

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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)	
YAMANO FARMS , INC.,)	
)	
Respondent,)	Case No. 82-CE-93-SAL
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	11 ALRB No. 16
)	
Charging Party.)	

DECISION AND ORDER

On October 28, 1983, Administrative Law Judge (ALJ) Marvin J. Brenner issued the attached Decision. Thereafter Respondent Yamano Farms, Inc. timely filed exceptions to the ALJ's Decision and a supporting brief. The General Counsel then timely filed its response to Respondent's exceptions.

Pursuant to the provisions of section 1146,^{1/} of the Agricultural Labor Relations Act (ALRA or Act), the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.^{2/}

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALJ as

^{1/}All section references herein are to the California Labor Code unless otherwise specified.

^{2/}The signatures of Board members in all Board Decisions appear with the signature of the chairperson first (if participating), followed by the signatures of the participating Board members in order of their seniority.

modified herein, and to adopt his recommended Order with modifications.

Respondent excepts to the ALJ's finding that United Farm Workers of America, AFL-CIO (UFW or Union) activists Maria Santos Ramos and Gloria Coronel missed work in Respondent's 1982 weeding and thinning operations and were refused rehire in Respondent's 1982 tomato machine harvest because of their involvement in the 1980 UFW garlic strike and their subsequent resort to UFW and ALRB assistance in securing employment from Respondent.^{3/}

With respect to the allegations of missed work in the weeding and thinning operations, Respondent challenges the causal connection drawn between the missed work and any anti-union animus that might have been generated by the discriminatees' protected union activity. As noted above, we adopt the ALJ's demeanor-based credibility resolutions and his finding of knowledge and animus on the part of Respondent's owner and labor contractor. We are persuaded, as was the ALJ, that they had every intention of obstructing the discriminatees' persistent efforts to seek employment with Respondent.

^{3/} Respondent has excepted to various findings and conclusions of the ALJ which were based upon his discrediting the testimony of labor contractor Prieto and owner William Yamano. The ALJ's credibility resolutions against both men were based on inconsistencies -- both logical and factual -- in their testimony and his assessment of their demeanor. To the extent that such resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. (Adam Dairy dba Rancho Dos Rios (1978) 4 ALRB No. 24.) Our review of the record herein indicates that the ALJ's credibility resolutions are well supported by the record as a whole.

Our finding *is* supported by the following evidence: (1) on approximately May 19, according to Ramos, Respondent's labor contractor "Juicy" Prieto told her not to come to the cafe so frequently seeking work with Respondent "because the growers saw him together with us and the growers would not give work to him;" (2) Ramos and Coronel testified that, on July 21, 1982, Prieto told them that because they were "strikers and troublemakers," the growers were putting pressure on him and refusing to give him work. When Coronel asked if Yamano were one of those growers, he responded "this you should know;"^{4/} (3) UFW field office director David Ronquillo testified to 3 phone conversations he had with agents of Yamano on August 10 and 11, 1982 while he was attempting to assist the discriminatees in obtaining work with Respondent; Prieto told him that "the old man" (presumably Yamano) did not want to hire Ramos and Coronel; Prieto's daughter and secretary/bookkeeper told him that Yamano had told "someone" that he would not hire Ramos and Coronel because of the unfair labor practices filed on their behalf on August 10; Yamano's attorney told him that Yamano "had problems with hiring Gloria and Maria;" (4) Ramos and Coronel both testified that, on September 4, 1982, Prieto told them that Yamano had "sent [him] to the fucking hell because yesterday I gave work to you and for this reason he won't give me work . . ." and

^{4/}Ramos' testimony contradicts Coronel's somewhat on this point. Ramos testified that Prieto responded to Coronel's question by saying he did not know. However, given that Yamano was the only grower for whom Ramos and Coronel worked, we find that, regardless of Prieto's actual response to the question, Yamano was the grower to whom Prieto was referring.

that because they were "strikers and troublemakers," Yamano would not give them any more work either. The discriminatees had been active and visible participants in the wide-spread strike of 1980, a strike which had involved Prieto's entire work force and which caused him substantial financial losses. When the discriminatees sought and were denied work in Respondent's 1980 tomato harvest after the strike ended, the UFW filed unfair labor practice charges against Yamano on their behalf. The charges were resolved by settlement in 1981. Yamano himself corroborated the substance of Prieto's statements when he testified that he felt "harassed" by the discriminatees' "litigations."

We do, however, find merit in two of Respondent's arguments. We find that the record does not support the ALJ's finding that Respondent changed a past practice of personally notifying employees of the commencement dates of its various operations. The discriminatees testified that they had been personally notified of the start-up dates by foreman Eusebio Salinas who had since left Respondent's employ -- a foreman who was the father of their close personal friend. Such an assertion does not suffice to rebut the uncontested testimony of Respondent's owner and labor contractor that neither had a policy or practice of providing personal notice of start-up dates to prospective employees.

We find, however, that the ALJ's conclusion that the missed work resulted from Respondent's violation of the Act is not dependent upon his finding that the policy had been changed. Our analysis is buttressed by the assertive and persistent manner

in which the discriminatees pursued employment. They were clearly not relying on an expectation that labor contractor Prieto would come to their home as had foreman Eusebio Salinas. Rather, they were exceedingly diligent in reporting regularly to Prieto and owner Yamano at the local cafe where the growers and contractors gathered each morning.

A preponderance of the evidence indicates that, at least for the May 24 and July 20 incidents, labor contractor Prieto deliberately misled the discriminatees into not applying for work. In May, as mentioned above, Prieto told the discriminatees not to come to the cafe so often to seek work from him. They gave him their phone number and told him he could call them as he had earlier offered to do. From May 19 to May 25 they stayed away, relying on Prieto's offer, and, consequently, they missed the first day of the tomato thinning on May 24. Prieto's representation of July 19, that "for these days there's no work" clearly discouraged them from returning the following day, the first day of the pepper weed and thin operation.

However, with respect to the discriminatees' loss of work on August 10, the first day of the celery pulling operation, we agree with Respondent that the causal nexus is missing. Unlike the ALJ, we are not persuaded that the evidence established that Yamano "certainly . . . would have known [on August 5] that the celery work was to commence on August 10 with a Prieto crew." Moreover, even if he did know, the evidence does not indicate that it would have been his practice to notify Prieto's prospective hirees. Accordingly, despite strong evidence of

contemporaneous animus in the form of statements by Respondent's agents to Ronquillo, we find that the General Counsel failed to make a prima facie case that the missed work of August 10 is attributable to Respondent.

With respect to the September operations, we find that the General Counsel made a prima facie case that Ramos and Coronel were refused rehire as a result of their union and other protected activity, including their resort to ALRB processes. Yamano's animus toward the discriminatees for their union activity and ALRB "litigations" was well-established even before the August 10 unfair labor practice charge was filed. Ramos and Coronel had worked on the first machine in Yamano's tomato harvest in 1976, 1978, 1979 and 1981.^{5/} On September 2, 1982, the first day of Respondent's tomato harvest, Ramos and Coronel went to the cafe and asked Yamano if the tomato machine harvest had begun. This was their first contact with him since filing new unfair labor practice charges against him. Yamano did not inform them that the harvest was beginning that day, but instead referred them to Prieto to hoe peppers. The discriminatees proceeded instead to the tomato ranch where they saw a machine being readied for operation. When Yamano arrived they again asked him for work on the machines. He finally explained that he was "putting on" the "ranch people" -- that is, the wives of his tractor drivers

^{5/} They were in Mexico in 1977. In 1980, after having participated actively in the three-week UFW strike, they were refused rehire in the tomato harvest, leading to the unfair labor practice charges against Respondent which were settled the following June. In 1981, Respondent hired them pursuant to the terms of the settlement agreement.

and irrigators who lived there on his ranch. Yamano testified that he had given his supervisors orders to fill the first machine exclusively with "ranch people" and that he therefore assumed that only ranch people were actually hired. However, he admitted that a second machine was started the next day and that he did not know whether all positions were actually filled by ranch people. Rather than inform Ramos and Coronel that there might be vacancies the following day, he again attempted to divert them from the more desirable and longer-lasting harvest work to Prieto's short-lived pepper hoeing operation and eventually ordered them off of his property.

The following day when Ramos and Coronel reported to hoe peppers, they were told that Yamano had instructed the foreman not to hire anyone else. Prieto hired them later that day. However, he told them on the following day that Yamano had refused to give him any more work in retaliation for having hired them and that Yamano would not hire them again because they were "strikers and troublemakers." On September 8, Yamano pretended not to see them when they tried to ask him for work as he was driving away from the cafe.

Ramos testified that, although they had never lived on Yamano's ranch, she and Coronel had worked with the "ranch people" on the first tomato machine every year in which they had worked in Yamano's tomato harvest. On September 2, at least two individuals who had not previously worked on the first machine were hired in their places. Yamano admitted that non-ranch residents Ramos and Coronel had always been hired on the first

machine. These facts can be reconciled only with a policy of hiring at start-up, rather than in advance. Given the credited testimony of Yamano's animus and his evasive treatment of the discriminatees' application for work, his failure to rehire them as usual when they appeared for work before the arrival of the others presents a strong prima facie, case of discrimination. In such a case, the burden shifts to Respondent to prove it had a legitimate business reason for refusing them rehire. (NLRB v. Transportation Management Corp. (1983) 462 U.S. 393 [103 S.Ct. 2469]; Royal Packing Co. (1982) 8 ALRB No. 74; Sam Andrews' Sons (1985) 11 ALRB No. 5 .)

Respondent claims to have refused rehire to Ramos and Coronel pursuant to a nondiscriminatory policy and practice of giving priority in the tomato harvest to ranch residents who were married and otherwise related to Yamano's tractor drivers and irrigators. Yamano also testified that in 1982, he discontinued hiring ranch residents directly for weed and thin work in order to avoid charges of discrimination. Yamano testified on the one hand that it had always been his practice to notify only the "ranch people" of the start-up of the tomato machine harvest and on the other hand that non-residents Ramos and Coronel had always been hired on the first machine. This indicates to us that the actual hiring was traditionally done on a first-come first-serve basis. Yamano's 1982 order to his foremen to hire only ranch residents would have constituted a change in policy resulting in exclusion of the very individuals whom Respondent had previously retaliated against for their

protected activities.

Instituting a policy of restricting tomato harvest work to ranch residents would, of course, be perfectly permissible in the absence of a discriminatory intent to exclude union activists. However, Respondent must prove by a preponderance of all the relevant evidence that, even absent their persistent pursuit of their rights under the Act, Ramos and Coronel would have been refused rehire in Respondent's 1982 tomato harvest.

Respondent denies having changed its policy and gives no persuasive business explanation for the hiring restriction.^{6/} As we find that the alleged restriction constituted a change in policy, Respondent's failure to explain the basis for the change results in a failure of proof. Moreover, the evidence is unclear that at the time of rejecting the discriminatees, Yamano knew or even believed that all vacancies on the first two machines would be filled by ranch people, and he acknowledges that vacancies on the third machine were filled by non-ranch residents. Like the ALJ, we are inclined to interpret the

^{6/}Yamano's gradual conversion from manual to electronic sorting machines does not assist his defense. First of all, there were apparently more positions on the two electronic machines (10 to 12, according to Coronel V:70; 12-18 according to Ramos II:35; 10 according to Yamano VI:67) than there were ranch residents who would have been interested in the work (6 to 8 according to Yamano VI:104). Second, Yamano, despite his awareness of Ramos' and Coronel's willingness to challenge his employment practices, at no point explained to them that the conversion to electronic machines was responsible for his reduced labor needs. Finally, to prevail in this defense, Respondent must prove by a preponderance of the evidence not just that the conversion created cutbacks in positions, but that the positions that remained were nondiscriminatorily reserved exclusively for "ranch people." This, as discussed infra, Respondent has not done.

"policy" to hire exclusively ranch people as a pretext rather than as a legitimate business policy precluding the hiring of Ramos and Coronel.

Finally, we find an independent violation of section 1153(a), (c) and (d) in Respondent's four-hour delay in hiring Ramos and Coronel for pepper hoeing on September 3.^{7/} They timely reported for work but were prevented from working for four hours due to Yamano's instruction to Prieto's foreman that he not hire additional workers. The fact that Yamano had specifically referred them to work in the pepper hoeing in combination with credited evidence that Yamano later reprimanded Prieto for hiring them indicates that Yamano's facially nondiscriminatory instructions were targeted to exclude the discriminatees.

Our findings lead us inescapably to the conclusion that Yamano never intended to provide Coronel or Ramos with any work -- tomato harvest or pepper hoe. Prieto's statements of September 4 together with the other evidence of Yamano's animus toward Ramos and Coronel because of their union and protected concerted activities, persuades us that Yamano intended to and did refuse rehire to Maria Santos Ramos and Gloria Coronel in violation of sections 1153(a)(c) and (d) of the Act.

Credited testimony that Prieto told them on September 4.

^{7/}The fact that the discriminatees did not accept Yamano's offer of pepper hoeing work on September 2 is relevant only to the amount of backpay due them for this discriminatory refusal to rehire them in the tomato harvest. It does not preclude us from finding a violation on September 2.

that because they were strikers and troublemakers they would have no more work with Yamano further supports our finding that Ramos and Coronel should be made whole for any loss of work in subsequent operations of Respondent. (See Golden Valley Farming (1980) 6 ALRB No. 8.)

ORDER

By authority of Labor Code section, 1160. 3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent, William Yamano and Yamano Farms Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

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

(b) Failing or refusing to hire or rehire, or otherwise discriminating against employees in regard to the hire, tenure, or conditions of employment because they have filed charges or had charges filed on their behalf with the Agricultural Labor Relations Board.

(c) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Agricultural Labor Relations Act.

2. Take the following affirmative actions which are

deemed necessary to effectuate the policies of the Act:

(a) Offer to Maria Santos Ramos and Gloria Coronel immediate and full reinstatement to their former or equivalent positions, without prejudice to their seniority or other employment rights or privileges.

(b) Make whole the two 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) 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 period and the amounts of backpay and interest due under the terms of this Order.

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

(e) 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 during the period from May 24, 1982 to May 24, 1983.

(f) 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.

(g) 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.

(h) 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: June 27, 1985

JYRL JAMES-MASSENGALE, Chairperson

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, William Yamano and Yamano Farms, Inc., 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 refusing to rehire two employees, because they participated in activities in support of the United Farm Workers of America, AFL-CIO (UFW) and because they filed charges with the Board. 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 interfere with, restrain or coerce you in the exercise of your right to join and engage in activities in support of the UFW or any other union.

WE WILL NOT discriminate against you for participating in Union activities or for filing unfair labor practice charges with the Board.

SPECIFICALLY, the Board found that it was unlawful for us and our labor contractor Joe Prieto to have refused to rehire Maria Santos Ramos and Gloria Coronel.

WE WILL NOT hereafter refuse to rehire or otherwise discriminate against any employee for joining or supporting the UFW or any other union or for filing a charge against us with the Board.

WE WILL offer Maria Santos Ramos and Gloria Coronel reinstatement to their former jobs without loss of seniority and we will reimburse them for all losses of pay and other money they have lost because we unlawfully discriminated against them.

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Dated:

YAMANO FARMS, INC.

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 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3161.

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

YAMANO FARMS, INC.

11 ALRB No. 16
Case No. 82-CE-93-SAL

ALJ Decision

The ALJ found two workers were discriminatorily refused rehire in several of Respondent's operations because of their protected union activity and for filing unfair labor practice charges with the Board, in violation of sections 1153(a), (c) and (d) of the Act.

Board Decision

The Board affirmed the ALJ's findings that the discriminatees were effectively refused rehire in Respondent's May and July weed and thin operation. The Board found that Respondent's labor contractor successfully attempted to prevent the discriminatees from learning of start-up dates but disavowed the ALJ's finding of a past practice of prior notification. With respect to the August celery pulling operation, the Board rejected the ALJ's finding of a violation, concluding that the evidence was insufficient to prove a causal connection between Respondent's well-established animus and his failure to notify the discriminatees of the start-up date. The Board affirmed the ALJ's finding that Respondent's refusal to hire them in the 1982 tomato harvest was discriminatory. The Board adopted the ALJ's finding that Respondent's explanation -- that he had a nondiscriminatory policy of limiting hiring for the first harvest machine to ranch residents -- was neither legitimate nor credible. The Board also noted that the instant case stems from a charge filed on behalf of the discriminatees by the UFW shortly before this incident occurred.

* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
)
YAMANO FARMS, INC.,)
)
Respondent,)
and)
)
UNITED FARM WORKERS OF)
AMERICA, AFL-CIO)
)
Charging Party.)
_____)

Case No. 82-CE-93-SAL



Appearances:

Christine Bleuler
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Clare M. McGinnis
United Farm Workers of
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for Charging Party

Kevin K. Cholakian
Robert K. Carrol
Littler, Mendelson, Fastiff & Tichy
650 California Street, 20th Floor
San Francisco, California 94108
for Respondent

Before: Marvin J. Brenner
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

STATEMENT OF THE CASE

This case was heard by me on July 11, 12, 13, 14, 15, August 29, 30, and 31, 1983, in Gilroy, California. The Complaint was based on charges filed by the United Farm Workers of America, AFL-CIO (hereafter referred to as "Union" or "UFW") on August 12, 1982 (Charge No. 82-CE-93-SAL) and February 4, 1983 (Charge No. 83-CE-8-SAL).^{1/}

All parties were given a full opportunity to present evidence and participate in the proceedings. The General Counsel and Respondent filed briefs after the close of the hearing.

Upon the entire record,^{2/} including my observation of the demeanor of the witnesses and after careful consideration of the arguments and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent was engaged in agriculture in the State of California within the meaning of section 1140.4(c) of the Agricultural Labor Relations Act (hereafter the "Act"), as was admitted by Respondent in its Answer. Accordingly, I so find.

Respondent also admitted, and I find, that the UFW was a labor organization within the meaning of section 1140.4(f) of the Act.

1. This latter charge, No. 83-CE-8-SAL involving the Casas family (paragraphs 8 (in part) and 10 of the Complaint), was severed from the case at the request of the General Counsel and is no longer a part of the present Complaint.

2. Hereafter, General Counsel's exhibits will be identified as "G.C. Ex___"; and Respondent's exhibits as "Resp's___". References to the Reporter's Transcript will be noted as "TR.____ (Arabic numeral), p.____".

II. The Alleged Unfair Labor Practices

The Complaint alleges that Respondent through its agents and supervisors failed and refused to rehire Maria Santos Ramos (hereafter "Ramos") and Gloria Coronel on May 24, July 20, August 10, September 2, and continuing thereafter because of their UFW activities. The above conduct is said to be in violation of sections 1153(a) and (c) of the Act.

Respondent denies these allegations.

III. The Business Operations and the Use of Labor Contractors

William (Bill) Yamano, the owner of Yamano Farms, Inc., grows mainly tomatoes, peppers, celery and sugar beets in the Gilroy area on approximately 1,400 acres of land, 600 of which he owns, the remainder of which is leased.

Yamano testified that prior to 1982 a majority of his hoeing and thinning operations for the above-mentioned crops was performed by labor contractors, principally Joe "Juicy" Prieto. A John Fernandez, and a Rodriguez^{3/} also did some of the work. (TR. 6, p. 105, 73, 76.)

In 1982, however, Yamano testified that he turned all hoeing and thinning operations over to labor contractors,^{4/}

3. Yamano was unsure of Rodriguez's first name.

4. This point was disputed by the General Counsel as she produced evidence that at least 4 of Yamano's own workers, (so-called "ranch people"), Gloria Solis, Estelle Resales, Jose Ahumada, and Beatrice Delgado, worked during the period of July 31, 1982-August 14, 1982 doing thinning work. (G.C. Exhs 4, 5, and 6.) Yamano was unable to explain this but admitted that said individuals were on his payroll records, that they were paid by him, and that they either would have been hired by him or by his general foreman,

(Footnote continued---)

generally Prieto, as he no longer wished to play any role in the hiring of employees for these operations.^{5/} (TR. 6, 115.) Yamano testified that the reason he effectuated this change was because ". . . every time that I hire just a small, a lot of times I need a small crew, a few people, and I am brought charges against me because of not hiring the two girls, Maria and Gloria^{6/} they they were not allowed to work" (sic). (TR. 6, p. 27.) Yamano added that another advantage in using labor contractors was that they would do the hiring, supervising, and disciplining of the crews as well as maintain the payroll records.

In addition to the switch to labor contractors -- yet connected with it—, Yamano made another important change in 1982. Yamano testified that that year he allowed non-Yamano Farms workers to live on his property, whereas before, in 1980, only Yamano employees could reside there. Yamano testified that the 1980 policy was also altered as a result of the filing of certain unfair labor practice charges against him that had alleged that his previous practice of giving hiring preference to those who were living on his

(Footnote 4 continued—)

Bobby Hirosake. (TR. 6, p. 112.) Yamano's office manager, Kathy Barnes, testified that the women workers were the wives of tractor drivers and irrigators whose husbands had asked that they be given work to earn extra money and that Yamano accommodated them when Yamano had some work though never enough for a full crew. (TR. 6, p. 122.) There was no explanation why Jose Ahumada was likewise employed.

5. However, Yamano testified he continued to hire directly tractor drivers, irrigators, and tomato harvest machine workers.

6. Yamano was referring to Maria Santos Ramos and Gloria Coronel, the two alleged discriminatees in this case.

ranches was discriminatory.

Yamano testified that as a result of these changes, whenever he needed a crew for a particular crop, he would contact the labor contractor (usually Prieto) directly and give him instructions as to how many workers he required and for what crops. Yamano testified it was not necessary for him to tell Prieto what to do because Prieto, having worked for him for several years, already knew. (TR. 6, p. 79.) Yamano also testified that he would check the work of his labor contractors' employees^{7/} and would do so on a frequent basis at the start of the season. (TR. 6, p. 78.) If not satisfied, he would so inform the contractor; and if still dissatisfied, would terminate his services. (Id.)

Yamano testified that in 1982 any workers asking him for work in hoeing and thinning would have been referred to Prieto but that the two alleged discriminatees, Ramos and Coronel, continued with some frequency -- the only ones to do so -- to see him about employment. Yamano testified that each time they came he told them to see Prieto but that they kept coming back to him to the point where he regarded their visits as harassment. (TR. 6, p. 39.)

IV. Union Activities and Employer Knowledge

Ramos and Coronel testified that on July 25, 1980 they were doing hoeing work along with a crew of Yamano "ranch" employees in a field owned by Yamano Farms; they were being supervised by Yamano

7. As a rebuttal witness for General Counsel, Ramos testified that on the first day of work in May of 1981, while working in a Yamano field, her foreman, Eusebio Salinas, gave the entire crew a copy of certain work rules and regulations (G.C. Ex 7) and told them that these were Yamano rules that had been given to him (Salinas) by Bill Yamano.

foreman Jose Ahumada,^{8/} having been hired by Yamano supervisor Bobby Hirosake. Coronel added that she and Ramos were the only non-"ranch people"^{9/} that were working that day for Ahumada.

While working, a group of non-Yamano employees, carrying UFW flags, arrived and asked the crew to join a UFW sponsored strike^{10/} and to sign authorization cards. Ramos, Coronel and one other person out of the crew of 14 signed these cards. Both Ramos and Coronel testified they were observed signing by Ahumada who was within 10 feet of them. Thereafter, Marshall Yamano, 31 years of age, son of Bill Yamano and supervisor for Respondent,^{11/} arrived. According to Ramos, Yamano inquired as to what was occurring; and she informed him that she and Coronel had stopped work because of

8. There was some dispute in the testimony as to whether Ahumada was a supervisor. As a rebuttal witness, Ramos testified that Ahumada served as a foreman for Yamano during the above-described 1980 hoeing operation but that he was usually employed as a rank-and-file worker during the tomato harvest.

9. "Ranch people" were workers residing either on Yamano's own property or property he was leasing.

10. This was the 1980 garlic strike in the San Benito and Santa Clara Valleys.

11. At the hearing, Bill Yamano testified that Marshall Yamano was not a supervisor in 1980 and did not become one until 1982. (TR. 6, p. 28.) Further, Respondent's counsel argued in response to the denial of its Motion to Dismiss, that Respondent's Answer admitted only that Yamano was a supervisor presently or at the time of the filing of the Answer. (TR. 6, p. 22). Nevertheless, the fact remains that Respondent admitted in its Answer that Marshall Yamano was a supervisor under the Act. Paragraph 6 of the Complaint to which the Answer was addressed alleged that the "following persons have at all times material herein occupied the positions opposite their names and are now and at all times material herein have been supervisors within the meaning of Labor Code section 1140.4(j) and agents of Respondent acting on its behalf" (Emphasis added.) Respondent is bound by its Answer. I find Marshall Yamano to be a supervisor.

the strike but that they would resume working once the matter was settled. Coronel testified that Yamano then asked, "[w]ho signed cards?" (TR. 4, p. 54), and that she informed him that she and Ramos had both signed them. In addition, both Coronel and Ramos testified that a co-worker, Sylvia Resales, also told Yamano at that time that they (Coronel and Ramos) had signed the authorization cards. This conversation was undisputed.^{12/}

Ramos testified that she and Coronel went on strike that day, that they were the only ones from her crew to do so, and that they remained on strike until the labor unrest in the area subsided, around August 9 or 10, approximately two weeks later.

The extent of their participation in that strike was the subject of some controversy with General Counsel's witnesses claiming they were quite active and Respondent's witnesses claiming they had no knowledge of any such activity. For example, a witness for the General Counsel, UFW representative Miguel Ybarra, who was in charge of picketing activities during this strike, testified that both Ramos and Coronel were quite active and earned the nicknames of "patrulleras" or patrollers because they would observe the various fields and report back to UFW headquarters any farmworkers found still to be working. However, there was no evidence that any picketing took place on any property owned or operated by Respondent during this period.

Other union activity followed the strike. In September of 1980 the UFW filed a Notice of Intent to Take Access in Case No.

12. Neither Marshall Yamano nor Ahumada testified.

80-NA-91-SAL (G . C . Ex 3) , ^{13/} and Coronel, Ramos, and two Union organizers went out to Yamano fields to speak to tomato machine workers during the lunch hour about UFW benefits. (TR . 4, p. 7 9 .)

After the strike, Ramos and Coronel were allowed to return to work, working the days of August 11 and 12, doing tomato cleaning. But thereafter they applied for but were allegedly refused rehire in Respondent's 1980 tomato harvest, and an unfair labor practice charge was filed by the UFW on their behalf. A complaint was subsequently issued, which was settled in July of 1981 (G . C . Ex 2) . ^{14/} This settlement directly affected Ramos' and Coronel's 1981 employment. (The parties stipulated that this settlement, which resulted from the unfair labor practice charges filed against Respondent in September, 1980, April, 1981, and June, 1981, controlled the hiring and employment by Respondent of Ramos and Coronel in Respondent's operations in 1,981 prior to the 1981 tomato harvest season and in Respondent's 1981 tomato harvest and

13. This exhibit was not admitted into evidence, but I have taken administrative notice of the occurrence. (TR . 3, p. 8 5 .)

14. Of course, Respondent had knowledge of these proceedings, of which I have taken Administrative Notice (TR . 6, pp. 3 - 5) , and of Ramos and Coronel's claims of union support. Bill Yamano was notified: (a) on September 5, 1980, that the UFW had filed a charge (80-CE-205-SAL) alleging that Respondent had discriminatorily denied work to some of its employees; (b) on April 20, 1981, that Respondent had allegedly discriminatorily refused to rehire employees due to their union activities and filing of unfair labor practice charges (81-CE-64-SAL); and (c) on June 8 that Respondent had allegedly cut back on the amount of work normally given to the Eusebio Salinas crew because of their union activities (81-CE-64-SAL). As early as September 25, 1980, a complaint issued alleging that certain workers in Eusebio Salinas' crew, specifically naming, among others, Ramos and Coronel, had been unlawfully refused rehire because of their union activities (Case No. 80-CE-239-M-SAL). The complaint specifically mentioned the July, 1980 garlic strike in the San Benito and Santa Clara counties.

bell pepper operations.)^{15/} (TR. 1, pp. 2-3).

There was also undisputed testimony that thereafter, on several occasions, Yamano and Prieto were informed personally of Ramos' intent to seek the help of the UFW for her employment problems. Ramos testified that on July 22, 1982 she told Yamano that she intended to speak to UFW representatives about her inability to obtain work with the Jose Salinas crew weeding peppers, infra. And she testified that again on August 5, 1982, she informed Yamano that she was going to speak with UFW representatives about not being hired for celery machine work, infra. UFW official David Ronquillo testified that on that same date, August 5, he spoke to Yamano and requested work on behalf of both Ramos and Coronel and did so again on August 10, infra. Ronquillo also testified that he likewise spoke to Prieto on August 10 on the same subject matter.

Bill Yamano testified that he had never had a contract with any labor organization, that there had never been a union election or a certification on his property, and that there never was a strike or picket line at any of his ranches during 1980. In fact, Yamano generally denied any knowledge of the area-wide strike activity by the following testimony in response to questions by the General Counsel on cross-examination:

15. The settlement provided a payment to Ramos and Coronel of \$1,550.00 each, by far the largest amounts of money paid in the settlement; and further provided, inter alia, that Ramos and Coronel would be offered work by Respondent on the 1981 tomato machines and that Respondent would notify Prieto, Eusebio Salinas (a Prieto foreman), and the UFW by mail at least 3 days before the start of work of the availability of employment for Ramos and Coronel in the 1981 tomato harvest.

- A. I don't know if there was a strike or not, but I've seen some commotion, whatever you call it, you know.
- Q. You don't know if there was a strike in 1980 in the Gilroy area?
- A. I just heard, I, just hearsay. Actually, I didn't go there. That's why I didn't know. I can't say whether there was or not.
- Q. What do you mean you didn't go there?
- A. I didn't go see what they're doing. Because I was busy with my own problem.
- Q. What was your own problem?
- A. Running the ranch.
- Q. So you didn't know anything about the strike?
- A. No.
- Q. In 1980.
- A. Oh, well, I just heard that there could have been a strike, I don't know, but I didn't go, actually go see a strike put on.
- Q. Did you read the newspapers during that time?
- A. Mmmmm.
- Q. Okay. Did you hear about the strike in the newspapers?
- A. Yeah, I read it a little bit.
- Q. A little bit?
- A. Just a little.
- Q. Did you ever see picket lines?
- A. No.
- Q. Did you ever watch the TV and see the strikers on the TV?
- A. No, I didn't see it. No.
- Q. Do you know growers that were struck in this area?
- A. I don't know who they were. I've seen two or three, I believe. I'm not so sure who, I heard of their names.

Q. Who were those people?

A. Well, Christopher, then Bertuccio, my neighbors there."
(sic)

(TR. 6, pp.80-81) (See also TR 6, p. 40.)

Though Yamano acknowledged that while at the Golden West Cafe for breakfast during 1980, he would run into other growers, he also explained that he learned nothing about the then existing labor strife in the community because " I didn't ask them -- No, I never asked or they never give out information, just talk about what's growing on the crop. That's about it. -- I got my own problems, that's just all. No, because I didn't ask nothing about what was going on. Not about the strike or anything, their problems, personal problems". (sic)

(TR. 6, pp. 84-85.)

Yamano denied talking with anyone about UFW organizational activities in the valley during the strike though he recalled Mike Hernandez, one of Prieto's foreman, showing up at his field wanting permission to speak to his workers. (TR. 6, p. 85.)

Yamano also denied knowing of any growers, except for Christopher and Bertuccio, where elections were held during 1980 or where UFW certifications resulted. (TR. 6, p. 93.)

Specifically, Yamano denied knowing at the time of the strike that Ramos and Coronel supported it: " What they do after they leave the ranch, I don't know what they do. I'm just concerned that they work on the ranch, that's all, and they were under, mostly on the payroll of Joe Prieto". (sic) (TR. 6, p. 86.)

However, Bill Yamano, though denying ever speaking with his son, Marshall, about the 1980 strike, admitted that Marshall had indeed told him that some people had come to the field, that they

had spoken to Ramos and Coronel, that Ramos and Coronel had signed something, had then left the work site, and that this was not a usual occurrence. Yamano denied he knew anything about their activities beyond this. (TR. 6, pp. 85-86, 99.)

Finally, Yamano testified that Prieto never told him that Ramos or Coronel were involved in the 1980 strike, and he denied he never told Prieto not to hire them because of their Union activities. (TR. 6, p. 53.)

In contrast, Prieto testified he recalled the strike and picket lines (including the one behind his office and at the Bob Filice field) very well, as all the 10-15 growers in the area that he did business with (except Yamano) were involved in the strike; and all of Prieto's crews went out on strike and did not work during this period. (TR. 7, pp. 68-69, 47.) Further, Prieto testified that one of his own foremen, Mike Hernandez, was a strike leader and started the strike at both the Christopher and Sansing companies.^{16/} (TR. 7, p. 46, 68.) As a result of this labor unrest, Prieto acknowledged that he lost a significant amount of work. (TR. 7, p. 47, 68.) However, Prieto testified he was unaware of whether Ramos or Coronel participated in the strike.

Prieto denied Yamano ever told him not to hire Ramos or Coronel because they had participated in the 1980 strike or because of any 1980 activities. (TR. 7, p. 42.)

16. As a matter of fact, Prieto's daughter, Gloria Snyder, testified that Hernandez, in either late July or early August, actually negotiated on behalf of his crew with a few of the Gilroy farmers in Prieto's own office.

V. The Refusal to Rehire Allegations

A. The Prieto Operation and His General Hiring Practices

Joe Prieto testified he had been a labor contractor for 35 years and that he had provided labor to Yamano Farms during 20 of those years, as well as to approximately 10-15 other growers. Prieto operates out of the Gilroy/Hollister/San Juan Bautista area. His office is located in Gilroy, right next to the Golden West Cafe where workers often come looking for him in order to obtain employment. According to Prieto, hiring was done by him either at his office or at the Golden West Cafe or by his foremen in the field, who usually hired workers who had worked in the crews for a number of years. Gloria Snyder, Prieto's daughter who served as his bookkeeper/secretary, added that quite often a foreman would have a regular crew of workers he could ordinarily depend upon, many of whom lived in the labor camp, so that Prieto only needed to alert the foreman as to the start-up date of the operation, and the foreman would routinely round up his own people.

Prieto testified that the number of hirings was controlled by how many workers the grower had indicated he wanted. (TR. 7, p. 12.) According to Prieto, all his crews were hired on a first come/first served basis, and hiring would continue on the second day of an operation, only if there were a need. Thus, to obtain work, it was necessary for the applicant to come by every day.

However, Prieto also testified that during August of 1982 he kept a few slots specifically open for Ramos and Coronel (whom he had known since 1978 when they began working in his operation), as he could always use a couple of extra people; and it made little

difference to the grower. (TR. 1, pp. 22, 65-66.) Later he testified that he himself did not keep any vacancies open for them in 1982 but that it was his foremen who did. When asked why, he initially stated he didn't know (TR. 7, p. 84), then testified it was because they were good workers and the foremen wanted them (TR. 7, p. 85.)

In addition, Prieto testified on cross-examination by General Counsel that if a grower were dissatisfied with the work performed by any of his employees, he would not hire back that employee the following day.^{17/} (TR. 7, p. 53.) But he also testified that Bill Yamano had never told him to fire a worker from any of his crews. (TR. 7, p. 71.)

B. The General Employment History of the Alleged Discriminatees

Ramos and Coronel testified they both worked for Yamano Farms every year since 1976 except for 1977 when they both resided in the State of Texas where they have family.^{18/} Ramos testified that prior to 1980, she and Coronel worked between March and November but that beginning in 1980 and continuing to the present, the work schedule was moved up to May. According to Ramos, the initial work would be thinning in the beets, bell peppers, tomatoes, and celery, followed by the weeding and cleaning of these crops. Beginning in mid-August-September and lasting until October would be the tomato machine harvest, and finally, the bell pepper machine

17. On redirect examination, Prieto denied that this had been a truthful statement (TR. 7, p. 70.)

18. Ramos and Coronel are cousins.

harvest would occur for one month, finishing in November.

Ramos testified that in the past she had always been hired directly by Bill Yamano for the tomato harvest but that for the other operations; e . g . , hoeing and thinning, the hiring was done by labor contractor Prieto. Ramos also testified that when hired by Prieto, she worked for Respondent almost exclusively (as was her preference) except for a few days here and there -- at most a week -- when there was no work available due to Respondent's irrigation schedule, and she was required to work for other growers.

Coronel testified that she also depended upon Prieto almost exclusively for work and that the substantial portion of that work was performed on Yamano ranches. In fact, Coronel testified that Prieto traditionally gave her work at other farms; e . g . , Nagarita, Benny Yamane, Mike Mondelli, Muroaka, and Sansing, but only 'for approximately a week at a time when Yamano didn't have any work available at all due to his land still being wet from irrigation.

Prieto testified that Ramos and Coronel would often request work at Yamano Farms but not with other growers. In fact, Prieto testified that both in 1982 and 1983 he had offered them work at other farms which they refused, stating that they would await the start of a Yamano operation.^{19/} (TR. 1, pp. 29-30.) He also testified he didn't know if Ramos and Coronel had ever done work for

19. Prieto later, on cross-examination, testified he couldn't remember if they refused any work in 1982. (TR. 1, pp. 67-68.) On redirect he testified that they had sometime in the past refused other assignments, but he couldn't remember when. (TR. 7, p. 74.)

any other grower while working for him. (TR. 7, p. 87.)^{20/}

C. The Prior Personal Notifications

According to Coronel, between 1976-1980 Ramos and she were always personally contacted about the start-up of operations at Yamano Farms. For example, Coronel testified that her foreman in 1976, Shorty Perez, a Prieto foreman, would always notify Ramos and her at the labor camp where they were living at the time.

Similarly, Prieto foreman Eusebio Salinas personally notified them in 1978, 1979 and 1980.^{21/} Though Coronel admitted that she was a good friend of Salinas' daughter, Carolina, and that this might have been one reason for personal notification, she also testified that all the members of the crew were notified in the same fashion, even those who were not residing at the labor camp. In addition to Perez and Salinas, Coronel testified that in July of 1980 Yamano foreman Jose Ahumada also personally notified Ramos and her of hoeing work and that usually a Yamano foreman would advise them as to when the tomato harvest would begin, as well.

But, Coronel testified, this procedure abruptly changed for her and Ramos in 1982, and notifications of the start-up dates for Yamano operations no longer occurred. Instead, they had to seek

20. In rebuttal, Ramos, while conceding that she preferred Yamano work and would inquire of Prieto if the work was on a Yamano field, denied ever refusing Prieto's offers during 1982 and 1983 to do work for other companies. (TR. 8, pp. 37-38, 42.) In support, she produced check stubs (G.C. Ex 8) which she testified represented payment for work performed at Muroaka in June of 1982 and at J.R. Norton in August of 1982.

21. Salinas did not work as a Prieto foreman in 1982, and the 1981 hiring was covered by the Settlement Agreement. (G.C. Ex 2.)

work by contacting Prieto personally, either at his office or, most commonly, early in the mornings at the Golden West Cafe, located next to his office. Coronel testified that her other crew members were not required to find work in this way and that she never observed any of them looking for work at the cafe during 1982.

In contrast to this testimony, Prieto testified that between 1976-80 and during 1982 he did not have a policy of personally notifying or telephoning employees of work opportunities and was not aware of his foremen engaging in such a practice. (TR. 7, p. 78.) But Prieto also testified that Ramos and Coronel worked exclusively for his foreman, Salinas, during 1976-80 and that he (Prieto) could not remember (TR. 7, p. 10), then stated he did not know (TR. 7, p. 11) whether Salinas did, in fact, so contact the alleged discriminatees.^{22/}

Prieto's daughter, Gloria Snyder, testified that the business had no policy of notifying workers in advance of work, and she further testified that she was not aware of a time when her father or his foremen ever went to the homes of workers to personally contact them about work or called them by phone.

Yamano testified that prior to 1980 and during 1982, for those operations in which he (and not Prieto) would do the hiring, he would notify and employ his own ranch people first but that he never personally notified any others that did not live on the ranch nor did he instruct his own foremen or Prieto to personally notify others. (TR. 6, pp. 68-70.) Yamano further testified that after

22. Prieto initially testified Salinas did not personally notify them. (TR. 7, p. 10.)

the ranch people were notified and hired, other hirings would take place on a first come/first served basis, according to his needs; and that word about such job openings usually go around, often when the ranch people themselves would refer potential applicants. (Id.)

D. The Specific Incidents

1. May 24, 1982

The parties stipulated that a crew hired through labor contractor Prieto began work in Yamano's tomato thinning and hoeing operation on May 24, 1982 and was employed through July 7, 1982. (TR. 1, pp. 1-2.) It was further stipulated that Ramos and Coronel were employed on all available work dates from May 25, 1982 - July 7, 1982. (Id.)

Ramos testified that on May 7 on behalf of herself and Coronel^{23/}, she asked Yamano for work at the Golden West Cafe^{24/} and was told that work had not yet started, that it would commence within the month, and to check later with Prieto. According to Coronel, Prieto was immediately contacted and responded that he didn't have any work as Yamano had not yet notified him. Ramos testified that she and Coronel returned to the restaurant -- about once every third day -- and spoke to Prieto on several occasions but that each time they were told there was no work. Ramos also testified that Prieto told her that either he would inform her of the work or she should check back at the cafe but that she shouldn't

23. Ramos testified that she, the elder, always acted as spokesperson for her cousin whenever she spoke to Yamano and that he was aware of this.

24. Ramos testified that Yamano was known to frequent this restaurant and that she went there often to look for work.

return too often because other growers might see them together and, as a result, might not give him any more work. (TR. 1, p. 57.) Coronel testified that Prieto suggested they also check again with Yamano.

According to Ramos, she could not recall looking for work specifically on May 24, the actual date of the beginning of the tomato thinning operation. However, she did remember that the following day, May 25, she and Coronel spoke with Prieto at his office about work and were informed that it had started the day before. Coronel testified they asked Prieto why he had not contacted them, as they had left their phone number with him, but that he did not answer the question. Ramos testified that Prieto told them that it had been necessary for them to have shown up at the work site (Yamano's Airport Ranch) to arrange for employment.

Following this conversation, Ramos and Coronel proceeded to the field and were employed in the tomato thinning and hoeing operation until its finish on July 7, 1982.

Prieto testified that he would have hired Ramos and Coronel the first day of the operation had they shown up, and he did not know why they failed to do so. (TR. 7, p. 13.)

2. July 20, 1982

The parties stipulated that a Prieto crew of approximately 20 workers weeded peppers on July 20, 22 and 23, 1982, and that Ramos and Coronel were employed on July 22 and 23. (TR. 1, p. 2.)

Ramos testified that following the end of the thinning and hoeing operation on July 7, she and Coronel went virtually every

morning to the Golden West Cafe seeking work.^{25/} Though Ramos could not be sure if she checked with Prieto on July 19, Coronel testified they did and that Prieto told them that "[F]or these days, there is no work." (TR. 4, p. 91.) Coronel also testified that they did not look for work on July 20, the first day of the operation, because Prieto's earlier comment had given them the impression that there would be no work on that date.

Both Ramos and Coronel testified that on July 21 they went to Prieto's office, asked for work, and were told they could have work weeding and thinning peppers at Yamano's Shop Ranch. Both also testified that when Prieto told them the work had started the day before, they inquired as to why they had not been notified and why Prieto had earlier said there would be no work during this time but that Prieto did not reply.

Coronel testified that, pursuant to Prieto's instructions, they proceeded to the field to work; and that when they arrived, around 6:30 a.m., Jose Salinas and his crew were already there but that no one had yet begun to work. Coronel testified she told Salinas that Prieto had sent them and that he (Salinas) acknowledged he was aware of that. Thereafter, according to Coronel, Carolina Salinas and five members of the Casas Family arrived.

Coronel testified that thereafter, Prieto, in any angry

25. Coronel testified they sought work at the Golden West frequently but not every day. For example, Coronel testified they did not contact Prieto on July 16 or July 18 but that they did on July 12 and July 14. According to Coronel, in the two-week period prior to July 21 (following the conclusion of the tomato thinning and hoeing operations on July 7), she and Ramos looked for work approximately every third day as Prieto had made it clear he didn't want them there every day.

mood, arrived, dismissed the Jose Salinas crew that had been there when she and Ramos arrived, but told foreman Salinas to "[l]eave them" (TR. 4, p. 95), meaning that Coronel and Ramos were permitted to stay and work. But Ramos and Coronel did not remain but proceeded to Prieto's office. Ramos testified that once there she asked Prieto why there had been no work that day^{26/} whereupon he told her to go to hell and that she was creating problems for him: "Because of you the growers don't want to give me work anymore . . . because of you, both of you all, I stopped the crew" (TR. 1, p. 75.) Ramos testified further that Prieto called them (she and Coronel) "strikers and troublemakers." (TR. 1, p. 76.) Coronel corroborated this conversation (TR. 4, p. 98), adding that the "strikers and troublemakers" reference was in the context of that being the reason no grower wanted to give them work. (Id.) Coronel also testified that she asked Prieto if Bill Yamano were one of these growers, and he replied: "This you should know." (TR. 4, p. 99.)

Ramos testified that on this occasion she again requested work and that Prieto told her to return the following morning and speak to Yamano personally. Ramos testified that she followed this advise and that the very next day, July 22, she and Coronel spoke with Yamano but that he only told them to see Prieto. Ramos further testified that she then told Yamano that she intended to speak to UFW representatives about the matter whereupon Yamano asked her not to talk to the Union and that he would give her work that day.

26. The Salinas crew, other workers, and Ramos and Coronel all left the field. No work was performed that day.

Ramos testified that she did, in fact, work July 22 and July 23 in Jose Salinas' crew weeding peppers, which was the last day for this operation. Thereafter, she and Coronel weeded tomatoes from July 27-August 4, all available work days during this period, in a Prieto crew of around 25 workers. (Stipulation, TR. 1, p. 2.)

Prieto's version of the July 21 incident was quite different from that of Ramos and Coronel. He testified that Yamano had told him he wanted 25 workers to weed peppers on July 21, that he (Prieto) arranged for that number to work and sent them to the field, and that when he arrived at the field, these workers were lining up getting ready to work. Around 10-15 minutes later, Prieto observed that 18-20 other workers showed up and also lined up to work. Prieto testified that this group had been brought to the field by Ramos and Coronel. (TR. 7, pp. 58, 18-19.)

According to Prieto, he told the 18-20 that he could not hire them and to leave, but they didn't want to go. To avoid problems, he dismissed his original group of 25, assigned them no more work for the day, and told the 18-20 that they could stay and work.^{27/} He denied he was angry when he made this decision. (TR.7, pp. 62-65.)

Returning to his office, Prieto testified he discovered that the group had not remained in the field to work as they (Ramos, Coronel, members of the Caras family, and others) were there waiting for him.

27. Earlier in his testimony, Prieto had testified he had told only Ramos and Coronel they could stay and work. (TR. 1, p. 62.)

As a rebuttal witness, Ramos denied that she brought any workers with her and testified that the five members of the Casas family and Carolina Salinas all arrived after she and Coronel were at the field.^{28/} (TR. 8, p. 32.)

3. August 10, 1982

The parties stipulated that a Prieto crew of approximately 20 persons pulled celery from August 10-24, 1982, and that Ramos and Coronel were employed on all available work dates from August 11-24, 1982. (TR. 1, p. 2.)

Ramos and Coronel both testified that on August 5 they spoke to Yamano regarding work on the celery machine^{29/} but that they were told that the work had already started and that there was no work for them. Ramos testified she told Yamano that she had previously, in 1981,^{30/} worked on the celery machines and inquired why she was not selected in 1982 for the job to which Yamano is alleged to have replied that John Fernandez had already completed the crew.

Ramos testified she told Yamano she would talk to the UFW about this matter, and further testified that she did, conferring with David Ronquillo.

28. During her direct testimony, Coronel had likewise denied that she or Ramos had brought any additional workers with them.

29. Ramos admitted that she was working in bell peppers on August 4 (4 hours), the first day of the celery machine work, and that she would have had to leave her bell pepper work one day before it was completed in order to be employed in the celery.

30. 1981 was the first year Respondent had utilized celery machinery.

On August 10, Ramos testified she and Coronel^{31/} passed by a field and observed Prieto foreman Jose Salinas¹ crew pulling up celery. Ramos testified she reported this to Ronquillo who later told her he had made arrangements for her to be employed the next day, beginning at 8:00 a.m. Also on August 10, Ramos spoke to Prieto who confirmed the offer of work for the next day.

On August 11, Ramos and Coronel, accompanied by Ronquillo and UFW office administrator, Ellie Campos, reported to the field at 7:15 a.m., which they thought to be early, and discovered the crew was already there, pulling celery, and had started at 7:00 a.m.^{32/} Ramos and Coronel did not commence work until 8:00 a.m.

David Ronquillo, Director of the UFWs Hollister office, testified that on August 5, 1982, he saw Bill Yamano personally and requested work on behalf of Ramos and Coronel but that Yamano told him to contact Prieto. On August 10, he testified he again contacted Yamano, explained that Ramos and Coronel were getting the "runaround" as to whether the hiring was to be done by him (Yamano) or Prieto, and that someone would have to take responsibility or else unfair labor practice charges would be filed. Ronquillo again was told to talk to Prieto which he then did. According to Ronquillo, Prieto told him Yamano did not want either Ramos or Coronel working for him so he (Prieto) couldn't give them a job.

31. The parties stipulated that if called to testify, Coronel's testimony regarding the August 10 events would be the same as Ramos¹ testimony. (TR. 4, p. 101.)

32. Ramos testified she knew the crews regularly started their celery work at 7:00 a.m. but that she had been told to report at 8:00 a.m.

When Ronquillo indicated he might have to file a charge, Prieto stated that they could have work the **next** day, at 8:00 a.m.^{33/}

Prieto testified that on orders from Yamano, he needed 18-20 celery workers for August 10 and that he left two places open for Ramos and Coronel but that they didn't show up.

Prieto denied that Yamano had ever directed him not to hire Ramos or Coronel that first day, August 10. (TR. 1, p. 23.) Prieto further testified that when Ramos and Coronel arrived for work on the second day, he put them to work.

4. September 2, 1982 - The Yamano Tomato Machine Harvest

a. The Pre-1980 Period

Both Ramos and Coronel testified that prior to the 1980 strike, they had been hired and paid directly by Bill Yamano at the very beginning of each tomato harvest season and were so employed for the entire harvest. Both also testified that they had always been among the group (which consisted of the wives of Yamano tractor drivers and machine operators who lived on the Yamano property) whose machine was the first to start up. When the second machine began operating, vacancies were then filled by any remaining Yamano workers residing at his ranch. Ramos testified that if then additional workers were still needed, Yamano would call on Prieto to supply them. (TR. 2, pp. 31-32.)

Yamano used both non-electronic (manual) and electronic machines in his harvest. He testified that prior to 1980 the

33. In fact, Ronquillo did file a charge that day, the charge that forms the basis of the present Complaint, by personally serving same on Yamano. (G.C. Ex 1A.)

majority of the machines he used -- though he was quite uncertain as to numbers -- were non-electronic. In recent years, however, there have been more of the electronic variety, and Yamano testified that in 1982 all his machines were electronic.

The non-electronic machines required far more workers to operate. Ramos estimates that 16-20 workers were required^{34/} while only around 5-6, plus a machine operator, were necessary for the electronic,^{35/} because it contained a tomato sorter. Both Ramos and Coronel testified that they worked on both types of machines.

b. The Alleged Discriminatees' Prior Employment History on the Tomato Machines

Coronel testified that in 1976, there were two or three machines used in the harvest, all non-electronic, and that she and Ramos, working under foreman Gennaro Perez, were employed on the first machine from the initial day of the harvest operation.

Coronel testified that in 1978 Yamano had three machines, two of which were electronic,^{36/} and that she and Ramos worked on the electronic machines under the supervision of Bobby Hirosake.

Finally, in 1979, according to Coronel, both she and Ramos again worked on the first machine, which was electronic. There was a total of four machines that year, two of which were electronic. The supervisor again was Hirosake.

34. Coronel placed the number at 20-25 workers. Yamano testified that around 20 workers were required.

35. Yamano testified the electronic machine needed 5 workers, including the operator.

36. On cross-examination, Coronel testified there were four machines, only one of which -- the one she worked on -- was electronic.

Coronel also testified that in 1978 and 1979 all of the harvesters that she and Ramos worked with on the electronic machine lived on the ranch.

c. The Allegation of Respondent's Refusal to Rehire Ramos and Coronel in the 1982 Tomato Harvest

1.) The Events of September 2, 1982

Ramos testified that at the end of the celery work on August 24, she was informed that the tomato machines would commence operating in about two weeks. On September 2, the first day of the harvest (though unbeknownst to Ramos and Coronel at the time), Ramos and Coronel went to the Golden West Cafe, encountered Yamano, and asked him for work on the tomato machines. According to Ramos, Yamano did not address their inquiry and instead told them to check with Prieto regarding hoeing work in the peppers.^{37/}

Instead of contacting Prieto, Ramos and Coronel decided to see for themselves if the tomato harvest had started and proceeded to Yamano's Airport Ranch where they saw that two tomato machines were in the field and also observed that Yamano foreman, Marshall Yamano, was present. Here, Ramos learned for the first time, after conversing with Yamano, that the machines were scheduled to commence operations that day. Ramos testified that she informed Yamano that she and Coronel were interested in working the harvest and that Yamano told them he would have to check. While waiting for the answer, other workers, who had been living on Yamano's ranches

37. At times bell pepper work would overlap the tomato harvest, but Ramos testified she would never work in bell peppers during this period. The bell pepper workers were usually hired by Prieto.

during 1982, arrived to work on the tomato machine. According to Ramos, those workers were: Elisa Resales, Alicia Rosales, Consuelo Villa, Jose Ahumada, Delia Martinez and Beatrice Martinez. Ramos testified that of these workers neither Delia Martinez nor Beatrice Martinez had ever previously worked with her and Coronel on the first machine but instead had always worked on the second one.^{38/}

Ramos further testified that Bill Yamano then arrived and said he would not give them work on the tomato machines: "I won't give you work. I shall put the people from the ranch. Go work in the hoeing operation." (TR. 2, p. 23.)

Yamano departed. Though he had told Ramos and Coronel to see Prieto about bell pepper hoeing, they decided instead to remain at the field in order to see whether any tomato machine vacancies might possibly occur. According to Ramos, when Yamano returned and saw them still there, he told them that he would not give them work, that there was no work available in the tomatoes, though there was in the peppers, that he had previously told them to leave, and that if they persisted in remaining on his property, he would have to call the sheriff.

Yamano testified that his tomato harvest season began with just one machine on September 2; the second machine started the next day. According to Yamano, he gave orders to Bobby Hirosake and Marshall Yamano that his first machine was to be filled by all ranch personnel, as he testified that was to whom he customarily gave

38. Coronel's testimony was corroborative. She did not list either Delia or Beatrice Martinez as having worked with her previously on the first machine.

preference.^{39/} (TR. 6, pp. 104-105.) Although he testified there were 6-8 ranch people he thought would be interested in the work, he could not be sure all the positions on the first machine were filled from this group. (TR. 6, p. 103.) Similarly, he did not know who filled the positions on the second machine either. (TR. 6, p. 105.)

Yamano also testified that he used these two machines until it rained at the end of September or early October when he increased the number of operating machines to three; all were electronic. (TR. 6, p. 91, 100.) Yamano further testified he hired some workers from labor contractor John Fernandez' crew to work on the new machine because he couldn't get hold of Prieto. (TR. 6, p. 91.) He also testified that neither Ramos nor Coronel had asked him for work around this time.

As to the encounter with Ramos and Coronel on September 2, Yamano testified he first saw them early in the morning when they had come to ask for work, that he told them that he was just going to run one machine, that all positions were taken, and to see Prieto about hoeing peppers. (TR. 6, p. 58.)

Yamano testified he then left but returned two hours later only to find them still there. He testified he again told them there was no tomato machine work for them but that there was work in the peppers. He also testified he informed them that it was "dangerous to be around the machinery because we, when we first

39. Yamano testified that the workers who were living on the ranch knew when work was to begin because he told their husbands, who were his tractor drivers and irrigators, about the starting time (TR. 6, p. 58). Apart from those living on the ranch, Yamano could not recall if he told anyone else when work was to commence.

started we didn't have no room to park cars or anything like that, so I told them to move their cars and get out of the field because there is no work." (sic) (TR. 6, p. 60.) Finally, Yamano testified that he told them if they didn't leave, he'd call the sheriff because he didn't want them to get hurt on the ranch. (Id.)^{40/}

2.) The Events of September 3, 1982

Following Yamano 's statement of his intent to call the sheriff, Ramos and Coronel did, in fact, leave the field. As they were departing, one of Prieto's foremen arrived and informed them that there was work for them in the bell peppers, but Ramos testified she told him it was too late; and neither she nor Coronel applied for bell pepper work that day. Instead, both of them went to the UFW office, spoke to Ronquillo, and informed him they had been denied work in the tomato harvest. Ramos could not recall whether she told Ronquillo she had been offered bell pepper hoeing work that day, but she and Coronel testified that Ronquillo advised them to see Prieto about work for the next day, September 3. Pursuant to this advise, Ramos and Coronel saw Prieto later that same afternoon at his office and were told to report for work in the morning.

This they did. Both testified they showed up for work on September 3 at 6:30 a.m. but were informed by foreman Carlos Salinas that Yamano had been there and had told him that he (Salinas) was

40. In rebuttal, Ramos testified that Yamano never told her about the machines being dangerous or that she should stay away from them for her own safety. (TR. 8, p. 33.)

not to take any more workers. However, Prieto arrived later and put Ramos and Coronel to work weeding peppers though it was only for four hours.^{41/}

Prieto testified he was expecting Ramos and Coronel on September 2 and that he hired around 30 workers leaving two spots open specifically for them but that they did not show. (TR. 7, p. 24.) Prieto also testified that in order to make room for them on September 3, he had to take two workers out of his crew. (TR. 7, pp. 24-25.) Finally, Prieto testified that they worked only 4 hours on September 3 because they were late in arriving. (TR. 7, p. 26.)

d. The Allegation of Respondent's Refusal to Rehire Ramos and Coronel Subsequent to the Start of the Tomato Harvest

Ramos testified that on September 4, she and Coronel went to the Golden West Cafe, found Prieto, and asked for work but that Prieto replied: ". . . no, Yamano already sent me to the fucking hell because yesterday I gave work to you and for this reason he won't give me work anymore in the bell pepper machine." (TR. 2, p. 28.) In addition, Ramos testified that Prieto told them that Yamano wouldn't give them work anymore and that he (Prieto) also would no longer offer them work in the bell peppers. Ramos also testified that Prieto told them that ". . . the rest of the growers do not want you because you are strikers and troublemakers." (TR. 2, p. 28.)^{42/}

41. The parties stipulated that a Prieto crew weeded bell peppers on September 2 and for 5 hours (7:00-12:00 noon) on September 3; and that Ramos and Coronel worked on September 3 for 4 hours (8:00-12:00 noon). (TR. 1, p. 2.)

42. The substance of this conversation was corroborated by Coronel during her testimony. (TR. 4, p. 126.)

Prieto, for his part, denied ever telling Ramos and Coronel that they were strikers and he couldn't use them, denied ever informing them that Yamano had told him not to employ them because they were strikers, and denied ever using profane language in front of them when they asked for work. (TR. 7, pp. 35-36.) Prieto also denied ever telling Yamano that Ramos and Coronel should not be employed because they had participated in the 1980 strike. (TR. 7, p. 42.)

On September 8, Ramos testified that she and Coronel returned to the Golden West hoping to personally speak to Yamano. Spotting him leaving the cafe to enter his car which was parked in the parking lot, Ramos testified she placed herself to the side of his car, in plain view, and made a sign for him to stop so she could speak to him but that he drove right on past. According to Ramos, Yamano had to have seen her as she was stationed on the driver's side, she was 1^{1/2} yards from him, he was looking in her direction, and his car passed very close to where she was standing.^{43/} Coronel corroborated this testimony, testifying that Yamano was very close to them and, in fact, turned his face towards them as he rapidly exited.

Yamano acknowledged that Ramos and Coronel frequently tried to flag him down as he was driving out of the Golden West driveway by "practically step on front of the car to stop me." (sic) (TR. 6, p. 37); and that each time he would bring his car to a halt for

43. Ramos testified that on other occasions in the Golden West parking lot she had employed the same method to gain Yamano's attention by placing herself in a similar position by his car and that upon seeing her, he had always stopped.

ANALYSIS AND CONCLUSIONS OF LAW

VI. The Prima Facie Case and Burdens of Production and Persuasion

It is the general rule that to establish a prima facie case of discriminatory refusal to rehire, the General Counsel must show by a preponderance of the evidence that the employees were engaged in a protected concerted activity, that Respondent had knowledge of such activity, and that there was some connection or causal relationship between the protected activity and the subsequent failure or refusal to rehire. (Anton Caratan & Sons (1982) 8 ALRB No. 83, citing Jackson and Perkins Rose Company (1979) 5 ALRB No. 20.) It must be shown that Respondent would not have failed or refused to rehire the alleged discriminatee(s) but for his/her union membership or union activity. (O. P. Murphy Produce Co., Inc. (1981) 7 ALRB No. 37, citing Lawrence Scarrone (1981) 7 ALRB No. 13.)

In addition, the General Counsel must ordinarily show that the alleged discriminatee(s) made a proper application for employment at a time when work was available and, as stated above, was not rehired because of his/her said union activity or other protected concerted activity. (Kyutoku Nursery, Inc. (1982) 8 ARLB No. 98, citing Prohoroff Poultry Farms (1979) 5 ALRB No. 9 and Guimarra Vineyards, Inc. (1981) 7 ALRB No. 17.)

To prove that an employer discriminatorily failed to recall a laid off employee, the General Counsel must establish that the employer did in fact have a policy or practice of recalling former employees as suitable openings arose but did not do so with respect to the alleged discriminatee(s) because of his/her union activity or

other protected concerted activity. (Ukegawa Brothers (1982) 8 ALRB No. 90, citing Sam Andrews' Sons (1979) 5 ALRB No. 68; J.R. Norton Company (1982) 8 ALRB No. 89; Verde Produce Company (1981) 7 ALRB No. 27.)

However, where an employer has a practice or policy of recalling or giving priority in hiring to former employees, a proper application is all that is required; work need not be available at the precise time of the application. The discrimination occurs if, when work becomes available, the employer fails or refuses to recall or rehire the former employee because of his/her union activity or other protected concerted activity. (Kyutoku Nursery, Inc., supra, citing Prohoroff Poultry Farms, supra, and Miranda Mushroom Farm, Inc. (1980) 6 ALRB No. 22.

If the General Counsel establishes a prima facie case that protected activity was a motivating factor in the employer's decision, the burden of both production and persuasion then shifts to the employer to prove that it would have reached the same decision in the absence of the protected activity. (Martori Brothers Distributors v. Agricultural Labor Relations Board (1981) 29 Cal.Sd 721; N.L.R.B. v. Transportation Management Corp. (1983) __ U.S. __, 76 L.Ed.2d 667, 51 U.S.L.W. 4761; Wright Line Inc. (1980) 251 NLRB No. 150, 105 LRRM 1169; Nishi Greenhouse (1981) 7 ALRB No. 18; Verde Produce Company, supra; J.R. Norton Company, supra; Ukegawa Brothers, supra; Kyutoku Nursery, supra, citing Royal Packing Co. (1982) 8 ALRB No. 74.)

VII. Respondent's Knowledge of Ramos' and Coronel's Union Activities

It is clear that Ramos and Coronel were engaged in union

activity and that that activity was known to Respondent.

A. Knowledge Directly Attributable to Respondent Via its Own Supervisors and Foremen

It is not disputed that on July 25, 1980, Ramos and Coronel were working directly for Yamano (and not for Prieto) at a Yamano field, having been hired by Yamano supervisor Bobby Hirosake.^{44/} When UFW strikers entered the property to ask the workers to sign authorization cards and join the strike, only Ramos, Coronel and one other employee did so.^{45/} This activity was observed by Yamano foreman Jose Ahumada. Later, Yamano supervisor Marshall Yamano arrived, inquired as to what had happened and was told that Ramos and Coronel had signed cards and would be joining the strike. This event was considered significant as Marshall passed this information on to his father, Bill Yamano. The latter confirmed that Marshall had told him that individuals had entered the field, that they had specifically spoken to Ramos and Coronel, that Ramos and Coronel had signed something, and that they had then left the work site. In fact, they were the only two members of the crew to join the strike.

Ramos and Coronel returned to work after the strike, about 3 weeks later. Thereafter, the UFW, in September of 1980, filed a Notice of Intent to Take Access on the Yamano property; and during

44. It is significant that Ramos and Coronel held special positions at Yamano Farms prior to the 1980 strike. Not only were they the only Prieto crew members hired directly by Yamano to work with the ranch people in certain thin and hoe operations, but they were also the only two non-ranch workers hired by Yamano for the first machine during the tomato harvest, infra.

45. The other employee signed a card but she did not join the strike.

that month Ramos and Coronel, in the company of UFW organizers, in fact, took access at Yamano Farms and spoke with Yamano employees working in the tomato harvest about the benefits of unionization.

Ramos' and Coronel's continuing connection with the UFW after the 1980 strike could not have gone unnoticed by Respondent. On September 25, 1980, a complaint issued, on a charge by the UFW, naming Ramos and Coronel (and others) as alleged discriminatees who were allegedly refused rehire because of union activities. And later, on June 16, 1981, a consolidated complaint was filed, again giving Respondent notice of Ramos' and Coronel's continuing involvement with the UFW. it was, in fact, the complaint that formed the basis for the 1981 Settlement Agreement (G.C. Ex 2) which controlled Ramos' and Coronel's hiring and employment by Respondent prior to its 1981 tomato harvest and during its 1981 tomato and bell pepper harvest operations.

(Stipulation, TR. 1, pp. 2-3.)

These facts and the settlement itself do not, of course, by themselves, prove that Respondent had knowledge of Ramos¹ and Coronel's Union activities. But they do show that Respondent was at least on notice as to their claim of Union involvement. This claim, when coupled with the other facts cited, establish that Yamano did have the requisite knowledge.^{46/}

46. Of course, the Settlement Agreement is being referenced only on the issue of employer knowledge. I make no findings -- nor would it be proper for me to do so -- with respect to the merits of the alleged violations. The Settlement Agreement, containing, as it does, a standard non-admission clause, does not, in and of itself, constitute competent evidence of the prior alleged unlawful conduct of the settling party. Nor is it admissible to show animus. (Poray, Inc. (1963) 143 NLRB 617; Parker Seal Company (1977) 233 NLRB 332, 335.) (See also Paragraph 11 of General Counsel Exhibit 2.)

In addition, Bill Yamano was further informed of Ramos' and Coronel's connections with the UFW in other ways. On July 22, 1982, Ramos personally informed him that she intended to go to the UFW concerning her claim of being denied work during this time frame.^{47/}

Likewise, on August 5, 1982, Ramos again told Yamano that she would speak to the UFW about her difficulties in obtaining work, which she did. In fact, UFW official Ronquillo testified that on that very day, and on August 10, he personally spoke with Yamano and informed him he was acting on behalf of Ramos and Coronel in their attempts to find work with Yamano Farms.

Despite the uncontradicted evidence of what Marshall Yamano observed Ramos and Coronel doing and what he later passed on to his father, Bill Yamano persisted in denying that he had knowledge, not only of Ramos¹ and Coronel's involvement in the 1980 strike, but virtually of the 1980 strike itself. Yamano sought to create the impression that he either was uncertain whether there was any union activity in his area during 1980 or that if there were, he was very unconcerned about it, as he just ran his business and never asked other growers anything about their problems.

It is difficult to give much credit to Yamano's cries of ignorance, naivete, and indifference in view of the volume and intensity of union organizational activity in Gilroy, Hollister and San Juan Bautista during the summer and fall of 1980, as evidenced by the number of representation petitions and notices of intent to

47. It was only upon hearing of this possibility that Yamano offered Ramos work on July 22 and July 23.

take access filed by the UFW and the number of elections held.^{48/}
(Administrative Notice List Exhibits 1, 2 and 3 .)^{49/} It would be hard to conclude that anyone in the business of farming 1,400 acres in this area during 1980 and who admittedly had frequent contact with other growers during this same time period, would not have known about this frenzied union activity.^{50/} it is also to be recalled that Respondent's own office assistant, Kathleen Barnes, testified Yamano always sought to stay on top of his total farming operation, including any labor problems. (TR. 6, p. 137.)

I believe the voluminous evidence of the UFW's activities in the San Benito/Santa Clara area during 1980 casts doubt upon the candor of Yamano's denials of any extensive knowledge of this activity; it would also, quite logically, cast doubt upon his specific denials of Ramos' and Coronel's degree of participation in

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48. Administrative notice was taken of the large numbers of filings of representation petitions and N/A's during this period in the general area where Respondent operated his farming business. It is appropriate for an ALJ to take notice of the records "of its own proceedings in related matters, provided that the facts noted are stated on the record at hearing or in the hearing officer's proposed decision so that the affected party may have an opportunity to rebut or except to them." (Sunnyside Nurseries, Inc. (1978) 4 ALRB No. 88, p. 3, fn. 4 (citations omitted).)

49. The actual documents underlying these exhibits were supplied by the General Counsel after the conclusion of the formal hearing but before the filing of briefs pursuant to my directive. (TR. 8, pp. 5-8.)

50. This activity would include, of course, the access that was taken on Yamano's own property in September of 1980.

that activity.^{51/} I conclude that Bill Yamano did indeed have knowledge of Ramos' and Coronel's union activities.^{52/}

B. Knowledge of Labor Contractor Joe Prieto

Unlike Yamano, Prieto openly admitted his knowledge of the intense union organizational campaign that took place in the Gilroy/Hollister/San Juan area in July of 1980 and the fact that of the 10-15 growers he worked for (with the exception of Yamano), all were involved in the strike. (TR. 1, pp. 45-46.) Prieto also acknowledged that his crews all supported the strike, that none worked during its duration, and that one of his main foremen, Mike

51. Even if one were to confine the activity purely to Gilroy, Yamano's base, (and exclude Hollister and San Juan Bautista), the exhibits demonstrate that of the 44 notices to take access filed, 21 were in Gilroy (Administrative Notice List 1); that of the 74 representation petitions filed, 36 were in Gilroy (Administrative Notice List 2); and that of the 32 elections held, with the UFW winning 30 of them, 18 were in Gilroy (Administrative Notice List 3). It is also interesting to note that the only election lost by the UFW (one was a tie) was at Bennie Yamane's in Gilroy, the owner of which was a friend of Yamano's, according to Yamano's own testimony. (TR. 6, p. 81.)

52. In making this finding, I give no weight to Ramos¹ and Coronel's allegation that they were observed by Yamano or Hirosake in a UFW caravan of several cars passing (by their testimony) some 30-50 yards in front of the office where Yamano and Hirosake were standing. There is no credible evidence that either gentleman could have specifically identified Ramos or Coronel in their moving car from the numerous other cars that were passing at the same time along the highway.

I also do not rely for this finding upon the testimony of Euselio Salinas regarding certain statements Yamano and Hirosake allegedly made in August of 1980. I find Salinas' testimony unworthy of belief. He was inarticulate and then confused as to dates and times. He made conflicting statements on important matters and contradicted himself as to the motivation behind his testimony. The General Counsel has failed to prove by a preponderance of the evidence that Yamano or Hirosake made the statements attributed to them by Salinas. (S. Kuramura, Inc. (1977) 3 ALRB No. 49.)

Hernandez, was a strike leader. (TR. 7, p. 69, 46.) According to Prieto, the strike caused him to lose a lot of work. (TR. 7, p. 47, 68.)

But Prieto denied knowing that Ramos and Coronel were engaged in any specific activities on behalf of the UFW. However, there were a number of statements attributed to him, which I credit as being made, infra, that demonstrate Prieto was well aware of Ramos¹ and Coronel's prominent role in the strike⁴ and his general perception of them as active Union supporters.

First, Ramos testified that sometime in May of 1982 she applied for work with Prieto at the Golden West Cafe and that he told her not to come back there too often as other growers might see them together and wouldn't give him any work as a result. This statement was not specifically denied by Prieto when he testified. I find that he said it.

Ramos next testified that she was hired on July 21 but that no one worked on that day because Prieto angrily dismissed the crew and later, at his office, told her to go to hell and that she was creating problems for him: "Because of you the growers don't want to give me work anymore" and "because of you, both of you all, I stopped the crew" (TR. 1, p. 75.) When Coronel asked why they weren't working, Prieto replied that no grower wanted to give them work because they were "strikers and troublemakers." (TR. 4, p. 98; TR. 1, p. 76.) When Coronel asked Prieto if Yamano was one of these growers, he responded, "this you should know." (TR. 4, p. 99.) Prieto was not asked about this conversation during his

testimony.^{53/} I credit Ramos and Coronel that Prieto made these statements.

Finally, according to Ramos, on September 4, Prieto told Coronel and her that there was no more work for them and that " . . . the rest of the growers do not want you because you are strikers and troublemakers." (TR. 2, p. 28.) This statement was denied by Prieto, but I am convinced he said it.

I have credited Ramos¹ and Coronel's accounts of their conversations with Prieto (as well as, generally, their testimony throughout this proceeding) because both appeared to me to be telling the truth. For the most part they answered the questions put to them without hesitation, and both had excellent recollections of the events in question. Each woman's testimony was also fairly consistent with the other.

In contrast, Prieto's general demeanor offered little to inspire confidence that he was being completely truthful. He seemed to ramble, didn't always answer the questions, and was sometimes incoherent. At other times he appeared argumentative, aggressive, and uncontrolled, sometimes interrupting counsel. He also exhibited the markings of a strong temper.

In addition, Prieto's memory occasionally failed him altogether. For example, though he admitted Ramos and Coronel had asked him for work at the Golden West Cafe, he couldn't remember if they did so at any time during 1982. (TR. 7, p. 35.) In fact, he

53. Though not asked specifically about this conversation, Prieto did deny ever calling Ramos and Coronel "fucking strikers", but it is unclear whether his denial went to the word "strikers" or to the profanity preceding it. (See TR. 7, pp. 35-37.)

even acknowledged that he couldn't recall any of the 1982 events very well. (TR. 7, p. 44.)

Furthermore, it is quite possible that Prieto would have made the statements attributed to him because of his unhappy experience during the 1980 strike when all of his employees went out, the growers he received business from were targets of UFW organizational activity and resultant successful elections, and he suffered business losses. His hostility was directed towards Ramos and Coronel because they apparently stood out in his mind (and/or in the minds of growers he did business with, including, evidently, Yamano) as symbols of that activity which had led to his problems.

I conclude that Prieto made the statements and had knowledge of Ramo's and Coronel's Union activities.^{54/}

C. Respondent Is Responsible for Prieto's Knowledge, Statements and Conduct

Early in the history of the National Labor Relations Act (hereafter "NLRA"), the U.S. Supreme Court was called upon to decide an employer's responsibility for actions which it had not specifically authorized or ratified. In I.A. of M. v. Labor Board (1940) 311 U.S. 72, 85 L.Ed. 50, 61 S.Ct. 83, a case involving the activities of several low-level "lead men" employees, the Court

54. As stated previously, in coming to this conclusion I do not rely upon any testimony of Euselio Salinas relating to alleged statements made by Prieto concerning Ramos and Coronel.

In addition, the evidence is insufficient that Prieto observed Ramos or Coronel on the picket lines at either his own office or the Bob Filice ranch. It is not clear he could have specifically identified them among the multitude of strikers, many similarly dressed, many shouting, and many carrying the same picket signs.

said:

. . . . We are dealing here not with private rights (citation omitted) 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 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. . . . (311 U.S. at 80; emphasis added.)

And in H.J. Heinz Co. v. Labor Board (1941) 311 U.S. 514, 85 L.Ed. 309, 61 S.Ct. 320 in a case where the conduct of supervisors was improper though again not authorized or ratified by the employer, the Court held:

The question is not one of legal liability of the employer in damages or for penalties on principles of agency or respondeat superior, but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process of a kind which the Act proscribes. To that extent we hold that the employer is within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right of self-organization, quite as much as if he had directed them. (311 U.S. at 521.)

Thus, the statutory provisions of the NLRA "permit the imputation to the employer not only of actions expressly authorized but also of actions which are impliedly authorized, and, more important, actions which are within the 'apparent authority' of the actor. It has long been held that the issue of agency authority is to be gauged from the point of view of the employees." (Gorman, "Basic Text on Labor Law" (1976) p. 134.)

Moreover, the National Labor Relations Board (hereafter "NLRB") has for years imposed liability for the conduct, not only of management and supervisory personnel, but in some cases other

types of employees and non-employees, as well. (Id., pp. 134-137.)
Section 1140.4 (c) of the Agricultural Labor Relations Act (hereafter
"Act") defines "agricultural employer" as follows:

The terms 'agricultural employer' shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association or persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined in Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part, (emphasis added.)

The California Supreme Court in Vista Verde Farms (1981) 29 Cal.Sd 307, 172 Cal.Rptr. 720, in interpreting this provision held that:

. . . in general an employer's responsibility for coercive acts of others under the ALRA, as under the NLRA, is not limited by technical agency doctrines or strict principles of respondeat superior, but rather must be determined, as I. A. of M. and Heinz suggest, with reference to the broad purposes of the underlying statutory scheme. Accordingly, even when an employer has not directed, authorized or ratified improperly coercive actions directed against its employees, under the ALRA an employer may be held responsible for unfair labor practice purposes (1) if the workers could reasonably believe that the coercing individual was acting on behalf of the employer or (2) if the employer has gained an illicit benefit from the misconduct and realistically has the ability either to prevent the repetition of such misconduct in the future or to alleviate the deleterious effect of such misconduct on the employees' statutory rights. (29 Cal.3d at 322.)

In Vista Verde the crucial question was whether an employer was shielded from unfair labor practice liability if such misconduct was perpetrated by a labor contractor whom the employer had hired rather than directly by the employer itself. The Court found that

for purposes of assessing responsibility for unfair labor practices, no meaningful distinction could be drawn between the grower's supervisors/foremen and the grower's labor contractors.

. . . Like a supervisor, the farm labor contractor is hired and compensated by the grower to supervise the activities of the agricultural employees of the grower. And, like the 'lead men' in I. A. of M., the farm labor contractor is clearly 'in a strategic position to translate to [his] subordinates the policies and desires of the management.' (311 U.S. at p. 80 [85 L.Ed, at p. 56].) In addition, because of the labor contractor's authority to hire and fire individual workers, the coercive impact of the contractor's actions are likely to be at least as great as that of the employer's most senior supervisory personnel. Finally, because a grower does have the power to retain or discharge a farm labor contractor and the contractor accordingly has a direct incentive to comply with the grower's directives, a grower will generally be in a position to prevent the repetition of unlawful activities by the labor contractor in the same way that it could generally control the conduct of its own supervisors. (29 Cal.3d at 328.)

As in Vista Verde, here the labor contractor had a very long (20 years) and stable relationship with the employer. Moreover, the employment patterns of the workers involved show continuous and almost exclusive^{55/} employment at Yamano Farms through this same labor contractor since 1978. For some operations, Yamano hired Ramos and Coronel directly; otherwise, he would direct Prieto to do the hiring pursuant to his work assignments. Often Yamano would tell Ramos and Coronel to see Prieto about work; at other times Prieto would tell them to see Yamano. The close association in the minds of these two employees of Prieto with Yamano would have and indeed did lead them to perceive of Prieto as

55. No substantial evidence — no payroll records or other documentation -- was offered by Respondent to dispute Ramos' and Coronel's testimony that except for sporadic employment of a week or so at other farms, all of their work was with Respondent.

acting on behalf of Yamano.^{56/} (Vista Verde Farms, supra; M. Caratan, Inc. (1983) 9 ALRB No. 33.

There is a certain irony in the fact that Yamano should be held responsible for the acts and statements of Prieto when Yamano specifically sought to avoid such liability by turning his hiring over to this labor contractor. But that was, of course, the very point of Vista Verde - an employee did not lose his/her protections under the Act just because that employee happened to be supplied by a labor contractor instead of hired by a supervisor or foreman. The Court understood this when it clearly stated:

. . . If an employer could vicariously commit unfair labor practices, through the medium of a labor contractor, the ALRA could never attain its high purposes of labor peace through the orderly accommodation of the interests of employer and employee. (29 Cal.3d 330.) (footnote omitted.)

. . . in light of the basic purpose of the ALRA, the Legislature could not conceivably have insulated such misconduct of a labor contractor from all ALRB review or remedial action. . . the Legislature could not reasonably have intended to proscribe coercive activities by the growers from whom such workers are generally removed, but to exempt from all regulation similar coercive activity whenever it is engaged in by the labor contractor with whom the workers have frequent and direct contact." (29 Cal.3d 325.) (footnote omitted.)

56. There is also evidence in the record to support the view that Yamano exerted control over Prieto's labor force; e.g. his checking its work, his correcting any deficiencies through consultation with Prieto, and his distributing to it his own work rules. (G.C. Ex 7.) Further control was illustrated by the testimony of Ramos, Coronel, and Ronquillo, which I credit, to the effect that Prieto had told them Yamano didn't want Ramos or Coronel working for him.

Thus, even if Yamano may not have explicitly authorized or ratified Prieto's conduct or statements, that conduct and those statements are nonetheless attributable to him for unfair labor practice purposes. (Vista Verde Farms, supra.)

VIII. The Refusals to Rehire

As regards each of the refusal to rehire charges alleged in the Complaint, the Respondent failed to rebut the prima facie case made out by the General Counsel that protected activity was the motivating force behind Respondent's conduct.

A. May 24, 1982

Ramos and Coronel sought work in May of 1982 and did not merely rely upon what they considered to be the past practice of personal notification, though they were entitled to do so, infra. On May 7, 1982, two weeks before the start of the tomato thinning season, they personally contacted Yamano and inquired as to the starting date. Yamano, presumably in accordance with his new hiring policy, told them to see Prieto, which they did, repeatedly, only to be informed that he did not know the date for the commencement of the operation. At one point Prieto even told Ramos not to contact him for work at the Golden West Cafe too often because he did not want other growers seeing them together, thereby jeopardizing his future work assignments. To help remedy this situation, Prieto suggested that he might notify Ramos when the work was to start. He did not do so.

Luckily, Ramos and Coronel, not having been contacted, just happened to be in Prieto's office looking for work on May 25, the day after the season started, when Prieto finally offered them

employment.

I find that Ramos and Coronel were not told of the start up date, despite repeated attempts, and were not otherwise notified because of their UFW activities. This resulted in their losing work on May 24.

B. July 20, 1982

The tomato thinning season had ended on July 7. Following its close, Ramos and Coronel sought work frequently by speaking to Prieto again at the Golden West Cafe. However, they did not seek work specifically on July 20, the date of the beginning of the bell pepper weed and thin operation, because an earlier comment by Prieto on July 19 had led them reasonably to believe that July 20 would not be the first day of work. In any event, neither was notified as to the actual start-up date.

Once again, they happened to have been in Prieto's office looking for work (on July 21) when they discovered it had already commenced the preceding day. After having been told by Prieto that they could work that day, they proceeded to the field, only to find out that Prieto foreman Salinas was already there with a full crew who were also ready to work. Thereafter, the five members of the Casas family arrived.

Then followed an incident that is in much dispute. Ramos and Coronel claim that Prieto arrived in an angry mood and told the originally assembled workers from the Salinas crew that there was no work for them and to leave the field; but at the same time he told Ramos and Coronel, in front of the dismissed crew, that they (Ramos and Coronel) could stay and work if they wanted. Later, back in his

office, Prieto told Ramos and Coronel that because they were strikers and troublemakers, growers, including Yamano, were putting pressure on him and refusing to give him work.^{57/} (TR. 1, pp. 75-76; TR. 4, pp. 98-99.)

On the other hand, Prieto testified that he had obtained, pursuant to Yamano's instructions, 25 workers to work the peppers on July 21 and that when he arrived at the field, he saw that Ramos and Coronel had brought an additional 18-20 persons to work. Wanting to avoid any trouble, he dismissed the initial group of 25 and assigned them no more work for the day. He then testified he told only Ramos and Coronel they could stay and work, then stated it was the entire group of 18-20 that he told could remain. He denied being angry. (TR. 7, pp. 58, 62-65.)

I credit Ramos' and Coronel's version of these events. I believe Prieto felt himself to be caught in the middle between Ramos' and Coronel's constant pursuit of employment with him and Yamano's distaste and Prieto's own in having to employ them. Prieto did hire them on July 22; but having arrived at the field and finding a full Salinas crew, suddenly increased by the addition of Ramos and Coronel plus the five members of the Casas family, he became agitated. Now, obviously angered by their presence,^{58/} Prieto decided to hold Ramos and Coronel up to contempt and ridicule

57. As mentioned earlier, I have found that Prieto made this statement. I also note that Prieto did not specifically deny having such a conversation, as counsel for Respondent declined to ask him any questions regarding it. (TR. 7, p. 21.)

58. Prieto, an emotional person, demonstrated during his testimony that he had a temper and was quick to anger.

from co-workers by dismissing not them but the other 25 workers who had been there before they arrived and were standing around ready to go to work. (He could, of course, have just hired them, as he testified he or his foremen often kept slots open for Ramos and Coronel in the past.) By allowing Ramos and Coronel to remain and work and identifying them with 18-20 other workers whom they supposedly brought with them, Prieto was acknowledging their visible role as leaders, and singling them out for special treatment.

Thereafter, Prieto told Ramos and Coronel to speak with Yamano personally on another day; but when they, in fact, spoke to Yamano about it, the following day, he (Yamano) told them to go see Prieto. It was only when Ramos indicated that she intended to consult with UFW officials about her treatment, that Yamano offered her work.^{59/}

I find that the incident of July 22 casts a light upon Prieto's real attitude towards Ramos and Coronel and explains why they again were not given the beginning date of the pepper season. I find that they were refused rehire on July 20 because of their Union activities.

C. August 10, 1982

On August 5, Ramos and Coronel spoke with Yamano about work on the celery machine but were informed the work had already started. Both brought this to the attention of UFW official Ronquillo. Ronquillo then spoke to Yamano personally but was told to contact Prieto.

59. This, of course, also indicates Yamano's ability to control the composition of the work force.

On August 10, while passing by a field, Ramos and Coronel observed a Prieto crew pulling up celery. As neither had been previously contacted, they reported this to Ronquillo. Ronquillo once again spoke to Yamano and once again was told to see Prieto, which he did. Prieto told him that Yamano didn't want either Ramos or Coronel working for him;^{60/} but when Ronquillo suggested he might have to file charges on their behalf, Prieto told him Ramos and Coronel could have work the next day, starting at 8:00 a.m. The work actually began at 7:00 a.m.

This incident again points up the effort made by Respondent, in this case both Yamano and Prieto, to keep Ramos and Coronel uninformed as to the correct starting times for the various operations. Certainly Yamano would have known that the celery work was to commence on August 10 with a Prieto crew; yet, he neglected to tell Ramos and Coronel of this when they applied for celery machine work on August 5. Likewise, Prieto failed to ever notify them of the availability of celery work, to commence on August 10, and would never had done so were it not for Ronquillo's statement (made by coincidence on that same date) that he was about to file an unfair labor practice charge.

60. I credit Ronquillo's testimony regarding this conversation. He was a thoughtful, articulate witness. His recollection, when refreshed, seemed quite good, and his testimony appeared to me to be truthful. I have already commented on my view of Prieto's general credibility. Prieto's further testimony that he had left two places specifically open for Ramos and Coronel on August 10 is not credited (see footnote 63, infra) and only confirms my earlier opinion. I also note that although Prieto denied Yamano had directed him not to hire Ramos or Coronel on August 10, he did not deny telling Ronquillo that Yamano didn't want them working for him on that occasion.

I find that Ramos and Coronel were also refused rehire on August 10, 1982 because of their Union activities.

D. September 2, 1982 -- The Tomato Machine Harvest

It is not disputed that prior to 1980, Ramos and Coronel were always hired directly by Yamano, along with several ranch people, on the opening day of the tomato harvest to work on the first machine, be it manual or electronic. In 1982, however, this did not occur.^{61/} On the first day of that harvest, September 2, Ramos and Coronel both contacted Yamano personally prior to the commencement of that work, but Yamano instead told them to check with Prieto about employment in the bell peppers. It was only later after they left Yamano and took it upon themselves to go directly to the field that they discovered that tomato harvest work was actually starting that day. They also observed that some of the same workers who had worked with them in the past on the first machine did so on this September 2 date, as well. On the other hand, they also learned that there were workers employed on that first machine that had not been so employed prior to 1980.

Yamano's explanation for this was that he had decided that his first machine was to be filled only with ranch people, that he gave orders to that effect, and that he so informed Ramos and Coronel of this on September 2. (This was apparently their first notice of any such change in policy.) Yamano's explanation for refusing to rehire Ramos and Coronel is not credited. He failed to

61. As previously pointed out, the Settlement Agreement (G.C. Ex 2) only covered the tomato harvest hiring for the year 1981 and was not in effect during 1982.

rebut the prima facie case of discriminatory conduct made out by the General Counsel. Aside from his general unreliability, previously discussed, witnessed by his insincerity regarding the extent of the 1980 strike in his area of operation and his dislike of Ramos and Coronel, fueled by their complaints to him and as evidenced by Prieto's statements on his behalf, there are several other factors which lead me to this conclusion.

First, though Yamano testified that only employees from the ranch were to be hired on the first machine, he also testified he was not sure if all the positions on that machine were filled in that manner. Yet, this did not prevent him from telling Ramos and Coronel that there was no work for them as all such positions had been filled. If he were not certain who had been hired, why did he not check with other personnel before so eagerly rejecting the applications of Ramos and Coronel? On the other hand, if, in fact, non-ranch people were indeed hired, why was such employment denied to Ramos and Coronel?

Second, though Yamano urges me to accept this "new policy" of hiring only the ranch personnel on the first machine as a legitimate explanation of Ramos' and Coronel's hiring rejection, he failed to ever give any explanation as to why non-ranch people (such as Ramos and Coronel) were, all of a sudden, no longer eligible for employment. In short, Respondent could not offer any legitimate business justification for the alleged change in policy.

Finally, assuming arguendo that Yamano had, in fact, changed his hiring rules in this regard and assuming further that all available positions on the first machine were indeed filled from

the ranks of the ranch people, what of the second machine that was started the next day? Why didn't he inform Ramos and Corohel of its intended use and hire them to work on it? There is no reason, short of discrimination, why he could not have done so. After all, he testified he only knew of 6-8 ranch people who were interested in the machine harvest, not enough to fill up two machines. Yamano did not even know who, in fact, did fill the jobs on the second machine.

Yamano's testimony convinces me that he was unconcerned about which employees worked on the tomato machines so long as Ramos and Coronel were not among them. He failed to give any legitimate business reasons for his summary rejection of their applications for rehire.

Rather than possessing a legitimate business reason for his actions, Yamano's conduct stemmed from a fear of unionization^{62/} that went back to the 1980 general strike in his area. This attitude was demonstrated repeatedly in 1982 by obstacles he or his agents placed in the way of Ramos¹ and Coronel's obtaining work in the thin and hoe operations, and in the tomato harvest. This attitude was also reflected in the statements attributed to him via Prieto designating Ramos and Coronel as "strikers" and "troublemakers".

62. Respondent's argument that the mere fact that no election was ever held on his property proves that Yamano lacked any animus against the UFW is not very convincing. Besides, the UFW took access at his farm in September of 1980 (Ramos and Coronel being two of the Union's participants) and meanwhile, other growers in his neighborhood, some of whom were farming the same crops, were rapidly being organized and certified.

E. Events Subsequent to September 2

On September 3, after having been assured of employment by Prieto the previous day, Ramos and Coronel showed up ready to work at 6:30 a.m. but were not allowed to do so until 8:00 a.m. This delay was apparently occasioned by the confusion or disagreement between Prieto and Yamano about whether Ramos and Coronel were to be hired (as Prieto had said) or whether no further hiring was to take place (as Yamano had said). I do not credit Prieto's explanation that they were late.^{63/}

The next day, September 4, Prieto told Ramos and Coronel when they applied for work at the Golden West that Yamano gave him "hell" about hiring them on September 3 and would not give him anymore work in the bell pepper machines. (TR. 2, p. 28.) Further, Prieto told them that Yamano would not offer them anymore work nor would other growers because they were "strikers and troublemakers". (TR. 2, p. 28.)

On September 8, Ramos and Coronel made another attempt to

63. Another reason, in addition to those already stated, for doubting Prieto's truthfulness was his shallow attempt to convey the impression that he actually kept spaces open in his crew to be filled by Ramos and Coronel. According to Prieto, he had been expecting them on September 2 (and August 10) and, in fact, left two spots specifically open for them. (TR. 7, p. 24.) (He had previously testified that he didn't make room for them but his foremen did.) But then he testified that the very next day, September 3, he apparently did not leave spaces open for them because he took two workers already hired out of the crew of 30 so that Ramos and Coronel could work. (TR. 7, p. 26.) However, Respondent's Exhibit 5 shows that on September 3 the crew (including foreman Salinas) was increased from 30 to 35, because in addition to Ramos and Coronel, three other persons worked on that date that had not worked on September 2. It is hard to give much credit to Prieto's claims of generosity in view of the record evidence of his demonstrated reluctance to notify them and/or employ them at all.

obtain work. They went to the Golden West looking for Yamano. Not only did he not give them work, but he refused to speak to them, driving his car rapidly by them close to where they were standing.

Ramos and Coronel did not seek any further employment with Respondent during 1982. Neither was employed at any time in the 1982 tomato harvest operation.

I find that Ramos and Coronel were refused rehire on September 2 and thereafter because of their Union activities.

IX. The Alteration of the Past Practice of Personal Notification

In 1976, 1978, 1979 and for part of 1980 Ramos and Coronel worked almost exclusively for Respondent. I credit their testimony that during that time each was always personally notified as to the starting date for every new operation by a Prieto foreman; e.g. Shorty Perez in 1976 and Euselio Salinas thereafter,^{64/} and by Yamano foremen; e.g. Jose Ahumada in July of 1980 and others prior to the start of the tomato harvest. There was also evidence that

64. Prieto's testimony about this subject matter was unreliable. Though Prieto denied having any policy of personally contacting employees about work or being aware of his foremen doing so, he also testified (after first denying it) that he could not remember (later that he did not know), whether Salinas did so. (TR. 7, pp. 10-11.) Further, Prieto testified that his workers only came to his office or the Golden West to secure employment (TR. 7, pp. 4, 7), then, later testified that his foremen hired worked in the fields (TR. 7, pp. 75-76), and finally admitted that said foremen often would tell the workers in their crews that they had worked with for a number of years about job availability. (TR. 7, p. 77.) Snyder, Prieto's daughter, confirmed that usually a foreman, upon getting a work assignment, would notify the people that had worked steadily with him in the past about the operation. (TR. 7, pp. 131-133.) Snyder also testified that employees sometimes even left their telephone numbers with her (including Ramos and Coronel in 1983) in the expectation of receiving calls about work. (TR. 7, pp. 103-104.) In any event, there was no evidence directly contradicting Ramos¹ and Coronel's claim of personal notification.

other members of Ramos' and Coronel's crew were likewise contacted in a similar manner.

This method of notification no longer applied to Ramos and Coronel when they sought work in 1982 as now they had to, unlike others in the crew, seek out Prieto or Yamano personally to obtain employment. As I view it, Respondent in its tomato harvest and via Prieto in the other operations discriminated against Ramos and Coronel by the alteration of its past practice and consequent failure to notify them as to the start-up dates for the various operations, in its failure to respond or its giving devious or incorrect responses to their requests for information about the said start-up dates, times work would commence, and work availability, in general, and in its failure to rehire them in the 1982 thin and hoe work and in the 1982 tomato harvest. The only conclusion that I can reach under these circumstances is that these results were a product of Ramos' and Coronel's protected concerted activity on behalf of the UFW. Prior to the 1980 strike, they experienced no problems in being notified of work and in being hired. Following the strike and the subsequent 1981 settlement, obstacles were directly placed in the path of their being hired at the start of any new operation; and they were required to constantly seek out Prieto, who sometimes referred them to Yamano, or Yamano, who sometimes referred them to Prieto, for work. Only their persistence, annoying though it may have been to both Yamano and Prieto, and the help of UFW representatives enabled them to obtain work (but not in the tomato harvest operation) but even then, only after the operation had already commenced. Were it not for this persistence, no work would

have ever been offered them at all.

I recommend that Respondent be found to have violated the Act by failing and refusing to rehire Maria Santos Ramos and Gloria Coronel on May 24, 1982, July 20, 1982, August 10, 1982, September 2, 1982, and thereafter.^{65/}

X. The Remedy

Having concluded that Respondent has engaged in unfair labor practices within the meaning of section 1153(c) and 1153(a) of the Act, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

XI. Recommended Order

Respondent, its officers, agents, supervisors and representatives shall:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire, 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) In any like or related manner interfering with,

65. The General Counsel would also have me find Respondent in violation of section 1153(d) of the Act as a result of certain statements Yamano is said to have made to Ronquillo. (G.C. post-hearing Brief, p. 42.) I decline to do so as this matter was not fully litigated. I also note that General Counsel seems to have abandoned this claim in the conclusionary portion of her Brief. (G.C. post-hearing Brief, p. 48.)

restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act.

(a) Offer to Maria Santos Ramos and Gloria Coronel immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights or privileges.

(b) Make whole Maria Santos Ramos and Gloria Coronel 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 the decision in Lu-Ette Farms, Inc. (1980) 8 ALRB No. 55.

(c) Preserve and, upon request, make available to the 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 period and the amount of backpay due under the terms of this Order.

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

(e) 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 during the period from May 24, 1982 until the date on which the said Notice is mailed.

(f) 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.

(g) 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 employees on company time and property at .times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and managment, 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 to compensate them for time lost at this reading and during the question-and-answer period.

(h) 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: October 28, 1983


MARVIN J. BRENNER
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we 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 refusing to rehire two employees because of their union activity.

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 refuse to rehire any employee because he or she has engaged in union activity or any other protected concerted activity.

WE WILL offer Maria Santos Ramos and Gloria Coronel reinstatement to their former jobs without loss of seniority, and we will pay them backpay for all economic losses they have suffered as a result of our refusal to rehire them.

Dated:

YAMANO FARMS, INC.

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 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3161.

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

DO NOT REMOVE OR MUTILATE.