Rates
2. Premium Pay for Herbicide Spraying
3. Status of Mennonites (agreement reached but UFW to provide letter)
4. Seniority (agreement reached but UFW to provide seniority lists)
5. Duration of Agreement (and wage rates for any years agreed to beyond 1980)

C. Anti-UFW Animus

There has been evidence in this case about incidents occurring away from the bargaining table at the time of the alleged refusal to bargain. I have found anti-UFW animus in connection with some of these incidents, and these

findings are stated briefly in the following subsections, with a cross-reference to the Sections of this decision in which they are fully discussed.

(1) 1978 Pruning Rehires

In Section VII of this decision, infra, I have found that in December, 1978, Respondent violated §1153(c) of the Act by discriminatorily refusing to rehire a number of pro-UFW employees for the 1978 pruning season, in an attempt to reduce the influence and numbers of UFW supporters at Respondent's ranch.

(2) Hiring of Atad Labor Contractor

The General Counsel alleges that in December 1978, Respondent violated §1154.6 of the Act by hiring the Arad contractor for the primary purpose of voting in an election. In Section VIII of this decision, infra, I have found that the General Counsel has not proven that the primary specific purpose for which Respondent hired the Atad contractor was to have the employees vote in an election. Accordingly I found no violation of §1154.6 of the Act. However, I did specifically find that the general purpose for which the Atad contractor was hired was to weaken the influence of the UFW at Respondent's ranch, and this finding is relevant to show Respondent's anti-UFW animus.

(3) Support of AFLU

In Section IX of this Decision, infra, I have found that in January 1979, Respondent violated §1153(b) of the Act by unlawfully assisting the AFLU in its organizational activities against the UFW at Respondent's ranch, with the intent of weakening the influence of the UFW at Respondent's ranch.

(4) January 1979 Pruning Layoff

In Section IX of this decision, infra, I have found that in January 1979, Respondent violated §1153(c) of the Act by discriminately laying off pruning employees for three days to help the AFLU during a strike.

(5) Elimination of Supervisors' Favors

There was testimony in this case that prior to the UFW's election in 1975, Supervisor Eugene Esau did favors for some employees (driving them to work, sending registered letters for them), and that after the UFW's victory these favors stopped. (Tr. XVIII:20-29) This testimony was contradicted by Supervisor Esau. (Tr. XXV:113-114) David Arakelian and Frank Gullo also testified that they never instructed supervisors to end favors for employees. (Tr. XXVII:141-142; Tr. XXIX:110-111)

I have found it unnecessary to consider this evidence in making my determinations in this case. The remoteness in time to the 1978 bargaining period would attenuate its relevance, and given the other incidents of anti-UFW animus occurring in the 1978-79 period, I do not find it necessary to consider this evidence.

(6) Alleged Anti-UFW History of Alpha Agency and Atad Contractor

There was testimony showing anti-UFW actions at other ranches on the part of the bargaining agents and labor contractor hired by Respondent in 1978. The General Counsel argues that this evidence shows that Respondent deliberately hired Lee Brewer's management consulting agency (Alpha Agency), and the Atad labor contractor, as part of a package to break the influence of the UFW at Respondent's ranch.

The General Counsel alleges, in sum, that the evidence shows the following: that prior to being hired by Respondent, Leland Brewer's Alpha Agency had been hired as a management consulting firm in ranches in Stockton and Salinas where there were UFW strikes; that a friend of Brewer's, Harry Zacoff, acted as a link to the Atad labor contractor and had brought in the Atad labor contractor at these other ranches; that the Atad contractor crews were used as anti-UFW strike-breakers at these ranches; and that Brewer worked with Respondent's

attorneys in deliberately repudiating the UFW's bargaining proposals and in trying to force the ALRB to conduct an election at Respondent's ranch in order to eliminate the UFW. The evidence is undisputed that Mr. Zacoff arranged for the initial meeting in December 1978, between David Arakelian and Atad's representative, Fred Rayray; that this meeting was held at Leland Brewer's office; and that at this meeting arrangements were made for Respondent to hire the Atad contractor to provide pruning crews in the 1978-79 pruning season. (Tr. XXI:106-107; Tr. X:121,144; Tr. XI:53; Tr. XXVIII:41)

I have found it unnecessary to consider this evidence as general evidence of anti-UFW animus, for several reasons. First, as noted above, I have found a number of instances of specific anti-UFW animus at Respondent's ranch during the time of the refusal to bargain. Second, I have considered some evidence of the Brewer-Atad connection, but only in specific sections of this decision where it has direct relevance (hiring of the Atad contractor; support of the AFLU). Finally, although I think such evidence would be of some relevance as a showing of anti-UFW animus, I feel that the problems of going into such collateral issues would outweigh their relevance in this case, because this evidence would only be cumulative to the stronger, direct evidence of anti-UFW animus at Respondent's ranch already noted above. For these reasons I have not considered this evidence.

D. Status of the UFW

Respondent contends that it had no obligation to bargain with the UFW, because the UFW was not the certified bargaining representative for Respondent's employees; or, in the alternative, because Respondent entertained a good faith doubt as to the UFW's continuing majority status at Respondent's ranch. I find these contentions to be without merit.

The UFW was certified as bargaining representative for Respondent's agricultural employees on October 27, 1975. On August 20, 1976, the UFW filed a petition for a one-year extension of its certification. On March 8, 1978, the Board denied the UFW's peitition, solely on the ground that the passage of time had rendered the petition moot. (RX:4). Respondent argues that his denial meant that the UFW was, after the first year, no longer the bargaining representative of Respondent's employees, and Respondent had no further duty to bargain after October 27, 1976.

This argument runs completely counter to the Board's holding in Kaplan Fruit and Produce Co., Inc., 3 ALRB No. 28 (1977). In Kaplan, the Board held clearly, and at length, that the employer's duty to bargain is a continuing one:

> Our conclusion that the duty to bargain does not lapse following the end of the certification year is not based solely on [our] reading of the [ALRA] in the light of NLRB precedent. The policy arguments in support of this conclusion are powerful. To hold that the duty to bargain lapses after one year would strike at the Act's central purpose of bringing 'certainty and a sense of fairplay to a presently unstable and potentially volatile condition in the state,' Section 1, ALRA At the heart of the Act is the plan that agricultural labor relations will come to be regulated by a process of collective bargaining conducted in good faith by both labor and management. If the duty to bargain is held to lapse after one year, the potential effects are incongruous with this goal.
>
> In the first place, such a policy would inhibit good faith bargaining. If an employer has, in fact, been bargaining in good faith throughout the certification year, and if, as the argument would have it, the duty to bargain ends after one year, the Act would operate to terminate, rather than to encourage, the good faith process in which the parties were then actually engaged. We cannot imagine a doctrine more mischievous to the policy of encouraging good faith bargaining than one which requires the parties to bargain, not until they reach agreement or impasse, but only until a year's time has slipped past in good faith negotiations.
>
> In the second place, such a policy would promote strikes by placing the union under great time pressure to obtain an agreement before its certification lapses.

> A union which must obtain an agreement within one year might strike to force concessions because it does not have the luxury of taking time to work out reasonable compromises....
>
> In the third place, this theory seriously impairs the employees' right to be represented in their relationships with employers. If, as will often happen, certification lapses when the employer has just passed his peak season, the effect would be to preclude the possibility of any representation for employees until the following peak season, when the entire election process would have to begin again.
>
> Finally, we note the increased burden on this Board's resources of requiring annual or bi-annual elections whenever the parties bargain in good faith but fail to reach agreement within one year. We fail to see the need to commit our resources to a process of ritual reaffirmance of certifications in cases where employees are satisfied with their representatives.

(Kaplan, supra, pp. 4-6)

I have quoted from the Kaplan opinion at such length because I disagree with Respondent's characterization of the Board's opinion in Kaplan as an "incorrect, boot-strapping advisory opinion." (Post-Hearing Brief for Respondent, p. 217). Rather, I find all the policy reasons stated in Kaplan to be equally applicable here, and I specifically follow that opinion. Accordingly I find unpersuasive Respondent's argument that, after the one-year certification ended, Respondent no longer had a continuing duty to bargain with the UFW.

I find Respondent's second contention, that it had a good faith doubt as to the UFW's continuing majority status, to be without merit because I find it to be a spurious argument. Respondent never indicated during the course of the bargaining that it had such a doubt. It continued to bargain through the final sessions in 1978. Its argument in this case has been that Respondent's bargaining was continuing (in good faith) because there were still unresolved issues about which Respondent wished to have further negotiations. I find that Respondent's contention of a good faith doubt is simply a post-bargaining litigation posture, and accordingly, I find that Respondent did not in fact enter-

tain a good faith doubt as to the UFW's status.

For the reasons just stated, I therefore find and conclude that Respondent had a continuing duty to bargain in good faith with the UFW.

E. Violation of §1153(e)

(1) Refusal to Execute a Contract

A line of NLRB cases holds that a refusal to execute an agreed-to contract is a per se refusal to bargain in good faith. H. J. Heinz Co. v NLRB, 311 U.S. 514 (1941); NLRB v Strong, 393 U.S. 357 (1969); NLRB v Donkin's Inn, Inc., 532 F. 2d 138 (9th Cir., 1976); Worrell Newspapers, 232 NLRB No. 65 (1977).

In determining whether there was an agreed to contract, it is necessary to look to the parties' intentions. In this case I have found that the parties intended that there would be no complete agreed to contract until all of the issues between the parties had been agreed to. I have also found that five issues had not been fully agreed to. Therefore, under the parties own ground-rules, there had not yet been a complete contractual agreement. Accordingly, I find and conclude that there was no complete contractual agreement between the parties and that, therefore, Respondent did not violate §1153(e) by refusing to execute an agreed to contract.

(2) Refusal to Bargain in Good Faith

It is well settled under the Act that an employer has a continuing duty to bargain in good faith with a certified union until agreement or good faith impasse is reached. Adam Dairy, 4 ALRB No. 24; Hemet Wholesale Company, 4 ALRB No. 75; O. P. Murphy and Sons, 5 ALRB No. 63. It is also well-settled in determining whether an employer refused to bargain in good faith, the entire course of conduct between the parties must be looked at, including independent violations of the Act. AS-H-NE Farms, 6 ALRB No. 9; McFarland Rose Production,

6 ALRB No. 18; Masaji Eto, et. al., 6 ALRB No. 20; O.P. Murphy and Sons, 5 ALRB No. 63; Hemet Wholesale Company, 4 ALRB No. 75.

On the whole record in this case, including actions at and away from the bargaining table, I have no difficulty in concluding that Respondent refused to bargain in good faith with the UFW. I find the evidence very clear and convincing that, as of November, 1978, Respondent no longer had a good faith desire to bargain with the UFW.

As has been described above, there were almost three years of bargaining between the parties. I find that this bargaining was in good faith, and that by October 1978, an agreement was virtually wrapped-up. Agreement had been reached on 46 issues, and on most of the remaining five issues there had been agreement on all but a few points. Thus, the parties were virtually in total agreement on a contract with just the final few points to be resolved, points that did not present major difficulties and were considerably less difficult than many of the issues which had already been agreed upon.

Just at this point Respondent changed its negotiator. I do not find that Respondent's hiring of Mr. Brewer was itself a manifestation of bad faith. However, the subsequent actions of Respondent in the three months from this change in negotiators provides a virtual litany of bad faith. On November 22, 1978, Mr. Brewer presented a proposal which attempted to change almost half of the issues laboriously agreed to in the three years of prior negotiations. I have found that this proposal was not a good faith proposal. Shortly after, Respondent discriminatorily refused to rehire a number of pro-UFW employees for the 1978-79 pruning season. Respondent then hired the Atad contractor labor crews with the purpose of decreasing the UFW's influence at Respondent's ranch. This was followed by Respondent's unlawful assistance of the AFLU in the AFLU's organizational campaign against the UFW. Finally, Respondent discriminatorily

laid-off employees with the intent of aiding the AFLU strike and weakening the UFW's influence at Respondent's ranch.

I believe that good-faith negotiations would likely have resolved in relatively short time the few disputed issues remaining as of October, 1978. Instead, Respondent's new proposal and its pattern of anti-UFW actions reveal quite clearly that Respondent was not interested in reaching an agreement with the UFW. Although it is not possible to pinpoint an exact date on which Respondent's bad faith refusal to bargain began, I believe that the most appropriate date would be November 22, 1978. On this date Respondent presented its new proposal, and shortly thereafter Respondent began its pattern of anti-UFW actions.

Accordingly, for the above-stated reasons I find and conclude that as of November 22, 1978 Respondent violated §1153(e) of the Act by refusing to bargain in good faith with the UFW.

F. The Remedy

General Counsel urges that the remedy for the refusal to bargain in good faith be enforcement of the alleged agreed to contract. While enforcement of an agreed to contract is an appropriate remedy, see H.J. Heinz Co. v NLRB, 311 U.S. 514 (1941), NLRB v Strong, 393 U.S. 357 (1969), NLRB v Donkin's Inn, Inc., 532 F. 2d 138 (9th Cir. 1976), I have found that there was not a complete agreed to contract in this case. Accordingly, enforcement of the "contract" would not be appropriate in this case.

I have recommended the normal refusal-to-bargain remedy (Section XIII of this decision, infra), ordering Respondent to commence bargaining in good faith, to cease and desist from its bad faith bargaining and related anti-UFW acts, and to make whole the employees for the delay in good faith bargaining. Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1978); Hemet Wholesale Company, 4 ALRB

No. 75. In this connection, I would note that in a refusal to bargain case the remedy is to be interpreted in light of the specific status of the bargaining between the parties. Adam Dairy, supra; AS-H-NE Farms, 6 ALRB No. 9; Montebello Rose/Mount Arbor Nurseries, 5 ALRB No. 64. In this case I have found that agreement has been reached as to 46 of the 51 issues between the parties, and that these issues cannot be reopened unilaterally in good faith. Thus, absent a mutual agreement to reopen any of these agreed upon issues, the remedy in this case should be interpreted to mean that the parties should bargain in good faith as to the remaining issues, to the extent that there remain unresolved points in connection with those issues.

VII. 1978 PRUNING HIRES (§1153(c))

The General Counsel alleges that 18 named persons were discriminatorily refused hire for the December 1978 pruning season, in violation of §1153(c) of the Act. The 18 individuals are: Hippolito Aguilar, Jorge Aguilar, Luis Aguilar, Ramon Aguilar, Eduardo (Gerardo) Arroyo, Galdino Arroyo, Prudencio Arroyo, Rafael Arroyo (Padilla), Ricardo Castoro, Jesus Garibay, Longeno Garibay, Constantino Hurtado, Vidal Hurtado, Roberto Muniz (Garibay), Salvador Savala (Jose Garcia), Daniel Solorio, Javalino (Avelino) Vega, and Pedro Vega.[37/]

In order to provide a framework for the findings of facts, I will first discuss the legal standards applicable to this issue.

The traditional requirements for finding a violation of §1153(c) are that

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[37/] Third Amended Complaint, Par. 10 (GCX:1S). Roberto Muniz (Garibay) was added in the Second Amended Complaint (GCX:1M); his name was inadvertantly omitted from the Third Amended Complaint. I have found that all these individuals were agricultural employees within the meaning of the Act. Section V of this decision, supra.

the employee applied for work, the employee was qualified for work, work was available, and the employer's refusal to rehire the employee was motivated by the employee's union support, known to the employer. See, e.g., Sahara Packing Co., 4 ALRB No. 40; Kitayama Bros. Nursery, 4 ALRB No. 85; Prohoroff Poultry Farms, 5 ALRB No. 9; Sam Andrews' Sons, 6 ALRB No. 44.

However, in Kawano, Inc., 4 ALRB No. 104 (1978), affirmed ___ CA3d ___ (Dist. 4, Div. 1, June 18, 1980), the Board set out standards which apply when an employer discriminates against an identifiable group of union supporters. In that circumstance, if it can be shown that the employer attempted to reduce the pro-union proportion of its workforce through its hiring practices, the General Counsel does not have to show the traditional requirements of a §1153(c) violation for each alleged discriminatee. The Board discussed this holding at length:

> Where the alleged discrimination is not directed at individuals, but at a group, the burden as to each named discriminatee may be met by a showing that the group was treated discriminatorily and that the named discriminatee is a member of the group. ... [T]he general counsel's burden of showing that each alleged discriminatee was not rehired because of union activity was met by a statistical showing ... that union supporters were recalled in far smaller proportion to their numbers in the pre-layoff workforce than were non-union employees. ...
>
> When an employer is found to have been concerned more with the fact of a union majority than with individual union activities, it is not necessary to prove employer knowledge of each alleged discriminatee's union affiliation or support. This rule is clearly applicable to the case before us, in which the most active union support came from a clearly distinguishable group of employees which the Employer could easily eliminate from its workforce by changing its hiring system.
>
> General counsel generally relies on statistical evidence . . . . The significance of the statistics is ... that [union supporters] comprised a much smaller percentage of the reduced workforce.

(Kawano, supra, pp. 8-12. Citations omitted)

Once it is shown that an employee has discriminated against a pro-union

group of employees, it is not automatic that every member of the group is included in the violation. However, instead of showing that each member made an actual application for work, the General Counsel simply has to show that a particular employee made some informal inquiry or other effort, or even had an unexpressed desire to return to work:

> [A] showing must still be made, as to each non-applicant, that he or she would have applied but for the employer's discriminatory practices. ... [T]his requirement might be met by 'evidence of an employee's informal inquiry, expression of interest, or even unexpressed desire.'

(Kawano, supra, p. 5, fn. 4. Citation omitted.)

Finally, the Board in Kawano held that even if some members of the discriminated-against group were rehired, a violation of §1153(c) is still made out:

> Respondent also argues that the fact that some [members of the group] were hired militates against a finding of discrimination as to other [members]. Cases in which the NLRB has found a statistical showing of disproportionate impact upon a group to be satisfactory evidence of discrimination have not required a showing of complete or absolute exclusion of the group from the workforce.

(Kawano, supra, p. 12. Citations omitted.)

This holding is consistent with prior holdings of the Board. Desert Automated Farming, 4 ALRB No. 99; TEX-CAL Land Management, 3 ALRB No. 14.

The General Counsel argues that Respondent's refusal to rehire the alleged discriminatees during the 1978 pruning season violated §1153(c) under the approach of the Kawano case. For the reasons discussed below, I agree. However, also for the reasons discussed below, I find that as to some of the named alleged discriminatees, no violation has been shown.

The above legal standards, as applied here, require three showings by the General Counsel:

(1) that the alleged discriminatees were part of an identifiable group in which the pro-UFW activity at Respondent's was largely concentrated;

(2) that Respondent knew of the pro-UFW activities of this group; and

(3) that because of Respondent's hiring practices, the percentage of this group in Respondent's 1978 pruning workforce was significantly reduced. I find ample evidence in the record for each of these showings.

1. The Group and its UFW Activities

The alleged discriminatees are all from two neighboring towns in the state of Michoacan, Mexico: Huapamacato and Changitiro.[38/] Many of the individuals are related.[39/]

Beginning in 1967 and 1968, people from Huapamacato and Changitiro began coming to work for Respondent. (Tr. XI:100) Discussions soon took place in the towns about the availability of work at Respondent's business, and for the next twelve years groups of people from these two towns regularly came to work for Respondent, including the alleged discriminatees. (Tr. XI:91-98,100-110; Tr. XV:2-4; Tr. XVI:11-12; Tr. XVII:12-17; Tr. XVIII:31-38,74-78). Some of the employees returned to Mexico after certain seasons, others worked for longer parts of the year; many of the discriminatees worked together and, up until May, 1976, lived together in housing on Respondent's premises during the working seasons. (Tr. VII:26-36; Tr. XI:100-110; Tr. XV:2-4,17; Tr. XVI:10-18; Tr. XVII:12-14; Tr. XVIII:4-15, 74-78. See RX:8 for calendar of Respondent's seasonal work for 1975-1979.)

38/ Pedro Vega, Javalino Vega, Salvador Savala, Ricardo Castoro, Prudencio Arroyo, Galdino Arroyo, Rafael Arroyo, Eduardo Arroyo, and Roberto Muniz come from Huapamacato. (Tr. VII:16). Vidal Hurtado, Constantio Hurtado, Longenio Garibay, Jesus Garibay, and Daniel Solorio are also from Huapamacato. (Tr. XVIII:31-38) Hippolito Aguilar, Luis Aguilar, Jorge Aguilar and Ramon Aguilar are from Changitiro. (Tr. XVII:12-17

39/ Hippolito Aguilar is the father of Luis Aguilar, Jorge Aguilar, and Ramon Aguilar. (Tr. XVII:17) Pedro Vega and Javalino Vega are cousins. Salvador Savala and Ricardo Castoro are brothers. Prudencio Arroyo, Galdino Arroyo, Rafael Arroyo and Eduardo Arroyo are cousins. (Tr. VII:16)

I find that the workers from these two towns constituted an identifiable part of Respondent's regular workforce. I find this from the above evidence, and from the lack of any contrary evidence offered by Respondent. Further, although David Arakelian testified that he had no idea where his employees came from (Tr. IX:3), he did admit that his employees included members of extended families who returned regularly over the years. (Tr. IX:2) Frank Gullo also admitted that there were families of workers. (Tr. XXVIII:56)

Before detailing the UFW activities of this group, I will deal with two preliminary issues concerning the group. First, at the hearing the evidence concerning the group of alleged discriminatees came through the testimony of six witnesses: three of the alleged discriminatees,[40/] and three other employees from Huapamacato who were not named as alleged discriminatees in this incident.[41/] The remaining 15 alleged discriminatees did not testify.[42/] Respondent, in its Brief, argues that evidence as to these latter fifteen alleged discriminatees is not valid, since "the only evidence regarding alleged discrimination against those (15) individuals is obviously indirect, hearsay testimony." (Post-Hearing Brief for Respondent, p. 131). This is incorrect, and represents a basic misunderstanding of the law of hearsay. If, as was repeatedly the case in the transcript references of the six witnesses given in the previous paragraphs, employee A testifies that "I came to work from

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40/ Hippolito Aguilar (Tr. XVII:12, et. seq.); Rafael Arroyo (Padilla) (Tr. XVI: 10, et. seq.); and Roberto Muniz (Tr. XI:91, et. seq.)

41/ Felipe Vega (Garibay (Tr. XVIII:87, et. seq.); Melquiades Vega (Tr. XV:10, et. seq.); and Rosendo Vega (Tr. VII:4, et. seq.; Tr. XVIII:1, 35. seq.) Melquiades and Rosendo Vega are named discriminatees in a separate incident, discussed in Section X of this decision, <u>infra</u>.

42/ The fifteen are: Jorge Aguilar, Luis Aguilar, Ramon Aguilar, Eduardo (Gerardo) Arroyo, Galdino Arroyo, Prudencio Arroyo, Ricardo Castoro, Jesus Garibay, Longeno Garibay, Constantino Hurtado, Vidal Hurtado, Salvador Savala, Daniel Solorio, Javalino Vega and Pedro Vega.

Huapamacato in 1975 with employee B," that is perfectly valid, direct, non-hearsay evidence that employee B came to work from Huapamacato in 1975. Hearsay would only enter in if employee A testified that "employee C said that employee B worked in 1975." I have not considered any such evidence, and have relied solely on valid, non-hearsay evidence concerning each of the alleged discriminatees.

A second point regarding the group concerns the exact nature of the group. Specifically, I find that it would be too broad to simply include all employees from the two towns who had worked at any time in the past at Respondent's business. Rather, in the context of this case, I limit the group to those who were from the two towns and who had been working at Respondent's business in 1978, prior to the pruning season. This means those persons who worked in the 1978 grape harvest. This group is a more narrow and tightly defined group, it can be verified from the payroll records in the case, and it would constitute those employees who were most likely to have worked in the 1978 pruning season but for Respondent's alleged discriminatory hiring practices. Further, as discussed below, persons who worked in the 1978 harvest were on Respondent's eligibility list for the 1978 pruning season. I exclude any alleged discriminatees who had worked for Respondent sometime in the past, but had not worked for Respondent in 1978.

On this basis, I find the following 12 alleged discriminatees to be part of the relevant group, (following each person is one payroll entry during the 1978 grape harvest): Hippolito Aguilar (GCX:22B, 9/25/78, p. 4, #9049); Jorge Aguilar (GCX:22B, 9/25/78, p. 4, #9045); Luis Aguilar (GCX:22B 9/25/78, p. 11, #9211); Ramon Aguilar(GCX:22B, 9/25/78, p. 4, #9047); Prudencio Arroyo (GCX:22B, 9/25/78, p. 12, #9220); Rafael Arroyo (Padilla) (GCX:22B, 9/25/78, p. 13, #9220); Ricardo Castoro (GCX:22B, 9/25/78, p. 6, #9071); Jesus Garibay (GCX:22B, 9/25/78,

p. 11, #9210); Roberto Muniz (Garibay) (GCX:22B, 9/25/78, p. 9, #9012); Salvador Savala (Jose Garcia (GCX:22B, 9/25/78, p. 13, #9228); Javalino (Avelino) Vega (GCX:22B, 10/05/78, p. 7, #9225); and Pedro Vega (GCX:22B, 9/25/78, p. 11, #9214).

I find that the following six alleged discriminatees did not work for Respondent in 1978 and are therefore not part of the group, (after each person is the indication from RX:9 work history summaries of the last date of employment): Eduardo (Gerardo) Arroyo (RX:9C, 12/17/74); Galdino Arroyo (RX:9C, 11/71); Longeno Garibay (RX:9A, 9/16/74); Constantino Hurtado (RX:9A, 6/19/75); Vidal Hurtado (RX:9A, 9/25/74); and Daniel Solorio (RX:9C, 10/8/76).

The record shows, and I so find, that a significant amount of the pro-UFW activity at Respondent's ranch came from this group of Mexican employees. Virtually all of the UFW activity testified to involved these Mexican employees. Among the UFW activities of the group were: (1) During the UFW's election campaign, six or more of the Mexican employees distributed UFW leaflets on Respondent's premises. (Tr. VII:64,66-69; Tr. XI:153; Tr. XVI:19-21) (2) Approximately ten of the Mexican employees talked to Respondent's workers in the fields about the UFW, with at least two of them wearing UFW buttons; at least one of these conversations took place in the presence of supervisors. (Tr. I:112-114; Tr. VII:63-69; Tr. XI:116-119,151-153; Tr. XVI:19-21; Tr. XVII:30-31) (3) One of the Mexican employees in the group helped workers fill out UFW authorization cards on Respondent's premises. (Tr. XV:18, 20-22) (4) The UFW observer at the election was one of the Mexican employees. (Tr. VII:65) (5) Mexican employees in the group attended bargaining sessions on behalf of the UFW from 1975-1978. (Tr. XX"27-35) (6) The two presidents of the UFW negotiating committee were Mexican employees. (Tr. I:94; Tr. XI:118) (7) Mexican employees in the group made bargaining statements to Respondent's management personnel

on behalf of the UFW, and had some conversations with supervisors about the UFW or UFW bargaining positions. (Tr. I:103; Tr. XI:142-143; Tr. XV:23-24) (8) A number of the Mexican group of employees attended the October 4, 1978 bargaining session on behalf of the UFW. (Tr. XX:34)

2. Respondent's Knowledge of UFW Activities

David Arakelian and Frank Gullo testified that they had no knowledge of, or interest in, where their employees came from (Tr. IX:3; Tr. XXVIII:55-57), and that therefore they were unaware of the pro-UFW support of the Mexican employees. However, I find their testimony vague and unconvincing on this point. While they may not have known the specific town the employees came from, I find that Respondent was aware of the extensive UFW activities described above of this group of Mexican employees who worked, lived and conducted UFW activities together on Respondent's premises.

I find Respondent's knowledge from the attendance of Mexican employees at the bargaining session, conversations with some of those employees concerning UFW positions, presence of one employee as the UFW observer at the election, and presence of two of the employees as president of the UFW negotiating committee. Further, on the whole record in this case I find that Mr. Arakelian and his overall supervisors were very actively involved in the details of Respondent's business. They visited the fields every working day. (Tr. XII:119; Tr. XXV:66) Their lead men were present in the fields throughout the day. (Tr. XII:112-127; Tr. XXV:65-86, 117-128) Mr. Arakelian and his bargaining representatives attended almost forty bargaining sessions with the UFW over a three year period. It is simply not credible that there was a UFW organizing and election drive, and then three years of negotiating for a contract, and that during this time Respondent was unaware of where in its workforce the pro-UFW support was coming from. I find that Respondent had knowledge that significant

pro-UFW support came from the group of Mexican employees.

3. Reduction of the Pro-UFW Mexican Workforce

A year after the UFW election in 1975, Respondent changed its hiring practices for grape pruning employees. It decided to institute a more tightly controlled system, which it considered to be an informal seniority system. Under the new system, employees would be hired who had pruned the year before, as well as those who had worked in the previous grape harvest and who knew how to prune. Respondent also instituted an employee eligibility list composed of these two groups of employees. Respondent ended its previous policy of teaching employees how to prune. (Tr. VIII:94-103; Tr. XXVII:46-63,135-137)

Respondent asserts that this system was adopted because the UFW had proposed a seniority system during contract bargaining, and Respondent thought it was a good idea and decided to set up its own informal system. (Tr. XVII:134-137) Respondent asserts that it has used this system neutrally since then. The issue under Kawano is whether Respondent used this hiring system to reduce the number of the Mexican group of employees in the 1978 pruning workforce. For a number of reasons, I find that Respondent did.

The 1977 and 1978 pruning seasons were virtually identical.[43/] In particular, Respondent pruned the same amount of acreage (Tr. VIII:41), and used approximately the same total employee hours.[44/] In both years Respondent supplemented the regular Mexican employees with labor contractors, in 1977 hiring the McGuire contractor and in 1978 hiring the Atad contractor. Despite the similarities of the two seasons, however, the payroll records reveal that in fact the proportion of the regular Mexican pruning employees was very

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[43/] The full details of the pruning seasons are discussed in Section VIII of this decision, infra.

[44/] See note 53 infra, and accompanying text.

substantially reduced in 1978.

The following table compiled from GCX:20 and GCX:22A shows that for the 12-week pruning season in 1977, the regular employees constituted 70% of the workforce:

1977 PRUNING SEASON

Week	Average Number Regular Mexican Employees	Percent	Average Number Contractor Employees	Percent
12/06/77	34	100%	--	0%
12/13/77	30	55%	24.8	45%
12/20/78	34	52%	32	48%
12/29/78	30	48%	32.4	52%
1/05/78 and	42	58%	31.3	42%
1/10/78	42	59%	29.2	41%
1/18/78	43	67%	21.3	21%
1/24/78	32	100%	--	0%
1/31/78	31	100%	--	0%
2/06/78	27	100%	--	0%
2/15/78	26	100%	--	0%
2/22/78	34	100%	--	0%
Total:			Total:	
12 Weeks	34	70%	6 Weeks 29	30%
			12 Weeks 15	30%

The next table (compiled from GCX:19 and GCX:22B) reveals a dramatic reduction in the percentage of the regular Mexican employees for the 1978 pruning season:

1978 Pruning Season

Week	Average Number Regular Mexican Employees	Percent	Average Number Contractor Employees	Percent
12/12/78	22	47%	25.5	53%
12/19/78	22	40%	33.2	60%
12/26/78	21	43%	38.4	57%
12/30/78	21	30%	49.5	70%
1/09/79	25	37%	43.5	63%
1/16/79	25	36%	44.2	64%
1/23/79	24	36%	43.5	64%
1/30/79	24	37%	41.0	63%
2/06/79	23	40%	33.8	60%
2/13/79	23	59%	12.7	41%
Total:			Total:	
10 Weeks	23	38%	10 Weeks 37	62%

Thus, payroll records reveal that in the 1978 pruning season the regular Mexican employees were reduced from 70% of the workforce to 38%, a substantial reduction of approximately one-half of their former strength.

In addition to this statistical showing, I also find several other factors showing discriminatory motivation toward this group of employees.

First, in early December 1978, several of the Mexican workers went to Respondent's ranch and asked supervisor Eugene Esau for pruning work. All witnesses agreed that there were at least five or six workers present, that they were all on the eligibility list by virtue of having worked in the 1978 grape harvest, that Mr. Esau asked them to demonstrate that they could prune, and that they worked for several minutes to show Mr. Esau. The testimony was disputed as to whether the workers could prune. Respondent refused to hire the workers. (Tr. XV:34 et. seq.; Tr. XVI:27 et. seq., 91 et. seq.; Tr. XVIII:31 et. seq.; Tr. XXIX:70 et. seq.; Tr. XXV:105 et. seq.) I find that at least four of the persons present, as well as other alleged discriminatees, knew how to prune by virtue of their having pruned in the past,[45/] and that Respondent's refusal to hire these qualified Mexican employees is evidence of its animus towards the group.

[45/] I credit the testimony of three witnesses that Salvador Savala was one of the workers present (Tr. XV:34-36; Tr. XVI:91-92; Tr. XVIII:81), and the testimony that Mr. Savala had pruned before (Tr. XVIII:34). I also credit the testimony of three witnesses that Rafael Arroyo (Padilla) was there (Tr. XV:34-36; Tr. XVI:91; Tr. XVIII:81), and the testimony of Mr. Arroyo that he had pruned before (Tr. XVI:91-92). I credit the testimony that Prudencio Arroyo and Jesus Garibay were there (Tr. XVI:27), and that they had prior pruning experience. (Tr. XVIII:35-36). I also find that other alleged discriminatees had prior pruning experience: Hippolito Aguilar, Luis Aguilar, Jorge Aguilar and Ramon Aguilar (Tr. XVII:25); Roberto Muniz (Tr. XI:105).

Second, I have found in Section VIII of this decision, infra, that the payroll and other evidence shows that Respondent, at the time it refused rehire to the Mexican employees, hired the Atad contractor crews in order to reduce the proportionate strength of the pro-UFW employees. I incorporate by reference here the discussion and findings in that section.[46/]

Finally, as discussed in Section VI of this decision, supra (Refusal to Bargain), a number of changes occurred at this time which reveal anti-UFW animus by Respondent, and this pruning incident cannot be taken in isolation. I find that it was part of the pattern of actions by Respondent to reduce or eliminate the influence of the UFW at its ranch and to remove the base of its support.

Thus, I find and conclude: that the Mexican employees constituted an identifiable group in Respondent's workforce, within which there was substantial UFW activity and support; that twelve of the alleged discriminatees were members of this group; that Respondent knew of the group's UFW activities and support; and that Respondent discriminatorily reduced the proportion of this group by refusing to hire some members of the group for the 1978 pruning season.

Respondent has not offered any business justification for this reduction in its regular Mexican employees, other than its assertion that not enough workers applied.[47/] However, as has been shown, several workers did in fact come to Respondent's ranch to apply for pruning work and were refused. In any event, under

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[46/] As noted in Section VIII, infra, I did not find that the Atad contractor was hired for the primary purpose of voting in an election, and thus the hiring of Atad was not a violation of §1154.6 of the Act. However, I did find that the Atad contractor was hired for an anti-UFW motivation, with the intent of reducing the strength of the UFW at Respondent's ranch.

[47/] Respondent did offer justifications, which I have rejected as pretextual, for the hiring of the Atad contractor. These are discussed in Section VIII of this decision, infra.

Kawano, once I have found the discriminatory reduction of the group as a whole, the final determination is only whether each of the alleged discriminatees made some effort, even if not a formal application, indicating a desire to work in the 1978 pruning season. Kawano, Inc., supra, p.5, fn.4.

I have already found above that six of the alleged discriminatees do not meet the threshold eligibility requirement of having been current employees for Respondent in 1978: Eduardo (Gerardo) Arroyo, Galdino Arroyo, Longeno Garibay, Constantino Hurtado, Vidal Hurtado and Daniel Solorio. Accordingly, I find no violation of §1153(c) as to them.

With regard to the remaining twelve alleged discriminatees, I make the following findings:

-- I credit the testimony that Prudencio Arroyo, Rafael Arroyo (Padilla), Ricardo Castoro, Jesus Garibay, Salvador Savala and Pedro Vega went to Respondent's ranch in December 1978 and asked Eugene Esau for pruning work. (Tr. XV:34-36; Tr. XVI:27; Tr. XVIII:81)[48/]

-- I credit the testimony that Hippolito Aguilar requested pruning work for himself and his three sons, Jorge Aguilar, Luis Aguilar and Ramon Aguilar, in a discussion with Eugene Esau in November 1978. (Tr. XVII:37,40-44)[49/]

-- I credit the testimony that Robert Muniz requested work from Eugene Esau in January 1979. (Tr. XI:144-148)

-- With regard to Javalino Vega, I find the evidence less clear than

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48/ I do not credit the uncorroborated testimony of Respondent's witness Rosendo Arroyo Muniz that Prudencio Arroyo and Rafael Arroyo did not apply for pruning work in 1978. (Tr. XXIX:89 et. seq.) I do not find Mr. Muniz' memory accurate on this point. I also do not credit the testimony that Jesus Garibay and Ricardo Castoro allegedly stated that they did not apply for work in the 1978 pruning. (Tr. XXIX:61-62)

49/ Respondent also admits that Hippolito Aguilar expressed an interest in pruning work in a discussion with Luis Linan in October 1978. (Tr. XXV:26-27)

as to the others, but on balance I credit the testimony that he requested, or at least indicated an interest in, pruning work by coming to Respondent's ranch in December 1978. (Tr. XVIII:81)

Accordingly, for the reasons discussed above, I find and conclude that the General Counsel has proven by a preponderance of the evidence that Respondent violated §1153(c) of the Act by discriminatorily refusing to hire for the 1978 pruning season the following twelve named discriminatees: Hippolito Aguilar, Jorge Aguilar, Luis Aguilar, Ramon Aguilar, Prudencio Arroyo, Rafael Arroyo (Padilla), Ricardo Castoro, Jesus Garibay, Roberto Muniz, Salvador Savala, Javalino Vega and Pedro Vega.

VIII. 1978-79 HIRE OF ATAD LABOR CONTRACTOR (SECTION 1154.6)

It is undisputed that on approximately December 11, 1978, Respondent hired the Rose Atad Labor Contractor to provide pruning employees for the 1978-79 pruning season. They worked until February 12, 1979. During this period, the Atad employees worked forty-six (46) days, averaging approximately 35-45 workers each day.[50/]

[50/] General Counsel's Exhibit #19 shows the following employment information regarding the date and number of Atad employees working at Respondent's ranches:

12/11/78 -- 24	12/23/78 -- 41	1/09/79 -- 44	1/25/79 -- 41
12/12/78 -- 27	12/26/78 -- 41	1/10/79 -- 46	1/30/79 -- 39
12/13/78 -- 30	12/27/78 -- 56	1/12/79 -- 42	1/31/79 -- 35
12/14/78 -- 29	12/28/78 -- 45	1/13/79 -- 46	2/01/79 -- 36
12/15/78 -- 29	12/29/78 -- 48	1/16/79 -- 43	2/02/79 -- 36
12/16/78 -- 32	12/30/78 -- 49	1/17/79 -- 48	2/03/79 -- 36
12/18/78 -- 38	1/02/79 -- 43	1/18/79 -- 47	2/05/79 -- 29
12/19/78 -- 41	1/03/79 -- 39	1/19/79 -- 44	2/06/79 -- 31
12/20/78 -- 37	1/04/79 -- 39	1/20/79 -- 47	2/07/79 -- 41
12/21/78 -- 33	1/06/79 -- 36	1/22/79 -- 36	2/08/79 -- 41
12/22/78 -- 40	1/08/79 -- 42	1/23/79 -- 39	2/09/79 -- 37
		1/24/79 -- 43	2/12/79 -- 9

The Atad Labor Contractor was hired by Respondent through the suggestion of Respondent's new bargaining representative, Leland Brewer, and his acquaintance Harry Zacoff. Mr. Zacoff arranged for the initial meeting to set the hiring procedures between Atad and Respondent. This meeting took place in December, 1978, at Mr. Brewer's office; present were Mr. Zacoff, Atad's representative Fred Rayray and David Arakelian. (Tr. XXI:106-107; Tr. X:121,144; Tr. XI:53; Tr. XXVIII:41)

As discussed in Section IX of this decision, infra, the bulk of the anti-UFW and pro-AFLU sentiment at Respondent's business came from among the Atad employees. On January 15, 1979, a petition to decertify the UFW was filed (GCX:30), and was circulated among Respondent's employees by one of the Atad workers, Jose Lopez.[51/] The petition was dismissed by the Fresno Office of the ALRB as untimely, and Respondent's Request for Review was denied by the ALRB. (GCX:26)

The General Counsel alleges that the Atad workers were hired for the primary purpose of voting in an election, in violation of 1154.6 of the Act.[52/]

51/ I find for several reasons that the Jose Lopez who filed the decertification petition (GCX:30), and who circulated it among Respondent's employees (Tr. XV: 37-40; Tr. XVIII:91,97; Tr. XX:46), was the same Jose Lopez who worked on the Atad Crews (CPX:4, p.4, #56). See Tr. XV:37-42; Tr. XVIII:91-98; Tr. XX:136; Tr. XXIII:27-35. See also GCX:30 (address of Jose Lopez given on decertification petition as 5120 Kaiser Rd., Stockton, Ca.); CPX:7,8 (address of Rose Atad labor camp given as 5125 South Kaiser Rd., Stockton, Ca.). I also note the vague testimony of Fred Rayray as to the whereabouts of the Jose Lopez on the Atad crew. (Tr. XI:16-17) On the entire record, I find it convincing that it was the same Jose Lopez in all instances, rather than a different Jose Lopez who appeared on the scene in the middle of this dispute to file a decertification petition, and then disappeared.

52/ In addition to the decertification petition, a petition for certification of the AFLU was also filed, on January 19, 1979 (CPX:11), and the allegation of a §1154.6 violation covers the claim that the Atad workers were hired for the purposes of voting in such an election as well.

Respondent argues that it hired the Atad workers for strictly business reasons; that, as had been the case several times in the past, Respondent was short of pruning workers and needed to hire a labor contractor to supplement the number of employees. Respondent also argues that it needed to distribute some of its pruning expenses in the 1978 fiscal (and calendar) year, for tax purposes.

For the reasons noted below, I find and conclude that the reason Respondent hired the Atad contractor workers went beyond any purported business interest, and was in fact motivated by a desire to reduce the pro-UFW proportion of its workforce. However, also for the reasons discussed below, I find and conclude that although Respondent hired the Atad contractor workers out of an anti-UFW motivation, the General Counsel has not proven the very specific motivation--hire for purposes of voting in an election--necessary to make out a violation of §1154.6 of the Act.

Respondent hired a labor contractor during the prior pruning season, 1977-78; however, a comparison of the prior season with the hiring of the Atad crew in 1978-79 shows the suspect nature of the Atad hiring.

The 1977-78 pruning season was virtually identical with the 1978-79 season. In both years Respondent pruned the same acreage. (Tr. VIII:41) There were no significant differences in terms of weather or the nature of the crops. (Tr. VIII:41-42) The 1977-78 pruning season began on November 28, 1977 (CPX:12), and ended on February 18, 1978 (CPX:13, entry of February 14, 1978). The 1978-79 pruning season began on December 4, 1978 (CPX:13), and ended February 12, 1979 (CPX:14, entry of February 9, 1979; GCX:19). In the 1977-78 pruning season there was a total of approximately 23,000 employee-hours, and in the 1978-79 season there was a total of approximately 25,000 employee-hours.[53/]

[53/] From the payroll and other records in this case, it is not possible to get an exact number of hours worked in pruning in the two years. The number (continued)

Despite these close similarities, however, there is one large difference between the two pruning seasons. In 1977-78, Respondent hired the Emma McGuire labor contractor to supplement its pruning crews. The evidence shows that in 1977-78 Respondent paid the McGuire contractor a total of $22,755.25 for its services.[54/] The evidence also shows that approximately $45,000 was paid to its regular pruning employees during this season.[55/] The total expenditure was thus approximately $68,000 for pruning in 1977-78.

(note 53 Cont'd) of contractor hours is fairly precise. The number of regular Mexican employee hours was derived from GCX:22A, and 22B. I have taken these hours by going through the journal entries for the weeks of the season, and adding up the number of hours worked during those weeks for which the employee code showed work done at the various ranches (thus excluding management, maintenance, shop, and general fund entries). I have also excluded the hours of those persons found in Section V (B), supra, of this decision to have been supervisors. This is consistent with the exclusion of the "foreman" hours on the contractor lists. It is possible that some non-pruning hours for regular employees have been included by use of this payroll code method, but since the identical method was used for both years, any consequent error in emphasis will cancel out; it is the comparison of the two years that is relevant here.

Using these methods, the regular employee hours for the weeks beginning 11/30/77 through 2/22/78 were 16,561, and contractor employee hours for the weeks 12/15/77 through 1/19/78 were 6,501.5; a total of 23,062.5 hours for the 1977-78 pruning season. Regular employee hours for the weeks 12/5/78 through 2/13/79 were 11,964, and contractor employee hours were 13,306.5 for the weeks 12/11/78 through 2/07/79; a total of 25,270.5 hours during the 1978-79 season.

54/ GCX:20 shows the following payments to McGuire:

Week Ending		Amount Paid
12/15/77		$ 4,653.25
12/22/77		4,474.75
12/30/77		6,833.75
1/05/78		1,431.50
1/12/78		3,685.50
1/19/78		1,676.50
	Total:	$22,755.25

55/ GCX:22A. For the reasons stated in footnote 53, supra, this figure is not precise. However, I have used the same method for each season, cancelling any tendency to over or under-estimate the actual pruning hours. There is no reasonable dispute that the figure given here is approximately correct.

In 1977-78 the "going rate" for Respondent's regular pruning employees was $2.80 per hour. (GCX:22A) In 1978-79 Respondent raised this going rate for its regular employees by 20 cents, to $3.00 per hour; this constituted an increase of approximately 7.15% in its pay rate. Applying this same percentage increase to the total 1977-78 pruning employee expense of $68,000, it would reasonably be expected that for pruning the same acreage in substantially the same conditions, Respondent in 1978-79 would spend a total of approximately $73,000 for its pruning in that season. However, the actual 1978-79 figures are startlingly greater. Respondent, with its $3.00 per hour rate for its regular employees, paid approximately $35,000 for those employees in its 1978-79 pruning season.[56/] The evidence is undisputed that in 1978-79 Respondent additionally paid $73,038.87 to the Atad contractor.[57/] The total expenditure was thus approximately $108,000, an increase of almost 60% over Respondent's 1977-78 employee costs.

Respondent's offered business justifications simply fail to explain why it paid this enormous additional cost to the Atad contractor. Rather, examination of these proffered justifications makes clear that the most likely reason for hiring Atad, and Respondent's willingness to pay a premium for doing so, was that Respondent hoped it would thereby reduce the pro-UFW proportion of

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56/ GCX:22B

57/ GCX:19 shows the following amounts paid to Atad:

Week Beginning	Amount Paid
12/11/78	$ 2,282.00
12/13/78	8,757.00
12/20/78	7,768.25
12/27/78	7,264.25
1/02/79	9,964.50
1/10/79	7,690.37
1/17/79	10,626.00
1/24/79	4,761.75
2/01/79	8,268.75
2/07/79	5,656.00
Total:	$73,038.87

its employees--an expectation which was fulfilled to a degree by the pro-AFLU interests soon exhibited by the Atad employees.[58/]

Respondent asserts that it was especially short of regular pruning employees in 1978-79. However, this explanation fails on two counts. First, I have already found (Section VII, supra, of this decision) that Respondent discriminatorily refused to hire qualified pro-UFW Mexican employees for this pruning season. Thus, any special shortage of employees, if such existed, was partly Respondent's own doing. Second, even if there were a great shortage of regular employees, this does not explain why Respondent paid such a high premium to Atad. If the rate paid to the McGuire contractor (plus a 7.15% increase paralleling the raise it gave its own employees) were applied to the greater number of hours worked by Atad in comparison to McGuire, it would still only be expected that Respondent would pay Atad approximately $50,000 for 1978-79.[59/] Yet Respondent actually paid over $73,000 to Atad, almost 50% more.

Respondent offers a second business justification, that the McGuire work was highly unsatisfactory and it had to pay more to get better work done in 1978-79. I find that this explanation fails on several counts. First, I do not credit Respondent's testimony (Tr. VIII:48-51, XXIX:140) that the McGuire work was greatly unsatisfactory. I place reliance here on a diary entry by David Arakelian made at the time the McGuire work was actually being done. On December 21, 1977, after two weeks of pruning by the McGuire crews, Mr. Arakelian

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58/ See discussion in Section IX of this decision, infra.

59/ This figure is derived as follows: The total hours worked by the McGuire crews, 6,501.5 (note 53, supra) divided into the total amount paid, $22,755.25 (note 54, supra) yields a rate of $3.50 per hour. This rate multiplied by the total hours worked by the Atad crews, 13,306.5 (note 53, supra) yields $46,572.75. Adding 7.15% ($3,289) gives a total projected cost of $49,861.75. The actual amount paid was $73,038.87, a significantly higher figure. (GCX:19)

noted: "Finished CB [pruning] w/contract labor--costs a little more but the work acceptable." (CPX:12, entry of December 21, 1977) There were no subsequent diary entries indicating the work was unsatisfactory. I have read the entire business diaries of Mr. Arakelian for 1977, 1978 and 1979 (CPX:12,13, 14), and I find the entries to be brief, to the point, and apparently accurate notations of a man closely involved in the details of his business. I place greater weight on Mr. Arakelian's diary entry at the actual time of the McGuire work than on his subsequent testimony on this point at the hearing.

I do not necessarily find that the McGuire work was excellent or problem-free, or even equal to that of Atad;[60/] I do find that the proferred excuse that the McGuire work was greatly unacceptable is not creditable and is pretextual. Further, this still would not explain why Respondent chose the Atad contractor at a 50% cost increase of the previous year. There is no evidence that Respondent compared any other contractor with Atad. Rather, the evidence indicates that Mr. Arakelian, shortly after the pruning season started, decided to hire Atad after a discussion arranged by Mr. Zacoff. Mr. Arakelian did not check other contractors. (Tr. XXI:106-107; Tr. X:121-144; Tr. XI:53; Tr. XXVIII: 41; Tr. VIII:46,120; Tr. IX:96; Tr. XII:133)

There is even an apparent conflict in Respondent's testimony; Mr. Arakelian testified that he relied on Atad's reputation at a prior ranch, the Franzia ranch; (Tr. VIII:120) Fred Rayray testified in a somewhat confused manner, that the Atad contractor had not worked at Franzia. (Tr. X:164)

Respondent's third explanation, that it wanted to get in a lot of pruning expense in 1978 fiscal (and calendar) year for tax reasons (Tr. VIII:48,110-113), does not seem to provide an explanation for hiring Atad. This is a weak

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60/ There was, however, testimony that the Atad work was deficient in certain respects. (Tr. XVIII:83; Tr. XIX:71)

justification since Respondent continued to employ Atad until February 12, 1979; thus making the bulk of its payments to Atad in 1979. This is contrary to 1977-78 where the McGuire crew was let go in January after the cost was apportioned. (Tr. VIII:48)

Finally, I reject as confused and inadequate the testimony of Fred Rayray concerning the reasonableness of the 75% commission Respondent paid to Atad over the labor costs. (Tr. X:121,154-167, Tr. XX:116) Mr. Rayray's explanation that the Atad contractor had to pay for its workers' transportation does not explain the large differential between the going commission of 35% (Tr. X: 121) and Respondent's payment of a 75% commission, and is inconsistant with the 50% commission Fred Rayray testified Atad received at other ranches where it transported workers. (Tr. X:120-131; Tr. XX:116) This latter testimony is itself inconsistent with other testimony of Mr. Rayray that the commission at these other ranches was 40%. (Tr. XX:114-116) I found Mr. Rayray's testimony on this point vague and elusive.

The paucity of business justifications for Respondent's hiring of the Atad contractor reinforces my conclusion that Atad was in fact hired with the hope and/or expectation that its employees would be unfavorably disposed towards the UFW.

This motivation for hiring Atad is supported by the evidence in the record of prior ranches where the Atad crew worked. There was testimony that at several such ranches there had been strikes or labor disputes by the UFW, and that Mr. Rayray brought Atad contractor workers to those ranches to work during the disputes. (Tr. XX:114-116) Further, there was testimony that this past involvement of Atad crews was known to Mr. Zacoff, and was discussed by him with Mr. Rayray. (Tr. XX:116) It is not necessary to find here that David Arakelian, at his meeting with Mr. Zacoff and Mr. Rayray or at some other

occasion, actually discussed anti-UFW proclivities of Atad as a quid-pro-quo for Atad being hired. It is sufficient that Respondent, through its involvement with Mr. Brewer, Mr. Zacoff, and Mr. Rayray, was aware to some degree of this prior history of Atad. I find that Respondent entertained either the hope or the expectation, even if not specifically articulated, that the Atad workers would be unsympathetic to the UFW. This explanation is the only one on the record in this case that can fully explain Respondent hiring the Atad contractor without comparative "shopping around" for other contractors, and with payment of a tremendously increased price over Respondent's previous pruning costs.

Thus I find and conclude that Respondent hired the Atad labor contractor out of an anti-UFW animus, in the hope and/or expectation that the Atad workers would be unsympathetic to the UFW and would thereby reduce the percentage of Respondent's workforce which was sympathetic to the UFW. This finding is consistent with the findings in other parts of this decision that the regular Mexican pruning employees formed the core of the pro-UFW support at Respondent's premises; and that the Atad workers subsequently did in fact form the bulk of the pro-AFLU (and thus anti-UFW) support at Respondent's business.

This finding, that Respondent hired the Atad contractor out of an anti-UFW motivation, is relevant to several aspects of this case, and I have discussed its relevance elsewhere concerning the alleged violations of §§1153(e) and (c) of the Act. However, this does not mean that the hiring of Atad contractor was itself a violation of §1154.6 of the Act. The reason is that §1154.6 requires that the employees be hired for the "primary purpose of voting in elections." This requirement of a specific motivation was emphasized by the Board in the Mario Saikhon, Inc., 5 ALRB No. 44 (1979).

I have no doubt that Respondent considered one possible anti-UFW benefit

of hiring Atad contractor to be a possible decertification election;[61/] however, there are a number of other anti-UFW effects the hiring of Atad contractor could have had. Respondent may have considered that the reduction of the pro-UFW workforce would cause the UFW to yield concessions in its contract bargaining. Respondent may have benefited by the pro-UFW employees becoming less strong in their support for the UFW in the face of a large number of employees who did not support the UFW. Respondent may have considered that the pro and anti-UFW factions which might result from the hiring of the Atad contractor would cause energy to be spent in inter-employee antagonism instead of directed at Respondent. The courts have recognized, in a different context, this effect of employee factions: "The principle of divide and conquer is older than the history of labor relations in this country, but that does not lessen its application here." United Packinghouse Workers Union v NLRB, 416 F. 2d 1126, 1135-36 (D.C., Cir., 1969), cert. denied 90 S. Ct. 216 (1969).

There was a decertification petition filed against the UFW, but it never came to election. It is not necessary for there to be an actual election in order to make out a violation of §1154.6, but an actual election in this case would have added further evidence which might help decide Respondent's primary specific motivation in hiring Atad. As the record stands, I cannot say which among the several possible general anti-UFW motivations described above was primary in Respondent's hiring of Atad contractor. Thus, although the anti-UFW motivation is relevant in other aspects of this case, I cannot say that the General Counsel has proven the specific "voting in elections" motivation necessary for a violation of §1154.6. Accordingly I find no violation of §1154.6 of the Act.

61/ Additionally, Respondent may have considered a certification election for another union as well.

IX. AMALGAMATED FARM LABOR UNION (§1153(b), (c),(d),(f))

A. The Issues

The General Counsel alleges that Respondent was involved in supporting activities of the Amalgamated Farm Labor Union, Inc. (AFLU) at Respondent's premises. Four incidents are alleged to comprise Respondent's involvement with the AFLU: (1) that Respondent encouraged and supported the filing of a UFW decertification petition by AFLU supporters in the Atad pruning crew in January 1979; (2) that Respondent encouraged and supported the filing of an AFLU certification petition by members of the Atad pruning crew in January 1979; (3) that Respondent encouraged and supported an AFLU strike, including laying off pruning employees for three days in January 1979; and (4) that Respondent attempted to reduce UFW opposition to the AFLU by laying off pruning workers for 22 days at the end of the pruning season in February 1979.

These four incidents are alleged to violate §1153(b) (domination and support of a labor organization), and §1153(f) (recognition of a labor organization). The two layoffs are also alleged to be independent violations of §1153(c) (discriminatory layoff) and §1153(d) (retaliatory layoff for ALRB activities). For the reasons stated below, I find that there has been a violation of §1153(b) of the Act and one violation of §1153(c), and that violations of §§1153(f), and (d) have not been proven.

B. Support of AFLU

(1) AFLU Activities and History

The AFLU is an organization that was formed by Mr. Roque Acacio and Mr. Frank Respicio. Mr. Acacio is a farm laborer employed by the Atad contractor. He worked in the pruning crews at Respondent's ranch in the 1978

pruning season. Mr. Respicio is a farm laborer and an independent insurance businessman. Mr. Respicio and Mr. Acacio began organizing the AFLU in May 1978. Mr. Acacio became President, and Mr. Respicio Secretary-treasurer. (Tr. X:4,30, 32) Mr. Respicio and Mr. Acacio wrote the Articles of Incorporation and the Bylaws of the AFLU. (Tr. X:32; GCX:25).

The AFLU did not, as of the date of hearing (June 1979), represent any employees at any ranches. (Tr. X:32). It had filed certification petitions at three ranches, but two petitions were dismissed by the Board, and the third was withdrawn; this includes the dismissed certification petition in the instant case (Tr. X:32), discussed below. In 1978 (and as of June 1979), the AFLU was still in the organizational stage. (Tr. X:32) The AFLU had no salaried employees (Tr. X:106), its office was run out of Mr. Respicio's home (Tr. X:106), and it had minimal expenses and financing (Tr. X:107). In June 1979, Mr. Acacio was in Alaska for an indefinite period of at least six months; he still occupied the position of President of the AFLU. (Tr. X:43)

The AFLU is part of a larger organization, called the Multi Filipino Service Center, Inc. (Tr. X:64) Mr. Respicio was vague and unable to precisely state the AFLU's exact relationship to the Service Center. (Tr. X:64-65) Mr. Martin Atad, husband of Rose Atad and co-owner of Atad labor contractor, is on the board of directors of the Service Center. (Tr. X:64) Mr. Atad is a close friend of Mr. Acacio and Mr. Respicio. (Tr. X:55)

As discussed in Section VIII of this decision, supra, in December 1978, Respondent hired the Atad contractor to provide workers for the pruning season. The Atad contractor provided workers from December 11, 1978 through February 12, 1979, the end of the pruning season. A daily average of approximately 40 Atad employees worked during the pruning season. The Atad contractor was hired by Respondent through the suggestion of an acquaintance of Mr. Brewer, Harry

Zacoff. Mr. Zacoff had assisted the Atad contractor on several previous occasions. Mr. Zacoff arranged for a meeting between Atad's representative, Fred Rayray, and David Arakelian. The three met in December 1978, at Mr. Brewer's office. Mr. Arakelian then arranged to hire the Atad contractor. (Tr. XXI: 106-107; Tr. X:121,144; Tr. XI:53; Tr. XXVIII:41; GCX:19)

In January 1979, the AFLU decided to organize at Respondent's business. Mr. Acacio, who was then working in the Atad pruning crew at Respondent's ranch, met with Mr. Respicio in mid-January. They got authorization cards signed by some of Respondent's workers. (Tr. X:31,34-40) The only employees who supported the AFLU at Respondent's business were from the Atad contractor crew. (Tr. X:7,31,34-40) Two other officers of the AFLU were Atad employees. (Tr. X:44) There is no evidence of support for the AFLU from any of Respondent's regular Mexican employees.

On January 15, 1979, a decertification petition was filed against the UFW. (GCX:30) On January 19, 1979, an AFLU certification petition was filed. (CPX:11) On January 26, 1979, the AFLU picketed and engaged in a strike at Respondent's ranch. The filing of the petitions, and the strike, are discussed in the following sections.

(2) The UFW-Decertification Petition

On January 15, 1979, a petition to decertify the UFW at Respondent's business was filed in the Fresno Regional Office by Jose Lopez. I have already found that this individual was the same Jose Lopez who was working in the Atad pruning crews at Respondent's ranch.[62/]

Prior to filing the petition, Mr. Lopez circulated the petition among the regular Mexican pruning employees to see if any would sign it. He told them

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62/ See note 51, supra, and accompanying text.

that the contractor employees had already signed. (Tr. XV:37-40; Tr. XVIII: 89-99). None of the Mexican employees signed. (Tr. XV:40; Tr. XVIII:97) I credit the testimony that Mr. Lopez petitioned these employees during working hours, that Chester Dodd was the supervisor in the fields with the employees at the time, that Mr. Lopez spoke briefly with Mr. Dodd when he entered the fields, and that Mr. Dodd observed some of the conversations Mr. Lopez had with the employees. (Tr. XV:38; Tr. XVIII:90,92-95; Tr. XX:46-47) David Arakelian testified that he was aware that a man named Jose was circulating a decertification petition among the employees in the field. (Tr. IX:100-101) Mr. Arakelian told his supervisors to let him know if the man came back, but he did not tell the supervisors to instruct the man to stop. (Tr. XXX:38)

On January 18, 1979, Fresno Regional Director Edward Perez sent a hand-delivered letter to Mr. Lopez stating that the decertification petition was denied. (CPX:10)

Atad payroll records show that Mr. Lopez began working in the Atad pruning crews at Respondent's ranch on December 28, 1978, and worked through January 19, 1979.[63/] After January 19, 1979, the day following the delivery of the letter denying the decertification petition, the evidence shows that Mr. Lopez did not work any more. (Tr. XI:15) Fred Rayray testified that he, Mr. Rayray, was given a note by a UFW attorney saying that the attorney wanted to talk to Mr. Lopez; and that Mr. Rayray gave the note to Mr. Lopez and told Mr. Lopez the attorney wanted to talk with him. (Tr. XI:16) Mr. Rayray was vague as to how or why Mr. Lopez happened to stop working after January 19th:

63/ CPX:4 shows that Mr. Lopez worked on December 28, 29, January 9, 10, 13, 16, 17, 18, and 19. The records indicate that Mr. Lopez received a double payment for work on January 2, 1979.

"Q: How did Mr. Lopez happen to leave your crew? Was he fired?
A: He just splitted away."

(Tr. XI:16)

No further action was taken concerning the decertification by Mr. Lopez or anyone else after the Fresno Regional Office denied the petition.

(3) AFLU Certification Petition

On January 19, 1979, Frank Respicio filed a petition for certification of the AFLU as representative of Respondent's employees. (CPX:11) Four days previously, on January 15th, Mr. Respicio had discussed with Roque Acacio whether a certification petition should be filed. (Tr. X:31) They decided to go ahead, and they began getting employees to sign authorization cards. During the next three days (January 16-18), a number of employees from the Atad pruning crews signed the cards. (Tr. X:31) Mr. Respicio witnessed six of the cards being signed by employees at his house on the evening of the 17th or 18th. (Tr. X:39) The rest of the signatures were obtained by Mr. Acacio, including a number signed by Atad employees in the fields on January 17th and 18th. (Tr. X:33,39) The Atad pruning employees were supervised in the field by Respondent's supervisor Louis Linan (Tr. XXV:19), and by Atad supervisor Dominic Bongcaron (Tr. XI:19-20). As many as 60 authorization cards may have been signed in the field. (Tr. X:33-43) The exact number of cards in all was not stated, and Mr. Respicio's description of the signing of the cards and the number signed was quite confused and inconsistant. It took almost ten pages of questions and testimony for him to answer that he had seen six or eight cards actually signed in his presence, (Tr. X:33-43) and he referred to his memory on this issue as "failing me" (Tr. X:31) and as being "short." (Tr. X:40)

The signed cards were given to Mr. Respicio by the evening of January 18th,

and the next day Mr. Respicio filed the AFLU certification petition. (Tr. X:6, 33-43) Mr. Arakelian was aware that the AFLU was petitioning Respondent's employees, and that it had filed a certification petition. (Tr. IX:111-115; Tr. XXIII:91-95)

On January 25th, the Board dismissed the certification petition. The following day, January 26th, the AFLU picketed Respondent and conducted a strike. That same day, Respondent filed suit in Superior Court for a Writ of Mandate to have the ALRB dismissal of the AFLU petition overturned and to require an election to be held. These incidents are discussed in the next subsection.

(4) January 26, 1979 Strike

On January 19, 1979, the AFLU filed its certification petition (CPX:11), discussed above. The petition was dismissed by the ALRB on Thursday, January 25, 1979. (Tr. X:58; GCX:23,24)

On Thursday night, January 25th, Mr. Acacio, Mr. Respicio and four members of the AFLU met at Mr. Respicio's house. They decided to set up an informational picket at Respondent's ranch in order to protest the dismissal of the petition and to pressure Respondent into conducting a quick election. (Tr. X:43-44,72-74) There was no strike vote or other vote of the AFLU membership over this action, nor any meeting of the membership. (Tr. X:61-62) Mr. Respicio stated that the action was not a strike, but an informational picket. (Tr. X:43-44,72-74)

The next day, January 26th, Mr. Acacio, Mr. Respicio and two other members of the AFLU went to the Atad labor camp carrying picket placards and told the workers not to come to work. (Tr. 49-50) The Atad workers did not come to work that day. (Tr. X:49-54) Then the four went to Respondent's ranch. They picketed from mid-morning until noon. (Tr. X:46) Their picketing was peaceful, with no shouting, singing, chanting or blocking of entrances. (Tr. X:51)

There was no evidence of any confrontation or interaction of any kind between the four pickets and any of the regular Mexican employees who were pruning at the ranch that day.

Fred Rayray called David Arakelian that morning and told Mr. Arakelian that the Atad workers were not coming to work because of the picketing. (Tr. XI:67-68)[64/] Mr. Arakelian then went to observe the four pickets. He asked them to leave the property, and they moved to an area outside the boundary. (Tr. X:46-47) Fifteen minutes later, they left. (Tr. X:46-47; Tr. IX:144)

Mr. Arakelian testified that there had never been a strike at Respondent's business. He testified that he became "scared" when he saw the pickets, and in order to avoid any confrontation among his employees, he ordered his regular pruning employees to be sent home. This was done by supervisor Eugene Esau. (Tr. IX:116-117; Tr. XXIII:100-101; Tr. XXV:145) Mr. Arakelian conferred with Lee Brewer about sending the employees home prior to making that decision. (Tr. XXIII:84)

Later that same day (Friday, January 26th), Respondent filed a Petition in Superior Court for a Writ of Mandate to order the Board to reverse its dismissal of the AFLU certification petition and to hold an election. (GCX:23) The Petition contained an allegation of irreparable harm, stating: "[T]he employees of [Respondent] have commenced a strike and picketing activities at [Respondent's] ranch, which have halted all pruning activities." (GCX:23, par. XIII) The Declaration of David Arakelian, attached to the Petition for the Writ of Mandate, stated that "This strike has effectively halted all pruning activities at our ranch." (GCX:24, p.3)

64/ I found the testimony of Mr. Rayray on this point, as was true in regards to other issues in the case, to be very inconsistent and evasive. (Tr. X:132-142; Tr. XI:17-70) He gave several versions of the picketing at the (continued)

David Arakelian testified that he made the decision to file a petition for a writ after consultation with Mr. Brewer and with Mr. Arakelian's attorneys. (Tr. XXIII:89) This decision was made on Thursday, January 25th, the day the ALRB dismissed the AFLU's certification petition, and one day before the AFLU picketing began. (Tr. XXIII:87-89) Mr. Arakelian understood that the Writ, if granted, would force an election on his premises. He also understood that in that election, the UFW could lose its status as representative of Respondent's employees. Mr. Arakelian was also aware that the AFLU had been petitioning Respondent's employees; that it had filed a Petition to become the certified bargaining representative for Respondent's employees; and that it could be elected as the representative if an election were held. (Tr. IX:111-115; Tr. XXIII:91-95) Mr. Arakelian testified that he would prefer to have no union on his premises (Tr. IX:114), but as between the UFW and the AFLU: "As far as I was concerned, it was none of my concern really because the employees are what determine that." (Tr. X:115) When asked why he had decided to file suit in court to force an election, Mr. Arakelian testified that there were two reasons. First: "to clear up the work stoppage problem that occurred." (Tr. X:115) However, I reject this testimony as not credible, because it is completely inconsistent with Mr. Arakelian's specific testimony that the decision to file suit was made on Thursday, January 25th, the day the ALRB dismissed the AFLU certification petition and the day <u>before</u> the work stoppage occurred. (Tr. 87-89) The other reason Mr. Arakelian gave

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(note 64 cont'd) Atad labor camp, including the statement that the four picketers had blocked the entrance to the labor camp. I do not credit this testimony, and I credit the testimony of Frank Respicio that the picketing at the Atad labor camp was peaceful and orderly, with a guard preventing the picketers from coming onto the camp grounds. (Tr. X:49-50) I credit the testimony of David Arakelian that Mr. Rayray said the workers weren't coming in because of the picketing. (Tr. IX:116)

for filing the court suit was: "to give our employees a fair chance to determine, you know, a fair chance to have the due process of the law." (Tr. IX: 115-116)

On Saturday (January 27, 1979) and Monday (January 29, 1979), three of the pickets returned to Respondent's ranch and picketed for several hours. (Tr. X:53) The picketing was in the same peaceful manner as on Friday. (Tr. X:51-53) No Atad employees came to work on those days (Tr. X:49-54), and Respondent continued to lay off its regular pruning employees on those days. (Tr. XXV:145-147)

On Monday, January 29th, Respondent's Petition for a Writ of Mandate was denied. That night Mr. Acacio, Mr. Respicio, and three or four other members of the AFLU met at Mr. Respicio's house and decided to end the picketing. (Tr. X:57,72-74) Mr. Respicio was unable to give a specific reason why the decision was made to go back to work at that particular time, just that people wanted to go back to work:

> "Q: You had people out for three days. What I'm asking you is: why did you change on that and bring them back to work?
> A: We decided that they go back to work. That's all."

(Tr. X:74)

The next day, Tuesday, January 30th, the Atad workers went back to work, and Respondent told its regular workers to come back to work. (Tr. X:72-74; Tr. XXV:145-147)

(5) February-March 1979 Pruning-Tying Layoff

I find that Respondent had a valid business justification for the February-March 1979 layoff. The facts and conclusions on this issue are discussed in subsection IX (E) (2) of this decision, infra. Accordingly, I find that this incident did not play a part in the alleged support of the AFLU, and I will now turn to a discussion of whether the other incidents

described above violated §1153(b) of the Act.

C. Violation of §1153(b)

Section 1153(b) of the Act makes it unlawful for an employer:

> To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

The issue in this case is whether Respondent's actions amounted to support of the AFLU.

The prohibition against employer support of a union is a policy which is fundamental to the purposes of the Act. The U.S. Supreme Court, dealing with the comparable prohibition in the NLRA, made clear the importance of this provision:

> We are dealing here not with private rights nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible.

International Association of Machinists, Tool and Die Makers v NLRB, 311 U.S. 72 (1940).

In a long line of cases, the Board has expressed its concern to keep the employer at a complete arm's-length distance from the organizational activities of unions on its premises. Sam Andrews' Sons, 3 ALRB No. 45; Jasmine Vineyards, Inc., 3 ALRB No. 74; Security Farms, 3 ALRB No. 81; Jack G. Zaninovich, 4 ALRB No. 82; Dave Walsh Company, 4 ALRB No. 84; George Lucas and Sons, 4 ALRB No. 86; Louis Caric and Sons, 4 ALRB No. 108; Royal Packing Company, 5 ALRB No. 31.

The Board has emphasized that the employer cannot "aid" a union, and that where two unions are organizing on the premises the employer cannot provide

"assistance to and cooperation with one of two competing unions in its organizational activities." Royal Packing Company, 5 ALRB No. 31, pp. 5-6. Such assistance has a clear impact on the employees' exercise of their protected rights:

> We find that the Employer's favorable treatment afforded [one union] a significant campaign advantage and that the natural tendency of such assistance is to inhibit the employees in their free exercise of the rights granted in Section 1152 of the Act.

Dave Walsh Company, 4 ALRB No. 84, p.

Applying these legal standards, I find the evidence in this case persuasive that Respondent unlawfully assisted and supported the AFLU in its organizational activities at Respondent's ranch.

I find a number of factors pointing to unlawful assistance of the AFLU by Respondent. Preliminarily, however, I note that Respondent argues that Fred Rayray of the Atad contractor was only hired by Respondent as a bargaining agent, and that any support of the AFLU given by Mr. Rayray was outside his authority and not binding on Respondent. In the complaint, the General Counsel alleged that the support of the AFLU occurred through actions of Mr. Rayray. However, as described below, I have not considered any actions of Mr. Rayray in this connection. The evidence did not involve him, or his involvement was superfluous, in most of the matters which constitute the alleged support. Although the complaint pleaded Mr. Rayray as being involved, the matter of support of the AFLU was fully and extensively litigated--it was, next to the bargaining issues, probably the most litigated matter in the case. Further, the complaint did allege the main incidents of the petitions and the strike. With no prejudice to Respondent, I therefore consider the fully litigated matter of Respondent's support of the AFLU.

I base my finding of assistance to the AFLU on the following factors:

First, Respondent was fully aware of the organizational activities of the

AFLU on its premises. Mr. Arakelian and supervisor Chester Dodd were aware that Mr. Lopez was circulating the decertification petition. Supervisor Linan was field supervisor of the Atad crews during the time period when Roque Acacio, one of the workers in the Atad crews, was getting a number of employees to sign authorization cards for the AFLU. Mr. Arakelian was present when the AFLU picketed on January 26, 1979.

Second, Mr. Arakelian was aware that the AFLU was petitioning employees in the fields during working hours, but Mr. Arakelian did not order his supervisors to stop the practice.

Third, Mr. Arakelian's decision to go to court to try to force an election after the Board dismissed the AFLU's certification petition was, on the facts of this case, clearly aimed at supporting the AFLU's attempt to get an election. The two reasons Mr. Arakelian gave for bringing the court action do not hold up to scrutiny. The first, that he wanted to clear up the work stoppage problem, is inherently incredible since he testified he made the decision to bring suit the day before the work stoppage occurred. If I were to credit that reason, in fact, I would have to find advance collusion between Mr. Arakelian and the AFLU organizers (who made the decision for a work stoppage the day before it occurred). Mr. Arakelian's second reason, that he wanted his workers to have due process, may be true, but I do not credit it as an important reason for his decision to bring the court action. Rather, given Mr. Arakelian's testimony that he knew the purpose of the suit was to force an election, and that if there was an election the UFW might lose its status as representatives of his employees, and coupled with the other evidence in this case of Respondent's efforts to reduce the UFW support and influence at its premises, I conclude that the primary reason Mr. Arakelian decided to bring the court action was to try to aid the AFLU in getting an election in which the UFW might be ousted.

Further, the fact that Respondent went to court and took a position in support of the AFLU's petition was an action which the other employees were bound to interpret as evidence that Respondent favored the AFLU in its organizational activities against the UFW.

Fourth, Respondent's lay-off of the regular pruning employees during the AFLU strike on January 26, 1979 is, on the facts of this case, evidence of support for the AFLU. I have found that the UFW support was centered in these regular Mexican pruning employees, while the AFLU support was entirely within the Atad pruning crews. The AFLU strike and picketing was as peaceful as any such action could possibly be. A total of four pickets, without any shouting singing, chanting, blocking of entrances, or interaction of any kind with any working employees, picketed for a couple of hours on January 26th. Mr. Arakelian immediately decided to send home all his regular employees. I do not credit Mr. Arakelian's explanation that he was afraid of a confrontation, because there is no evidence on which I find it reasonable to conclude that a confrontation was likely to take place. Rather, I find that this reaction to the AFLU's effort was calculated to lend a sense of strength and importance to the AFLU, to aid Respondent (and the AFLU) in Respondent's court action to force an election (because Respondent could then plead irreparable harm because no pruning work was getting done), and to intimidate the pro-UFW regular employees by showing support for the AFLU. I discuss below this layoff as an independent violation of the Act.

Fifth, I have found in Section VIII of this decision that in December 1978, Respondent hired the Atad contractor out of an anti-UFW motivation. I incorporate those findings here. I find that the hiring of the Atad contractor shows the anti-UFW animus which was Respondent's reason for supporting the AFLU, and also is indirect evidence of support for the AFLU. As discussed above, the

record is replete with evidence showing the inter-connections between the Atad contractor and the AFLU. There was hardly any evidence that the AFLU had any real activities outside of those involving Atad contractor employees. I find it probable that Respondent, through its bargaining agent Lee Brewer (in whose office the meeting took place at which Mr. Arakelian arranged to hire Atad contractor), knew the Atad employees had some involvement with another union (the AFLU). The two chief officers of the AFLU were "close friends" of the owner of Atad contractor. Because of these inter-connections, I find the hiring of the Atad contractor to be indirect evidence of support for the AFLU. I am not finding here that the Atad contractor was directly involved in organizing for the AFLU, but that Respondent's hiring of the Atad contractor under the circumstances of this case meant giving the AFLU a base for organizing at Respondent's premises.

Sixth, I have found in Section VII of this decision, supra, that in December 1978, Respondent discriminatorily refused to rehire pro-UFW pruning employees because of their UFW support. I find this incident, occurring close to the same time period during which the AFLU was conducting its organizational activities, to be evidence of anti-UFW animus which supports the conclusions that Respondent unlawfully assisted the AFLU in its campaign against the UFW.

For the above-mentioned reasons, I therefore find and conclude that in January 1979, Respondent unlawfully assisted and supported the Amalgamated Farm Labor Union, in violation of §1153(b) of the Act.

D. Violation of §1153(f)

The General Counsel alleges that the incidents of Respondent's support of the AFLU also violated §1153(f) of the Act. Section 1153(f) makes it unlawful for an employer:

> to recognize, bargain with, or sign a collective bargaining agreement with any labor organization not certified pursuant to the provisions of this part.

It is undisputed that the AFLU is not certified within the meaning of §1153(f). However, a line of NLRB cases makes clear that the comparable section in the National Labor Relations Act prohibits actions of an employer which are in the nature of bargaining with an uncertified union, or signing or executing a contract. Connie Jean, Inc. 162 NLRB 1609; Mr. Wicke Ltd., 172 NLRB 1680; Ellery Products Mfg. Co., Inc., 149 NLRB 1388. See also Garment Workers v NLRB, 366 U.S. 731 (1961). Since there is no evidence in the record of any activity of Respondent which could be construed as bargaining with, or executing a contract with, the AFLU, I find no violation of Section 1153(f).

E. Violation of §1153(c)

(1) January 26, 1979 Strike Layoff

As discussed above, I have found that Respondent supported the AFLU by helping it out with its strike on January 26, 1979, including the laying-off of the regular Mexican pruning employees for three days (January 26-29, 1979). I incorporate those findings here.[65/] Thus, I find and conclude that Respondent laid off its regular pruning employees because of their support for the UFW, and in order to help the AFLU in its campaign to reduce the strength of the UFW at Respondent's premises.

Respondent argues that there was no harm to the regular employees because all the pruning employees were laid off, no pruning was done, and thus no work

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65/ I incorporate the findings in Section VII that the pro-UFW activities came from the regular Mexican employees, and the findings in Section IX (B) (4) and IX (C) concerning Respondent's actions during the three-day work stoppage.

was lost. Essentially, Respondent argues that the layoff was a three-day unpaid break in the work. However, this argument fails for two reasons. First, Respondent did not lay off any Atad workers; as found above, the record is clear that the Atad workers did not come to work because of the picketing. Second, this means that the regular employees, had they worked, would have done all the pruning those three days, then continued to share pruning with the Atad contractor employees the remaining days. Thus the regular employees would have increased their percentage of the overall pruning work done during the season. Therefore Respondent's argument that no harm came to the regular employees fails.[66/]

Respondent also argues that there is no violation of §1153(c) because the General Counsel did not include in the complaint the names of the individuals laid off during the strike. However, there is no dispute that all the regular pruning employees were laid off, and at a hearing on the remedy, payroll and other records will indicate who those individuals were if any dispute arises. As discussed, I have already found that this group of regular Mexican employees was where the pro-UFW support was based, and that Respondent laid them off out of an anti-UFW motivation in order to help the AFLU in its campaign against the UFW. Thus, I find and conclude that on January 26, 1979, Respondent discriminatorily laid off its regular pruning employees for a three day period out of an anti-UFW motivation, in violation of §1153(c) of the Act. Akitomo Nursery, 3

66/ Respondent's argument is mathematically incorrect. A simplified illustration of the correct principle involved would be a situation where two employees were asked to 8 total units of work. Assuming that they could each do 2 units a day, it would be expected that each would do (and get paid for) 4 units of work over a two day period. However, if on the second day, worker A comes to work, and worker B does not, this would mean that after two days, worker A would have done 4 units, worker B, 2 units. The final day they would share the remaining work, (2 units), thus doing 1 unit each. The total would then be: worker A--5 units, worker B--3 units. Thus, by working on a day when worker B was absent, worker A would have increased his or her share of the total work. In the same manner, the laid-off regular employees would have increased their overall share of the total pruning by working on the three days when the Atad workers chose to stay home.

ALRB No. 73; Abbati Farms, Inc., 5 ALRB No. 34; Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54.

(2) February-March 1979 Pruning-Tying Layoff

The General Counsel alleges that Respondent violated §1153(c) of the Act when it laid off its pruning employees at the end of the pruning season in February 1979. It is undisputed that these workers were laid off for approximately 22 days, until the beginning of the tying season on March 7, 1979. (Tr. XXVII:44; Tr. XXIX:44; RX:8)

The General Counsel presented evidence that in past years workers usually went directly into tying after the pruning season, or were given other work until the condition of the vines allowed tying to begin. (Tr. VII:18; Tr. XV: 121-124; Tr. XVIII:46,76-78; Tr. XIX:28) However, I credit the following testimony and evidence which shows that Respondent had a valid business justification for this 22-day layoff.

The main reason for the gap between pruning and tying in 1979 was that there was none of the usual work which took place between these two seasons in some other years: root cutting, planting nursery stock, and grafting. The evidence was undisputed that in 1979 Respondent did not do any of that work. (RX:8; Tr. XXIX:43-44) Further, this was not a unique situation; in 1976 there also was no nursery work or root cutting. (RX:8) There was no evidence contradicting Respondent's testimony that in 1979 the tying had to wait until the vines were ready in early March. (Tr. XXIX:44) The evidence shows that tying began on March 10th in 1978; it began on March 23rd in 1977. (RX:8)

In addition to this evidence concerning a valid justification for the gap between pruning and tying, I note that the Atad contractor workers were also laid off at this time. (GCX:19) Thus, there is not the same situation as occurred at the beginning of the pruning season (discussed in Section VII of

this decision, supra) in which the regular employees were denied work while outside workers were employed. Finally, I also consider that there is no allegation of discriminatory refusal to rehire any employees when the tying season did begin on March 7th.[67/]

For the above-stated reasons, I find and conclude that no violation of §1153(c) has been proven in connection with the 22-day layoff between the pruning and tying seasons in February-March 1979.

F. Violation of §1153(d)

The General Counsel alleges that the two layoffs also violated §1153(d) of the Act, which makes it unlawful for an employer "to discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this part."

The General Counsel's argument, however, is essentially that because Respondent, out of an anti-UFW animus, discriminated against the pro-UFW employees in violation of §1153(c), Respondent therefore violated §1153(d) as well. I find no support for such a broad-reaching conclusion, and I do not believe that a violation of §1153(c) is automatically a violation of §1153(d).

There is no evidence of any action of Respondent taken against specific employees because of filing charges or because of testifying. In fact, the charges in this case were filed by the UFW, and not by any of Respondent's employees, and there had not been testimony in any ALRB proceedings by an employee. Therefore, I find no violations of §1153(d).

67/ General Counsel does allege a discriminatory refusal to rehire two employees during this season, but they applied for work in mid-April, after the tying season was over and the suckering work was beginning. For the reasons discussed in Section X of this decision, infra, I find no violation of the Act as to these two employees.

X. APRIL 1979 REFUSAL TO REHIRE ROSENDO VEGA AND MELQUIADES VEGA (§1153(c))

The General Counsel alleges that Respondent violated §1153(c) of the Act when, in April 1979, it discriminatorily refused to rehire Rosendo Vega and Melquiades Vega.

A violation of §1153(c) of the Act is made out where an employee applies for work, is qualified for the work, work is available and where the refusal to rehire the employee is motivated by the employer's knowledge of the employee's union activities. Sahara Packing Co., 4 ALRB No. 40; Kitayama Bros. Nursery, 4 ALRB No. 85; Prohoroff Poultry Farms, 5 ALRB No. 9; Sam Andrews' Sons, 6 ALRB No. 44.

For the reasons discussed below, I find that Rosendo Vega and Melquiades Vega were active UFW supporters at Respondent's business, that their UFW activity was known to Respondent, and that they applied for, and were qualified for, work. However, I also find that at the time of their application for work, no work was available; and for this reason I conclude that the General Counsel has not made out a violation of §1153(c) of the Act.

Rosendo Vega began working for Respondent in 1968. (Tr. I:89) His jobs during the ensuing ten years included pruning, grafting, tying, suckering and harvesting the grapes. (RX:9C; Tr. I:89) Mr. Vega was one of the most active UFW supporters at Respondent's ranch. His UFW activities included: acting as UFW observer at the union certification election in 1975 (Tr. VII:65); serving on the five-member UFW negotiating committee that bargained with Respondent over the contract (Tr. I:90-91); attending 28 contract bargaining sessions;[68/]

68/ Rosendo Vega attended bargaining sessions on: 11/20/75, 12/6/75, 1/22/76, 3/15/76, 5/24/76, 8/24/76, 8/31/76, 10/12/76, 10/29/76, 11/29/76, 12/7/76, 12/14/76, 2/2/77, 2/15/77, 2/25/77, 2/28/77, 3/2/77, 4/27/77, 4/28/77, 5/24/77, 6/1/77, 11/8/77, 11/23/77, 9/7/78, 9/22/78, 9/28/78, 10/4/78 and 11/1/78. Stipulation, Tr. XX:27-35.

speaking to Respondent's management personnel in order to give UFW bargaining positions; (Tr. I:103) and serving as president of the UFW negotiating committee from February 1976 through October 1978, (Tr. I:94). During 1975-1978 Mr. Vega spoke with other employees at Respondent's premises about union matters and the status of the bargaining. (Tr. I:112-114; Tr. VII:63-66) By virtue of his active and leading role for the UFW in the bargaining sessions for three years, Mr. Vega's UFW support was clearly known to Respondent, and I so find.

Melquiades Vega began working for Respondent in 1972. (Tr. XV:8-9) His jobs since then included pruning, tying and harvesting the grapes. (Tr. XV:9; RX:9C) Mr. Vega's UFW activities included: distributing and filling out UFW authorization cards for employees on Respondent's premises, (Tr. XV:18,20-22); attending UFW meetings on Respondent's premises after working hours (Tr. XV:22); having a conversation with supervisor Chester Dodd concerning UFW activities, in which Mr. Vega indicated that the UFW contract matters were "going well;" (Tr. XV:23-24) and attending, on behalf of the UFW, the contract bargaining session on October 4, 1979, (Tr. XV:24; Stipulation, Tr. XX:34). I find that by virtue of his attendance at the bargaining session and his conversation with Mr. Dodd, Mr. Vega's UFW support was known to Respondent.

Rosendo Vega worked during the grape harvest in 1978, and then went to Mexico for a period of time. (Tr. XVIII:38-42). Melquiades Vega worked through the pruning season in 1978-79, and then went to the State of Washington for a period of time. (Tr. XV:2,101-102) Both returned to Respondent's ranch in the middle of April 1979, during the tying and suckering season. At that time they spoke to David Arakelian and asked for work. (Tr. VII:81; Tr. XV:55; Tr. XXIX:75) I find that Rosendo Vega and Melquiades Vega thus applied for work in April 1979, and that by virtue of their prior employment at Respondent's premises they were qualified for the work.

When they asked David Arakelian for work in April 1979, Mr. Arakelian told them that the tying-suckering crews were full, that Respondent had not hired anybody for a month, and that the two employees could check back later. (Tr. XXIX:78-79) The General Counsel argues that in the past, Rosendo Vega had returned to Respondent's premises after leaving for a period of time, and that he had had no trouble getting rehired. (Tr. XVIII:7,38-42) However, I find on the record in this case that the General Counsel has not met its burden of showing that work was actually available at the time of the instant applications for rehire.

Specifically, the payroll records corroborate Mr. Arakelian's statements about the workforce. General Counsel's Exhibit 22B shows that no new workers were hired during the weeks from March 14, 1979 through May 22, 1979. I therefore find that no work was available at the time Rosendo Vega and Melquiades Vega applied for rehire in April 1979.[69/]

I conclude that because work was not available at the time of the request for rehire, no violation of §1153(c) has been shown in regards the applications of Rosendo Vega and Melquiades Vega for rehire in April 1979.

XI. SURVEILLANCE OF EMPLOYEES (§1153(a))

The General Counsel alleges that Respondent violated §1153(a) of the Act on January 15, 1979,[70/] when David Arakelian engaged in surveillance of employees while UFW representatives were discussing union matters with the employees.

69/ I also note that Melquiades Vega did request work later, during the 1979 grape harvest, and was hired at that time. (Tr. XV:111)

70/ There was some dispute as to the precise date this incident took place; however this does not affect by resolution of this issue.

Surveillance of employees engaged in protected union activities is a violation of §1153(a) of the Act. Merozian Bros. Et. Al, 2 ALRB No. 62; Howard Rose Company, 3 ALRB No. 86; Bacchus Farms, 4 ALRB No. 26; Mel-Pak Vineyards, Inc., 5 ALRB No. 13; Abbati Farms, Inc., 5 ALRB No. 54.

On January 15, 1979, two UFW representatives, Dianna Lyons (UFW attorney) and Manuel Hernandez (UFW organizer), went to Respondent's premises shortly before lunchtime. (Tr. XX:42-43) During lunchtime they talked to pruning employees in the fields while the employees ate lunch. (Tr. XX:42-46) The pruning crews' "lead man," Chester Dodd, was eating his lunch nearby. (Tr. XX:43-47)

During this lunchtime break, David Arakelian came to the area. (Tr. XXIX:81) Mr. Arakelian testified that he had been served that day with the decertification petition (GCX:30), and he needed to get some addresses of employees from Mr. Dodd in order to file an Employer's Response to the petition. (Tr. XXIX:81-82) Mr. Arakelian arrived while Ms. Lyons and Mr. Hernandez were talking to the employees. He had a brief conversation with Ms. Lyons, who identified herself as the UFW attorney; Mr. Arakelian declined to discuss union matters, giving her Lee Brewer's telephone number and telling her to contact Mr. Brewer. Mr. Arakelian then had a brief discussion with Chester Dodd, and left. (Tr. XXIX:81-87) There was disputed testimony as to whether the employees continued eating lunch (Tr. XXIX:86), or went back to work after Mr. Arakelian's appearance, (Tr. XV:68; Tr. XIX:10; Tr. XX:50). There was also disputed testimony as to whether Mr. Arakelian had previously ever gone to the fields during lunchtime (Tr. XXIX: 86-87; Tr. XV:48,69).

On the facts in this case I conclude that the General Counsel has not proven a violation of §1153(a) in this incident. I do consider it a suspicious coincidence that Mr. Arakelian appeared at the precise time the two UFW

representatives were talking to the employees. However, on balance I credit Mr. Arakelian's testimony that he came for a legitimate purpose, that he did not unduly intrude on the conversations, and that he only remained long enough to conduct the brief business his visit required. Accordingly, I find no violation of §1153(a) in regards the alleged surveillance of employees. I also find, on the overall record in this case, that this one brief incident of alleged surveillance was in any even de minimis. See Mitch Knego, 3 ALRB No. 32.

XII. SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the entire record, and for the reasons discussed in this decision, I have made the following findings of fact and conclusions of law:[71/]

71/ I feel constrained to make one observation concerning the evidence in this case. It is clear from the extensive record that this was a long and somewhat complex case. I found the presentation of counsel for all parties to be professional and excellent on the whole. However, within that context, I wish to note that I did not find helpful to my decision in this case the frequent characterizations in Respondent's Brief of witness for the General Counsel as possible "perjurers." (See Post-Hearing Brief for Respondent, p. 78, n. 32; p. 84, n. 37; p. 133, n. 66; p. 133, n. 67; p. 151, n. 78; p. 177, n. 95; p. 214, n. 111; p. 245, n. 119; p. 277, n. 125. Reference was also made to the Fresno Regional Director's actions as being "outrageous," "unprincipled," and in "blatant disregard" of the duties of that office. Brief, p. 21; p. 46, n.14). In this case, as in any long and complex case, the testimony of all witnesses contained some inconsistencies and vague recollections. Had any witnesses presented an unalterable version of the numerous details of a case involving three years of bargaining and ten alleged violations of the Act, I would have viewed such testimony as remarkable. I have attempted to carefully sift and evaluate all the testimony in the case. In making my findings, I have neither credited nor discredited any witness' testimony in its entirety. I have credited testimony of witnesses for Respondent on certain points, and have credited the testimony of General Counsel's witnesses as to other points. I find no basis for the characterization of witnesses as perjurers, and a simple recitation of the alleged inconsistencies and inaccuracies in the testimony would have sufficed.

A. I have found and concluded that the General Counsel has proven the following violations of the Act.

1. Respondent violated §1153(e) of the Act by refusing to bargain in good faith with the UFW.

2. Respondent violated §1153(c) of the Act by discriminatorily refusing to rehire employees in December 1978 for the 1978-79 pruning season.

3. Respondent violated §1153(c) of the Act by discriminatorily laying off pruning employees for three days on January 26, 1979.

4. Respondent violated §1153(b) of the Act by supporting the AFLU.

5. Respondent, by virtue of the above violations, also violated §1153(a) of the Act.

B. I have found and concluded that the General Counsel has not proven the following alleged violations of the Act.

1. Respondent did not violate §1153(e) of the Act by refusing to execute an agreed-upon contract.

2. Respondent did not violate §1154.6 of the Act by hiring the Atad labor contractor for the primary purpose of voting in an election.

3. Respondent did not violate §1153(c) of the Act by laying off employees for 22 days following the 1978-79 pruning season.

4. Respondent did not violate §1153(d) of the Act by laying off employees because of ALRB activities.

5. Respondent did not violate §1153(f) of the Act by recognizing the AFLU.

6. Respondent did not violate §1153(c) of the Act by refusing to rehire two employees in April 1979.

7. Respondent did not violate §1153(a) of the Act by engaging in surveillance of employees.

XIII. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices within the meaning of §§1153 (a), (b), (c) and (e) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the entire record, the findings of facts and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommendations.

ORDER

Respondent, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) Discouraging the membership of any of its employees in the UFW by laying off, refusing to rehire, or in any other manner discriminating against individuals in regard to their hire or tenure of employment or any terms or condition of employment, or by hiring other employees with the intent of reducing the number or replacing employees who support the UFW, except as authorized in Section 1153(c) of the Act.

(b) In any other manner interfering with, restraining and coercing employees in the exercise of its employees' 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, or to refrain from any and 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 continued employment as authorized in Section 1153(c) of the Act.

2. Respondent shall sign and post copies of the attached Notice to Employees (Appendix A) in English and Spanish in appropriate conspicuous places on the premises. Copies of this Notice shall be furnished Respondent for distribution by the Fresno Regional Office. A copy of this Notice shall be given personally to each employee hired, at the time of hire, in the harvest, pruning and tying seasons next following the issuance of this Decision; and copies shall be given personally to each employee currently working at the time of the issuance of this Decision. Copies of this Notice shall also be mailed to all employees employed from December 1978 until the present to whom copies have not been given personally.

3. Regarding violation of Section 1153(b), Respondent shall cease and desist from supporting in any manner the Amalgamated Farm Labor Union, Inc., including laying off employees, supporting any work stoppage or picketing, hiring employees in the expectation that they will support the AFLU, or in any other manner indicating a preference for its employees to choose the AFLU or any other labor organization as their representative.

4. Regarding violations of Section 1153(c), Respondent shall take the following affirmative action:

(a) Make whole to Hippolito Aguilar, Jorge Aguilar, Luis Aguilar, Ramon Aguilar, Prudencio Arroyo, Rafael Arroyo (Padilla), Ricardo Castoro, Jesus Garibay, Roberto Muniz, Salvador Savala (Jose Garcia), Javalino Vega and Pedro Vega, any losses they may have suffered as a result of Respondent's refusal to hire them for the 1978-79 pruning season, in accordance with the formula used in F. W. Woolworth Company, 90 NLRB 289, and Isis Plumbing and Heating Co., 138 NLRB 716.

(b) Make whole to the 1978-79 pruning season employees any losses they may have suffered when they were laid off for three days on January 26, 1979, in accordance with the above-mentioned formula in 4(a), supra.

(c) Preserve and make available to the Board or its agents, upon request, for examination and copying all payroll records, social security records, time cards, personnel records, reports, and other records necessary to analyze the amount due to the above employees.

5. Regarding violation of Section 1153(e) of the Act, Respondent shall:

(a) Cease and desist from refusing to bargain in good faith, as defined in Section 1155.2(a) of the Act, with the UFW as the representative of its agricultural employees, including changing or refusing in bad faith to agree to items already verbally agreed-upon in the negotiations, delaying or refusing in bad faith to agree upon items relating to wages and/or conditions of employment, acting to discriminatorily reduce the number of UFW supporters at its premises, hiring employees in order to reduce the strength of the UFW at its premises, supporting or assisting another union at its premises, and in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 1152 of the Act.

(b) Take the following affirmative action:

(1) Upon request, meet and bargain collectively with the UFW as the certified exclusive collective bargaining representative of its agricultural employees, and if understanding is reached, embody such understanding in a signed agreement.

(2) Promptly furnish to the UFW all information it requests which is relevant to the preparation for, or conduct of, collective bargaining

negotiations.

(3) Make whole its agricultural employees for all losses of pay and other economic losses sustained by them as the result of Respondent's failure and refusal to bargain in good faith, as such losses have been defined in Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1978), for the period from November 22, 1978 until such time as Respondent commences to bargain in good faith with the UFW and thereafter bargains to contract or impasse.

(4) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due its employees under the terms of this Order.

(c) It is further ordered that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's agricultural employees, be extended for a period of one year starting on the date on which Respondent commences to bargain in good faith with said union.

6. Respondent shall notify the Regional Director in the Fresno Regional Office within twenty (20) days from receipt of a copy of this Decision of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

It is further recommended that the allegations of the complaint which have been found not to be proven, be dismissed.

Dated: February 19, 1981

Beverly Axelrod
Administrative Law Officer

APPENDIX A

NOTICE TO EMPLOYEES

After a hearing, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to give this notice to all our employees telling you, that we will remedy those violations, and that we will respect the rights of all our employees in the future. Therefore we are now telling each of you:

(1) We will bargain in good faith with the United Farm Workers union and try to reach an agreement on a contract with them.

(2) We will not support any unions or labor organizations at our ranch, and we will not assist any labor unions, including the Amalgamated Farm Labor Union, in organizing activities at our ranch.

(3) All our employees are free to support, become or remain members of the United Farm Workers of America, or any other union. We will not lay off, discharge, refuse to rehire, or in any other manner interfere with the rights of our employees to engage in union activities which are guaranteed them by the Agricultural Labor Relations Act.

(4) We will give back pay to the pruning employees in the 1978-79 pruning season who were laid off for three days in January 1979.

(5) We will give back pay to Hippolito Aguilar, Jorge Aguilar, Luis Aguilar, Ramon Aguilar, Prudencio Arroyo, Rafael Arroyo, Ricardo Castoro, Jesus Garibay, Roberto Muniz, Salvador Savala, Javalino Vega and Pedro Vega for our refusal to hire them for the 1978-79 pruning season.

(6) We will compensate our employees for losses in wage increases and benefits caused by our refusal to bargain in good faith with the United Farm Workers union.

(7) All our employees are free to engage in any activities protected by the Agricultural Labor Relations Act, and we will not interfere or punish any worker in any way for engaging in those activities.

Date:

ARAKELIAN FARMS

(Signed) _____

Title

Appendix B

INDEX OF EXHIBITS

Joint Exhibits

#	Admitted	No. of Pages	Description
1	XIX:112	2p.	Arakelian Farms Payroll Letter and Number Codes

General Counsel's Exhibits

#	Admitted	No. of Pages	Description
1	II:2		Formal Documents
2	IV:97	108p	8/18/78- Agreement between Valley Vineyard Services and UFW
3	II:73	1p	9/7/78 - Proposal: Hourly Wages
4	II:77	8p	9/14/78 - Letter: Paul Doty to Kenneth Fujimoto, Bargaining Proposals
5	III:1	1p	9/22/78 - UFW Proposal- Hourly Rates
6	II:120	1p	9/22/78 - UFW Proposal: Harvest Rates
7	III:1	2p	9/22/78 - UFW Proposal
8	V:115	12p	9/27/78 - Arakelian Farms Proposal
9	IV:40	2p	9/27/78 - UFW Proposal
10	V:118	2p	9/28/78 - UFW Proposal
11	III:47	2p	10/4/78 - List of Names
12	IV:103	74p	10/78 - "Agreement" Between Arakelian Farms and UFW
12A	IV:85	75p	10/78 - "Agreement" Between Arakelian Farms and UFW
13	III:140	1p	10/24/78 - Memo: Cesar Chavez to Gilbert Padilla

General Counsel's Exhibits (Continued)

#	Admitted	No. of Pages	Description
14	IV:17	1p	10/19/78 - Memo: Ken Fujimoto to Gilbert Padilla
15	VI:55	2p	11/22/78 - Letter:Leland Brewer to Gilbert Padilla
16	VI:55	49p	"Articles"
17	VI:55	1p	12/6/78 - Letter:Gilbert Padilla to David Arakelian
18	VI:55	3p	11/21/78 -Letter:Leland Brewer to Gilbert Padilla
19	IX:149	16p	12/11/78-2/9/79 - Billing for Atad Labor Contractor
20	IX:149	6p	12/15/77- 1/19/78 - Billing for Emma McGuire Labor Contractor
21	IX:149	6p	12/27/78-2/7/79 - Checks to Rose Atad Labor Contractor
22A	IX:149		10/31/77 - 9/20/78 -Payroll Journals
22B	IX:149		9/25/78-5/31/79 - Payroll Journals
23	IX:109	27p	1/26/79 - Petition for Writ of Mandate
24	IX:109	7p	1/26/79 - Declaration of David Arakeliar
25	X:79	16p	4/1/78 - Articles of Incorporation and Bylaws of AFLU
26	X:75	1p	2/13/79- ALRB Denial of Request for Review
27	XV:55	1p	UFW Authorization Card
28	XIX:112	1p	Map
29	XX:144	2p	1/20/79-1/25/79- Payroll Records
30	XX:144	3p	1/15/79 - Petition for Decertification
31	XXIII:26	2p	Wells Fargo Bank Records for Rose Atad

General Counsel's Exhibits (Continued)

#	Admitted	No. of Pages	Description
32	XXIII:26	3p	12/8/78-3/2/79 - Checks by Rose Atad
33	XXIII:26	25p	Atad Labor Contractor Payroll Dedcution Cards
34	XXIV:58	49p	5/2/78-8/7/78 - Payroll Journal
35	XXIV:58	42p	6/5/79-8/31/79- Payroll Journal
36	XXIV:69	12p	10/78-1/79 - Letters re: Filing of Charges

Charging Party's Exhibits

#	Admitted	No. of Pages	Description
1	IV:45	1p	10/4/78 - Letter of Understanding re: Mechanization
2	IV:101	1p	"Article 36: Modification"
3	IV:89	75p	10/78 "Agreement" between Arakelian Farms and UFW
4	XII:43	32p	12/11/78-2/9/79 - Payroll Records of Pruning Crews
5	XXI:83	73p	"Agreement" between Arakelian Farms and UFW (10/78)
6	XXIII:119	8p	11/20/78-6/20/79 - Alpha Agency Payment Records
7	XXIII:132	4p	1/10/79-1/16/79 - Payroll Records for Atad Pruning Employees
8	XXIII:132	6p	1/2/79-1/9/79 - Payroll Records for Atad Pruning Employees
9	XXIV:6	25p	10/26/76 - Arakelian Farms-UFW, Status of Contract Proposals

Charging Party's Exhibits (Continued)

#	Admitted	No. of Pages	Description
10	XXIV:8	2p	1/18/79 -Letter; Edward Perez to Jose Lopez
11	XXIV:11	5p	1/19/79- Petition for Certification
12	XXIV:14	62p	1977 - Diary of David Arakelian
13	XXIV:15	43p	1978 - Diary of David Arakelian
14	XXIV:17	29p	1979 - Diary of David Arakelian
15	XXIV:27	16p	1/29/79 - Testimony of David Arakelian
16	XXIV:30	2p	1/18/79: Letter: Dianna Lyons to Leland Brewer
17	XXIV:34	1p	4/25/77 - Notes of David Arakelian
18	XXIV:38	1p	6/1/77 - Notes of David Arakelian
19	XXIV:41	1p	11/8/77- Notes of David Arakelian
20	XXIV:43	3p	8/31/76- Notes of David Arakelian
21	XXIV:45	2p	11/16/76-Notes of David Arakelian
22A	XXIV:50	1p	11/1/78- Notes of David Arakelian
22B	XXIV:50	1p	11/1/78- Notes of David Arakelian
22C	XXIV:50	1p	11/78- Notes of David Arakelian
23	XXIV:53	2p	11/7/78- Notes of David Arakelian
24	XXIV:56	1p	10/4/78- Notes of David Arakelian
25	XXIV:71	6p	1/31/78-2/28/79- List of Employees
26	XXIV:74	6p	List of Crews
27	XXVI:131	1p	Notesof Paul Doty
28	XXVI:186	1p	Notes of Paul Doty
29	XXVI:186	1p	Notes of Paul Doty
30	XXVI:186	1p	Notes of Paul Doty

Charging Party's Exhibits (Continued)

#	Admitted	No. of Pages	Description
31	XXX:61	1p	12/13/78 - Letter: Paul Doty to Frank Gullo
32	XXVII:107	6p	11/7/78- Notes of Ken Huggins
33	XXIX:18	1p	10/29/76- Notes of Frank Gullo
34	XXIX:18	1p	11/16/76- Notes of Frank Gullo
35	XXIX:18	2p	9/7/78- Notes of Frank Gullo
36	XXIX:18	2p	9/22/78- Notes of Frank Gullo
37	XXIX:18	3p	9/28/78- Notes of Frank Gullo
38	XXIX:18	3p	10/4/78- Notes of Frank Gullo
39	XXIX:18	2p	11/1/78- Notes of Frank Gullo
40	XXIX:18	18p	6/10/77- Proposal from Paul Doty to Cesar Chavez
41	XXXI:69	1p	AFLU Letterhead

Respondent's Exhibits

#	Admitted	No of Pages	Description
1		1p	5/17/79- Unemployment Insurance Denial for Rosendo Vega
2	XII:54	1p	10/27/78- Memo: Ken Fujimoto to Cesar Chavez
3	XXI:86	1p	Map
4	XXVI:24	2p	3/8/78- Order Denying Extension of UFW Certification
5	XXVI:38	7p	9/27/78- Arakelian Farms Proposal

Respondent's Exhibits (Continued)

#	Admitted	No. of Pages	Description
6	XXVII:108	1p	11/9/78- Letter: Ken Huggins to Gilber Padilla
7	XXIX:56	1p	10/27/75- Certification of Representat
8	XXIX:39	1p	1975-1978- Summary of Seasonal Employment
9A	XXIX:43	1p	Summary of Employee Work Histories
9B	XXIX:43	1p	Summary of Employee Work Histories
9C	XXIX:43	1p	Summary of Employee Work Histories
10	XXX:61	1p	6/18/79- Letter: ALRB to Arakelian Farms
11	XXXI:35	4p	1/24/79- Memo: Paul Savella to Edward Perez