STATE OP CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TEX-CAL LAND MANAGEMENT , INC . , TEX-CAL LAND CO. /TEX-CAL LAND, INC., TEX-CAL LAND COLD STORAGE, TEX-CAL LAND INC. COLD STORAGE NO. 2, TEX-CAL LAND MANAGEMENT, INC. STORAGE NO. 3, TEX-CAL SUPPLY COMPANY, TEX-CAL LAND SALES, DIAMOND S. LEASING, CALIFORNIA AGRI-SPRAYERS , INC., DUDLEY M. STEELE, JR., DUDLEY R. STEELE, MARY JANE STEELE, CARL STEELE, GRACE STEELE, MICHAEL STEELE, GAYLE STEELE, STEVEN HANSEN, C.A. HANSEN, WELTHA B. HANSEN, ROBERT MACDONALD, JEAN MACDONALD, DOVIE J. HORTON, WANDA L. GUERBER, EARL WINEBRENNER , IMOGENE WINEBRENNER, ROBERT KRUGER, BETTY KRUGER, ROBERT BARTHOLOMEW, THEDA BARTHOLOMEW, MARSHALL PLATT, ETHEL PLATT, TABLE KING RANCH, ALTER EGOS/SINGLE INTEGRATED EMPLOYER, Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 83-CE-7-D 83-CE-45-D 12 ALRB No. 26

DECISION AND ORDER

On May 25, 1984, Administrative Law Judge (ALJ) Thomas M. Sobel issued the attached Decision in this proceeding. Thereafter, Tex-Cal Land Management, Inc.[1] (TCLM), Dudley M. Steele, Jr. (Bud

[1]The ALJ refers to Tex-Cal Land Management Corp., but the record establishes that the correct name of this corporation is Tex-Cal Land Mangement, Inc.

Steele), General Counsel and the United Farm Workers of America, AFL-CIO (UFW OR Union) each filed exceptions and supporting briefs. Both TCLM and UFW also filed reply briefs.

The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the attached Decision in light of the exceptions, briefs and reply briefs and has decided to affirm the rulings, findings, and conclusions of the ALJ only to the extent consistent herewith and to issue the attached Order.[2]

The General Counsel generally contends that all Respondents constitute a single employer and were statutorily obligated to bargain with the UFW. The General Counsel alleges that the Respondents violated their statutory bargaining obligation in violation of Labor Code section 1153(e)[3] and (c) by discriminatorily diverting bargaining unit work to nonunion labor contractors and custom harvesters. TCLM defends that the Union's unyielding and hostile attitude made agreement impossible. With respect to the loss of work, it contends it was blameless because it lost most of the work when landowners from whom it leased land canceled the leases. This matter spans the period November 1982 through June 1983.

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[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.

[3] All section references herein are to the California Labor Code unless otherwise specified.

FINDINGS OF FACT

TCLM is a California corporation formed in 1973 by Robert MacDonald, William D. Anderson and Barbara Knoke to operate and manage farm properties. TCLM owns no land but leases land from many of the other named Respondents. Tex-Cal Land, Inc. and Bud Steele (the senior Steele) are the largest lessors. The leases require TCLM to pay all taxes, make all payments under the deeds of trust, and grow and harvest all crops. TCLM also pays for insurance for the landowners. Grapes grown by TCLM are sold under various labels. Dudley R. Steele (Randy, the younger Steele) became the sole shareholder of TCLM in 1973, when his father, Bud Steele, apparently gave him the stock. Bud Steele was the first president of TCLM and remained president until 1979, when his son, Randy Steele, succeeded him.

Bud Steele testified that after he resigned as president in 1979, he was not involved in operating TCLM except as it might have been necessary for him to consult on marketing questions. However, Randy Steele and Bob Bartholomew (TCLM's vice-president in charge of finance until June 1983) testified that Bud Steele interfered in the management of the company and would override Randy Steele's decisions. There was little evidence of Bud Steele's involvement in day-to-day affairs prior to January 1983, though it is clear that he performed some actions when he ostensibly was without authority.

Tex-Cal Land, Inc. (Land)[4] is a Texas corporation

[4]Apparently there is no Tex-Cal Land Co., and the complaint is dismissed as to it.

formed in 1970 by Theodore Flick, Sam Minter and David Grey. Bud Steele is the president and may be the sole shareholder (his testimony varied on ownership but one document shows him to be the owner). Marshall Platt, Betty Kruger and Earl Winebrenner are officers. Randy Steele was formerly an officer.

Tex-Cal Land Sales (Sales) was described in the record as a subsidiary or, alternatively, a name under which Land does business. Based upon the explanation of the nature and function of Sales, it is clear that Sales is merely a "d/b/a/" of Land. Land/Sales sells the grapes, almonds and kiwis grown and harvested by TCLM for a three percent commission. One third of its grapes and one-half of the kiwis come from other sources.

Tex-Cal Supply Company (Supply) is a California corporation formed in 1974 for the purpose of manufacturing, selling and applying farm fertilizers and chemicals. Two of its original incorporators, Robert J. MacDonald and Barbara Knoke, were among the original incorporators of TCLM. Apparently, it is a wholly owned subsidiary of Land. Bud Steele is the president and a director. Bud Steele's brother, Carl Steele, and Betty Kruger are the other officers and directors. Supply is essentially the purchasing agent for the various business entities named as respondents.

The complaint names three "Storages" as respondents: Tex-Cal Land Cold Storage, Tex-Cal Land Inc. Cold Storage No. 2,

Tex-Cal Land Inc. Cold Storage No. 3. There is no evidence that the storages exist as distinct entities. It appears that the "storages" are merely cold storage facilities. They are owned either by Land or by Bud Steele and are used to store crops marketed by Sales.[5]

California Agri-Sprayers, Inc. (Sprayers) is apparently owned by Bud Steele. He testified that he owned either Supply or Sprayers, but he was not sure which. Bud Steele is the president of Sprayers. Michael Steele is the chief executive officer and vice-president; Betty Kruger is the secretary-treasurer. Sprayer shares a yard with Supply and leases some vehicles from Diamond S. Leasing (Diamond).

Table King Ranch (Ranch 69) is owned by Marshall and Ethel Platt and is farmed by Bud Steele through Bonnie Bairn Farms, a subsidiary of Sales. The ALJ correctly dismissed the complaint against Table King Ranch on the basis that it was simply a piece of property.

Bonnie Bairn also farms Ranches 48, 49 and 69. The ALJ correctly dismissed the allegation of unilateral subcontracting with respect to these ranches as that question had previously been litigated in Tex-Cal Land Management, Inc., et al. (1985) 11 ALRB

[5]Since it appears that Respondents 3, 4 and 5, Tex-Cal Land Cold Storage, Tex-Cal Land Inc. Cold Storage No. 2, and Tex-Cal Land Management, Inc. Storage No. 3 have no independent existence, the complaint is dismissed as to them.

No. 31.[6]

Diamond is, or was, a partnership between Randy and Bud Steele which leases vehicles and equipment to TCLM. Although Randy testified that he became the sole owner of Diamond in 1981, when he bought out his father, Bud testified that he was currently still a partner. During 1983, TCLM made finance payments on some of its vehicles. The leasing may now be under the control of MCS Leasing (MCS), which is not named as a respondent.

Bud Steele owns approximately 1,200 acres. He has power of attorney for Earl Winebrenner, a landowner. Randy had a power of attorney for Bud Steele from March 15, 1979 to June 27, 1983, to act on Bud's behalf in business matters. Bud Steele leases most of his land to TCLM. At times relevant in this case, the following individuals also leased land to TCLM: Randy and Mary Jane Steele; Michael and Gayle Steele; Earl and Imogene Winebrenner; Steven, C.A., and Weltha B. Hansen; Robert (Bud Steeles' attorney on occasion) and Jean MacDonald; Dovie Horton; Wanda Guerber; Betty and Robert Kruger; Robert and Theda Bartholomew; and Marshall and Ethel Platt.

TCLM grows crops on the leased land described above. Because of a series of production losses, as early as July 1979,

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[6] Although the ALJ in the earlier case failed to make reference to this matter in her Decision, the allegation was nevertheless litigated, and both General Counsel and Respondent TCLM referred to it in their post-hearing briefs. (See General Counsel's brief, pp. 12-13, 21; Respondent's brief, p. 12, March 29, 1983.) Furthermore, in the present case, the UFW negotiator Miller admitted that the subject matter had been litigated.

TCLM began borrowing from Farmer's Home Administration (FmHA) to finance growing and harvesting. In 1980 and 1981, it obtained loans amounting to $9 million. FmHA approved only $5 million in 1982 because TCLM had already used $4.5 million which it owed to FmHA as liens on the 1981 crop to grow or finance the 1982 crops. As a condition for the 1982 loan, FmHA demanded additional security by requiring that Bud Steele sign loan documents as a co-maker. FmHA also imposed accounting procedures on TCLM and required it to seek conventional financing. On July 15, 1982, in return for assuming liability for the note, Bud Steele received Randy Steele's irrevocable proxy to vote Randy Steele's stock, thus giving Bud Steele control over TCLM. FmHA refused to loan TCLM funds for the 1983 crop but authorized TCLM to use $1.6 million from the sale of 1982 crops for its October and November 1982 expenses. In January or February 1983, TCLM was waiting for money to finance its crops and expecting protective monetary advances from FmHA in order to continue its operations. TCLM failed to receive additional money from FmHA and on March 29, 1983, FmHA issued foreclosure notices to TCLM.

TCLM and the UFW were parties to a collective bargaining agreement which expired June 6, 1982, but was extended on a day-to-day basis. The parties had begun bargaining for a new contract prior to June 6, and there was early agreement that 21 of the 41 articles of the old contract would remain unchanged. By mid-June there was agreement on additional provisions; however, the

issues of medical plan, wages, retroactivety, subcontracting and access remained unresolved.

When the 1982 negotiations began, TCLM was paying 22 cents per hour to the RFK Medical Plan pursuant to the terms of the 1981-82 contract. During the negotiations, the plan's trustees advised Deborah Miller, the UFWs chief negotiator, that the cost of providing benefits under the RFK Plan was already at 35 cents per hour. The Union relayed that information to TCLM and on September *2,* 1982, proposed a maintenance of benefits provision.

On November 24, 1982, TCLM's negotiator, David Caravantes, sent the Union TCLM's proposals on subcontracting and the RFK Medical Plan. The proposal provided for retention of the old language on subcontracting and a 40 cents per hour contribution rate to the RFK, to be effective upon execution of the contract. TCLM's proposal also provided that any increase in contributions for the purpose of maintaining benefits be achieved by reducing wages. These proposals were discussed on December 8, 1982. TCLM's RFK offer was a two-cent increase over the last company proposal. The Union wanted a maintenance of benefits provision and retroactive payments to the RFK fund based upon the increased cost of providing benefits which had already occurred. Caravantes stated that TCLM would not agree to open-ended benefits, but said that a wage increase proposal would be presented as soon as other costs could be determined.

The next meeting was January 7, 1983,[7] and was a reprise

[7]All dates are 1983 unless otherwise noted.

of the previous session.

TCLM's grape pruning, one of its most labor intensive operations, ordinarily began in January and lasted through the first week in March. In 1982, TCLM had delayed pruning and, using labor contractors and custom harvesters, had pruned for only two and a half weeks. Miller suspected that the same thing would happen in 1983.

Immediately after the January 7 meeting, TCLM's Assistant Director of Industrial Relations, Linda Tipton, wrote to advise the Union that the removal of almond trees would be subcontracted per Article 17 of the expired agreement and Caravantes wrote to the Union that TCLM would be recalling employees to prune the prune trees. The 1981-82 contract called for the pruning rate to be negotiated 30 days before pruning began. Miller replied to Caravantes' communication with a series of questions about the prune tree pruning. She also requested information on the removal of the almond trees and the date grape pruning was expected to start.

On January 25, Caravantes wrote to Miller claiming that TCLM had no contractual obligation to bargain over the almond removal. With respect to prune tree pruning, he advised that work had already begun. Caravantes generally contended that the information requested regarding pruning was not available. He stated, "We presently have no intention of pruning the grape vines this year unless the company receives the necessary funds to do

so." Miller responded with a request to examine the records of TCLM, Bud and Randy Steele, and ten other entities only one of which is not a named respondent. Miller testified that, "(W)e decided this year to request proof that it was for financial reasons, and they did have some justification for delaying the start of pruning..." and the information on the various entities under the control of Bud Steele was needed in order to get an accurate reflection of TCLM's financial problems.

On January 21, the Union filed the first unfair labor practice charge in this matter, 83-CE-7-D, alleging that TCLM and Bud Steele were delaying the start of grape pruning in order to deprive union employees of work. The charge requested that the ALRB seek a court injunction. On January 21, Caravantes made a written request for a meeting on April 22 to negotiate "its annual Collective Bargaining Agreement" which could cover the last six months of 1983 and any future time agreed by the parties. That same day, Bud Steele exercised his proxy and called a meeting at which he elected new directors for TCLM. According to Bud Steele, the new directors elected Mary Jane Steele acting president and Michael Steele vice-president in charge of cultural practices. The ALJ found, and we affirm, that Bud Steele essentially chose the newly elected officers.

On January 31, Caravantes wrote the Union and refused to supply the requested financial information. He also wrote a separate letter that day stating that the collective bargaining

agreement (which had been continued day-to-day) would be terminated effective February 2.

At a February 3 meeting between the parties, Caravantes asked for the Union's proposal on the prune tree pruning rate. Miller responded that the Union could make no proposal without the pruning information the Union had requested. Miller again requested information as to when grape pruning would begin. Caravantes stated that TCLM usually pruned in the spring and asserted that when, where, and how was a management right. Miller asked for information about "money problems," but Caravantes would only say that funding was late. Miller proposed RFK benefit contributions of 35 cents from June through September 1982, and 40 cents from September 1982 to September 1983, after which the Company would make contributions which were sufficient to maintain the existing RFK benefits. Caravantes did not respond.

On February 18, the Board obtained a temporary restraining order from the Tulare County Superior Court which required that TCLM refrain from hiring labor contractors or nonseniority crews to do tying and pruning and to refrain from hiring more than 40 workers in each of the crews listed in the order. After hearing, a preliminary injunction issued on February 18.

The ALJ found that following the injunction the concept of modular farming was put into effect. There is conflicting evidence as to what modular farming was and whether it was implemented. Bud Steele claimed to have never heard of modular

farming, for example, while Mary Jane Steele, Michael Steele and Randy Steele claimed to have discussed it with him. Noting that the evidence was conflicting, the ALJ found that from the end of February through mid-March landowners "canceled" their leases, broke into four or five groups or modules, and Caravantes then claimed that TCLM only farmed five ranches. The ALJ found that, in essence, nothing changed between TCLM and the landowners except that there was a pretense made to the Union and the Board that TCLM was not farming certain land. Michael Steele, now TCLM's vice-president, made arrangements for labor contractors and custom harvesters to prune the ranches of the landowners who canceled their leases. While Michael Steele claims he did this as a favor to the landowners and that he borrowed money from Sales and Bud Steele to pay for the work, the record supports the ALJ's finding that Bud Steele did not, in fact, loan his own money. After the lease cancellations, the landowners allegedly were supposed to pay for the services but, according to Caravantes, he instructed 3-S Accounting to send him the bills. Caravantes then paid the bills from funds received by TCLM from FmHA. He contended he paid the bills in an effort to get the leases reinstated.

Seniority crews pruned and tied on some of the ranches from February 15, 1983 until they were laid off on March 10, 1983. Before, during and after that time, labor contractor/custom harvester crews were pruning and tying (doing the work historically done by seniority employees) until the end of June 1983.

Bargaining in February was conducted primarily through an exchange of correspondence. Miller sent letters requesting more financial information regarding pruning and requested information regarding vacations. She also sent a list of relatives who were interested in working for TCLM. Caravantes replied that the obligation to hire relatives had expired with the contract. Caravantes wrote to Miller that he would bargain regarding access but would not permit access without a Notice of Intent to Take Access. Caravantes also informed the Union that TCLM had surrendered possession of certain ranches and offered to negotiate possible reduction of unit work. Miller responded by requesting information about the lease cancellations and requesting various documents. She eventually received some information, but none of the requested documents.

On February *23,* the parties met with ALRB representatives to discuss modification of the injunction. Following a hearing on March 7, the court granted a modification allowing the hiring of up to eight additional crews, each consisting of a maximum of 40 workers. TCLM wanted the crews the next morning and Miller agreed to have them there. The Union spent the night lining up the workers. Chaos ensued the next morning when a large number of applicants showed up. TCLM hired only four of the requested eight crews it originally claimed were needed and refused to hire anyone without a social security card.

The parties met on March 28, at which time Caravantes presented Miller with a letter denying her requests for

information regarding the lease cancellations. He stated she was responsible for the lease cancellations, claiming TCLM had been prevented from maintaining the ranches as required. Attached to the letter was a list of lease cancellations which turned out to be incomplete. The Union took the position that TCLM was still in control of the land, but Caravantes made it clear that TCLM was bargaining for only five ranches. Regarding RFK, Caravantes said TCLM had made February payments and would only continue payments for 90 more days.

In a letter dated May 17, Miller informed TCLM that it had to continue pension and RFK contributions even though the contract had expired. She advised TCLM that RFK trustees were no longer willing to accept 22 cents per hour because the cost of benefits had risen to 35 cents in September 1982. The letter stated that the Union demanded TCLM pay $28,630 to the RFK Fund to cover the 13 cents per hour difference since September 1982 and continue to pay 35 cents per hour until the RFK trustees changed the rate or a new rate was agreed to as part of a new contract. Caravantes wrote back rejecting the demands. He offered 22 cents per hour for RFK contributions, requested mediation, and claimed impasse.

On May 23 Caravantes wrote that TCLM would not agree to a two-year contract and stated that it was TCLM's position that the time period they had been bargaining for expired in mid-June 1983. He requested bargaining for the period June 1983 through

June 1984. At the final meeting, held on June 8, Miller insisted that the past year could not be left in limbo; Caravantes insisted that TCLM traditionally bargained for only one year. Caravantes also claimed he bargained for only 700 acres. The workers then took over the meeting, insisting that TCLM rehire everyone and bargain for all the acreage. TCLM representative Elias Munoz told Miller that if she would drop the charges, the landowners would reinstate the leases.

Caravantes sought another meeting but Miller refused to meet without new company proposals. Caravantes expressed outrage at this refusal to meet, and Miller scheduled a meeting. When the meeting was canceled by TCLM, Miller and the ranch committee "invaded" Caravantes[1] office. This concluded the negotiations.

The Landowners and Various Business Entities as a Single Employer or Alter Ego.

The General Counsel argues that Bud Steele, all the respondent business entities, and all the respondent individual landowners constitute a single employer. The ALJ found such a conclusion to be inappropriate. While we find today that TCLM, Land and Sales did comprise a single employer, we agree with the ALJ's conclusions as to the remaining respondents.

Both the National Labor Relations Board (NLRB or national board) and the ALRB examine four principal factors to determine whether two or more entities are sufficiently related that they may fairly be treated as a single employer. Those factors are: (1) common management; (2) centralized control of labor relations;

(3) interrelation of operations; and (4) common ownership or financial control. (Soule Glass and Glazing Co. (1979) 246 NLRB 792 [102 LRRM 1693]; Radio & Television Broadcast Technicians Local Union 1264, IBEW v. Broadcast Service of Mobile, Inc. (1965) 380 U.S. 255 [59 LRRM 23461; Abatti Farms, Inc., and Abatti Produce/ Inc. (1977) 3 ALRB No. 83; NLRB v. Browning-Ferris Industries of Pennsylvania, Inc. (3d Cir. 1982) 691 P.2d 1117 [111 LRRM 2748].)

In Truck and Dock Service, Inc. (1984) 272 NLRB 592 [117 LRRM 1327], the national board stated that:

> While none of these factors, viewed separately, has been held controlling, the Board has stressed the first three factors, particularly centralized control of labor relations. Parklane Hosiery Co., 203 NLRB 597, 612 (1973). Single employer status depends on all .of the circumstances and has been characterized as an absence of an 'arm's length relationship . . .among unintegrated companies. Blumenfeld Theatres Circuit, 240 NLRB 206, 215 (1979) enfd. 626 F.2d 865 (9th Cir. 1980). (Id. at p. 52.)

Even though the first three factors are stressed, they need not all be present, and the Board considers all the circumstances of the case. (Local No. 672, International Union of Operating Engineers, AFL-CIO (D.C. Cir. 1975) 518 F.2d 1040 [90 LRRM 2321]; see also Pioneer Nursery, River West, Inc. (1983) 9 ALRB No. 38.) For example, in Canton, Carp's Inc. (1959) 125 NLRB 483 [45 LRRM 1147], the NLRB observed that it had on several occasions made a finding of single employer status despite the absence of a common labor relations policy.

Tex-Cal Land Management, Inc., Tex-Cal Land, Inc., and Tex-Cal Land Sales as a Single Employer

The ALJ found that the relationship between Tex-Cal Land Management, Inc., Tex-Cal Land, Inc., and Tex-Cal Land Sales was such that the three entities comprised a single integrated employer. We agree, for the reasons set forth in the ALJ's Decision and those discussed below.

A review of the evidence in this matter indicates that TCLM, Land and Sales do not operate in the arm's length relationship found among independent companies, and may therefore be found to be a single employer. While TCLM and Land were incorporated separately, a wealth of NLRB precedent indicates that two or more corporations may be sufficiently interrelated so as to constitute a single employer.** (See, e.g., Davis Industries, Inc. (1977) 232 NLRB 946 [97 LRRM 15641; Soule Glass and Glazing Co. (1979) 246 NLRB 792 [102 LRRM 16931; Truck and Dock Services, Inc., supra, 272 NLRB No. 93. See also, Abatti Farms, Inc., and Abatti Produce, Inc., supra, 3 ALRB No. 83; Pioneer Nursery/River West, Inc., supra, 9 ALRB No. 38.)

Our analysis gives careful consideration to the separate corporate forms of the various entities. The insulation of one corporation from the obligations of another corporation is the norm. However, both the NLRB and this Board will examine nominally separate entities to determine whether there is, in

[8]In a previous case, Tex-Cal Land Management, Inc., and Dudley M. Steele, supra, 11 ALRB No. 31, we found that Bud Steele and TCLM were not a single employer. We based this finding on the absence of common ownership or financial control, and the lack of evidence of common management or centralized control of labor relations.

effect, only a "single employer." (NLRB v. Browning-Ferris Industries of Pennsylvania/ Inc., supra, 691 F.2d 1117.) If our review reveals a sufficient degree of interrelatedness between or among separate corporations or entities, we will treat them as a single employer for purposes of labor relations and the requirements of the Agricultural Labor Relations Act.

Common Management

Bud Steele is the president of Tex-Cal Land, Inc. In 1972, Steele was given a power of attorney for Land, with full power to act on behalf of the corporation. Tex-Cal Land Sales is a subsidiary of Land, and has no staff separate and apart from the employees of Land. Bud Steele was also president of TCLM until 1979, when his son Randy succeeded him. In July 1982, in return for co-signing a promissory note to obtain FmHA funds for TCLM, Bud Steele requested and received an irrevocable proxy permitting him to vote Randy's shares of stock. Since Randy owned 100 percent of the shares, this proxy effectively gave Bud Steele ultimate control over TCLM. In January of 1983, Bud Steele exercised this proxy by calling and chairing a shareholders' meeting, at which he voted all the shares and elected new officers. By virtue of the power of attorney and irrevocable proxy, Bud Steele controlled both TCLM and Land.

In the intervening period, Bud Steele, president of Tex-Cal Land, Inc., and Tex-Cal Land Sales, gained financial control over TCLM, and exercised that control to shape the structure of TCLM's operations and labor relations policies.

Betty Kruger is Secretary/Treasurer of both Tex-Cal Land, Inc., and TCLM. In addition, she was a past president of TCLM. Randy Steele, who was president of TCLM until Bud Steele called a meeting to oust him, was formerly an officer of Land. The overlap among the directors and officers of TCLM, Land and Sales, Bud Steele's management of Land and Sales, and his exercise of managerial control in calling a TCLM stockholders' meeting and electing new officers, establish the element of common management.[9]

Centralized Control of Labor Relations

The ALJ found that Bud Steele's role in developing the modular farming scheme resulted in the labor relations policies of TCLM and Land being identical. While the ALJ found insufficient evidence that Steele directed TCLM's operations on a daily basis,[10/] a finding that centralized control of labor relations exists only at the executive or top level does not preclude

[9]In Tex-Cal Land Management, Inc., supra, 11 ALRB No. 31, we found that Bud Steele's involvement in TCLM's harvest decisions was based on his concerns as broker and marketer for TCLM's grapes through Tex-Cal Land Sales, and did not rise to the level of common management. Subsequent to the events described in that case, however, Steele acquired an irrevocable proxy to vote all the outstanding shares of TCLM's stock, and he actively participated in the management of TCLM through his actions with its Board of Directors.

[10]Bud Steele testified that he monitored TCLM's operations closely and visited the fields regularly because of the marketing agreement between TCLM and Sales. We note, however, that Steele controlled all the stock in TCLM at the same time, and did what was necessary to "keep the company afloat." It is difficult to believe that, while observing the progress of the pruning and other cultural operations on the land TCLM leased, Steele could so easily shed his role as the person who controlled TCLM and assume a completely independent role as the president of Sales.

application of the "single employer" concept.[11] Sakrete of Northern California, Inc. v. NLRB (9th Cir.1964) 332 F.2d 902 [56 LRRM 2327]; Blumenfeld Theatres Circuit (1979) 240 NLRB 206 [100 LRRM 12291; NLRB v. Royal Oaks Tool & Machine Company (6th Cir. 1963) 320 F.2d 77 [53 LRRM 2699].)

By virtue of his control over the stock of TCLM, Bud Steele was able to develop and implement the modular farming scheme, which resulted in TCLM using labor contractor employees, rather than seniority employees as required by the contract between the UFW and TCLM. The imposition of this "framework" on TCLM's operations constituted a "very substantial qualitative degree of centralized control of labor relations." (Local No. 627, International Union of Operating Engineers, AFL-CIO, supra, 618 F.2d 1040; see also Soule Glass and Glazing Co., supra, 246 NLRB 792.) Such an exercise of control at the top level of management would not be found in an arm[1]s length relationship between or among independent enterprises. (Id.)

While there is little evidence of employee exchange between TCLM, Land, and Sales, the NLRB has noted that the issue of single employer status usually arises where two entities have

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(Blumenfeld Theatres Circuit, supra, 240 NLRB 206.)

[11]While the Chairperson, in her dissent, alleges that the presence or absence of common or centralized control over labor relations is the factor most heavily weighted by the national board, NLRB precedent is to the contrary. In NLRB v. Royal Oak Tool & Machine Co. (6th Cir. 1963) 320 F.2d 77 [53 LRRM 2699], the court upheld the NLRB's finding of single-employer status even though the national board had failed to include any discussion of common control of labor relations. While acknowledging that common control of labor relations is an important factor in determining whether allegedly separate entities can be found to be

their own work forces but are nonetheless interrelated.[12] (Blumenfeld Theatres Circuit, supra, 240 NLRB 206; see also Abatti Farms, Inc. and Abatti Produce, Inc., supra, 3 ALRB No. 83.) There is in this case some exchange of supervisory or management level personnel which suggests a less than arm's length relationship between the companies. George Johnson, who was the director of personnel and safety at TCLM, left that company for three months in 1983 (during the period while the leases were cancelled) and went to work for Bud Steele at Sales, where he received the same salary he received at TCLM. When the leases were reinstated, he returned to TCLM. In addition, Bud Steele testified that he "might" have hired Leo Bazaldua, a TCLM foreman, during this same period. Steele testified that, during those three months, most of the TCLM

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sufficiently interrelated as to constitute a single employer, the court noted that the labor policy of both entities was formulated and administered by the same group of men, who owned the stock in both companies and constituted the governing board of directors of each. The court found it inconceivable that the men, who were deeply concerned about labor costs of one of the companies, would allow that concern to play no part in their decisions involving the other company.

[12]The Chairperson argues in her dissent that there is little evidence that Land/Sales employed agricultural employees. That concern is irrelevant to our finding of a single employer. Where we find that several assertedly independent companies are in fact so intertwined as to constitute a single employer, then that employer is bound by the requirements of the ALRA so far as its agricultural employees are involved. Two or more individual companies may comprise a single employer even though the bargaining unit does not consist of a sample of employees from each company. (See Babbitt Engineering & Machinery, Inc., and San Marcos Greenhouses, Inc. (1982) 8 ALRB No. 10.)

supervisors were unemployed, and he "could have hired them,"[13] but was not sure if he had. Finally, Jose Medina, who was superintendent over harvest operations at TCLM in 1982, was at the time of the hearing the quality control coordinator for Sales.[14]

Bud Steele's control of labor relations at both TCLM and Land, his creation of the modular farming scheme, which determined the character of the work force at TCLM, and the exchange of supervisory and management personnel, exhibit a high degree of centralized control of labor relations among TCLM, Land and Sales.[15]

Interrelationship of Operations

As the ALJ noted, TCLM, Land and Sales are an integrated operation. Land owned over 1000 acres of land, all of which it leased to TCLM. In addition, Bud Steele also leased to TCLM almost all of the 1200 acres he owned. Sales supplied money to TCLM to cover its operating costs. TCLM cultivated and harvested the crops. Sales then marketed the product. A substantial

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[13]The Chairperson's Dissent makes much of Steele's equivocation on this point, but ignores the fact that Steele did hire at least one TCLM employee -- George Johnson.

[14]Evidence of employee interchange was absent from the record before us in Tex-Cal Land Management, Inc., supra, 11 ALRB No. 31. In addition, in that case, evidence of Bud Steele's role in TCLM's labor relations was limited to photographing picketing and attending a grievance meeting. We found that Steele's control over the labor relations policies of TCLM was "at best, potential" (Id. , at p. 6) ; by contrast, in the present case, Steele's actions determined the character of TCLM's work force.

[15]By stating that there is not "one iota of evidence" that Bud Steele was acting on behalf of Land/Sales when he made decisions regarding TCLM's labor policy, the Chairperson's dissent misses the point of a single employer analysis. Where there is sufficient evidence of common management, ownership or financial

portion of the produce marketed by Sales (2/3 of the grapes, 100 percent of the almonds, and 50 percent of the kiwis) was grown by TCLM.[16] TCLM, Land and Sales, as well as 3-S Accounting (a bookkeeping firm owned by Bud Steele), all had offices in a building at 1215 Jefferson Street in Delano, which was owned by Bud Steele and leased to his daughter-in-law Mary Jane Steele.[17] TCLM, Land and Sales shared a common reception area at the Jefferson Street Building, and all received their mail at the same post office box address.

3-S Accounting provided bookkeeping services for TCLM, Land and Sales. TCLM provided insurance coverage for the employees of Land and 3-S, and was then reimbursed for the cost of the insurance premiums.

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control, centralized control of labor relations, and interrelation of operations, the lines between various companies as independent corporations blur. It is this overlap of roles and interests that forms the basis for a finding of a single employer. Bud Steele's own testimony at hearing indicates that, once the "barn was on fire," he did not concern himself with clearly demarcating where his actions on behalf of one company he controlled ended and his actions on behalf of another began.

[16]In order for us to find that TCLM, Land and Sales were a single employer, it is not necessary that all of the crops marketed by Sales were grown by TCLM. See, for example, Abatti Farms, Inc., and Abatti Produce, Inc., supra, 3 ALRB No. 83, where Abatti Produce harvested crops for entities other than Abatti Farms.

[17]Mary Jane Steele was elected president of TCLM in January of 1983. During the period at issue in this case, Land and Sales moved to another building owned by Bud Steele, leaving only TCLM at the Jefferson Street Building.

Common Ownership or Financial Control

Concerning ownership of Land and Sales, Bud Steele testified that he had never been a shareholder of" either company and that the sole shareholder in both companies was Earl Winebrenner. However, the ALJ noted that General Counsel's Exhibit 10, a statement of the identity of the officers and owners of Tex-Cal Land, Inc. signed by the corporation's secretary, identifies Bud Steele as the sole shareholder of Land. In addition, Bud Steele's testimony on this point was inconsistent, as he stated both that he did and that he did not own Tex-Cal Land. In any event, Bud Steele holds a power of attorney from Earl Winebrenner allowing him to sell or transfer Winebrenner's shares.

Concerning the ownership of TCLM, while the shares are in the name of Randy Steele, Bud Steele holds an irrevocable proxy to vote all said shares. Thus, Bud Steele maintains complete financial control over TCLM, Land and Sales.[18]

Lack of Arm's Length Relationship

A review of the relationship between TCLM and Sales and Land, particularly during the period when the leases were

[18]In Tex-Cal Land Management, Inc., supra, 11 ALRB No. 31, we found the element of common ownership to be entirely absent and held that Randy Steele's ownership of all the stock in TCLM did not confer an ownership interest on his father. In the present case, of course, the significant development is Bud Steele's obtaining an irrevocable proxy from his son to vote all the TCLM stock.

canceled, shows very close dealings, unlike those found between independent companies.

The ALJ found evidence of single employer status in Land and Sales' loan of money to Michael Steele to provide funds for the modular farming scheme. As we noted in Tex-Cal Land Management, Inc., supra, 11 ALRB No. 31, while TCLM and Sales had a written marketing contract, it was less rigid than comparable agreements between TCLM and other companies. In the present case, when the landowners cancelled their leases and arranged for services for their property through Michael Steele, Sales dispensed with the need for any written agreements. Bud Steele testified that all the marketing agreements between Sales and the individual landowners were oral. He also testified that, when the leases were reinstated, the old sales contract between TCLM and Sales "kind of superceded" the oral agreements with the landowners. No new marketing agreement was signed between TCLM and Sales.

Robert MacDonald, one of the individual landowners, testified that he was not sure if he signed a document when he borrowed over $50,000 from Sales to run his property after he canceled his lease. He testified that he was not required to provide any collateral to secure the loan. Such business dealings are not characteristic of the arm's length relationship found among truly independent companies.[19]

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[19]The Chairperson finds the fact that Sales had a written marketing agreement with TCLM, but not with the landowners, to be meaningless. The Chairperson apparently believes that, after introducing evidence to show that Sales treated its business

The force which bound together TCLM, Land and Sales was Bud Steele, who controlled all three companies. In July 1982, when TCLM was experiencing problems obtaining operating capital, Bud Steele co-signed for a multimillion dollar FmHA loan in order to "save" TCLM. In 1983, Bud Steele felt that TCLM was again in dire financial straits, and that no one "had the responsibility to do the necessary things to keep this company afloat." He stepped into the breach, called a shareholders' meeting, voted the shares, elected new officers he had hand-picked, and "redefined the most priority things that had to be done to keep the company afloat" (such as negotiating directly with FmHA, getting officers to sign documents, and establishing a viable Board of Directors). Steele met personally with the representative of the FmHA to discuss TCLM's financial condition and the outstanding loans. He developed and implemented the lease cancellation scheme[20] and,

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relationship with the landowners more informally than its business relationship with TCLM, the burden did not shift to Respondents to show that this was common practice, but somehow remained with the General Counsel to prove the opposite. Requiring the General Counsel to prove some change in practice, and then prove that changes were not common, has no basis in legal precedent that we are aware of, and sets the logical presentation of evidence on its head. For evidence of "how agricultural marketing operations function," see Tex-Cal Land Management, Inc., and Dudley M. Steele, supra, 11 ALRB No. 31, in which the written marketing agreements between Sales and other growers besides TCLM were admitted as exhibits.

[20]We do not, as the Chairperson's Dissent states, rely on an assumed implementation of the modular farming scheme. We do, however, uphold the ALJ's finding that the leases were cancelled (the cancellation documents were introduced into evidence), and that the landowners and TCLM, Land and Sales were part of a pretense that the landowners, and not TCLM, continued to farm most of the property.

through his control of Land and Sales, provided the funds to operate it. In his efforts to salvage TCLM, Steele ignored the distinctions between the various companies he controlled. When asked by the General Counsel at hearing if he loaned any of his personal funds or funds from Tex-Cal Land Sales to Michael Steele for use of the landowners in 1983, Steele replied, "the barn was on fire and we were trying to put it out -- the niceties of all these things was not really explored."

Bud Steele's control over TCLM, Land and Sales, his interest in TCLM's success as an owner of a large portion of the land leased to TCLM, his role as the co-signer on a multimillion dollar loan to TCLM, his role as president of the company that marketed the grapes TCLM grew and harvested, and his actions in "saving" TCLM, make him the key figure in the events and entities involved in this case. Moreover, it was he who put into motion the lease cancellation scheme, which seriously altered the relationship between TCLM and the UFW.

Based on the above-described evidence of interrelation of operations, common management, centralized control of labor relations, common financial control, and lack of arm's length relationship, we find that Tex-Cal Land Management, Tex-Cal Land, Inc. and Tex-Cal Land Sales are *a* single employer for purposes of the Agricultural Labor Relations Act.

The Landowners and Other Respondents As A Single Employer With TCLM

We also find that none of the other business entities named as respondents constitute a single employer with TCLM.

Although there is evidence that some of the other named business entities and TCLM had some degree of common ownership, the extent to which common ownership existed in light of the other factors which we must evaluate is insufficient to warrant a conclusion that the other business entities and TCLM were a single employer. The record lacks substantial evidence of common management or centralized control of labor relations, and interrelation of operations, between TCLM and the other named business entities to support a conclusion of single-employer status.

With respect to the employer status of the landowners, we initially conclude that they were not agricultural employers within the meaning of the Act and thus, were not liable in any respect. The facts of this case do not establish that the landowners (in their non-corporate capacities), acted as the employer for any employees working on their land or any other landowner's land, and the purported cancellation of the leases did not constitute a situation where the landowners were acting in the interest of TCLM in relation to its agricultural employees.[21] The landowners can be held liable for the monetary remedies only if they can be deemed employers within the meaning of section 1153. We conclude that the landowners were, at most, agents of TCLM and not employers of the labor contractors' employees within the meaning of section 1153. As such, they were not subject to affirmative, remedial orders of the Board. (See Henry I. Siegel Co., Inc. (6th Cir. 1969) 417 F.2d 1206.)

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[21] Chairperson James-Massengale notes that the record demonstrates that the landowners discussed a business restructuring for the

Even had we concluded that the landowners were agricultural employers, we agree with the ALJ that the individual landowners did not constitute a single employer with TCLM or each other, merely because of their status as landowners.[22] Such status did not endow them with the capacity to control the decision making of either TCLM or each other. Nor did the fact that each possessed the potential to cancel his/her lease mean that an integrated business enterprise had been created. (See Coastal Growers Association, S & F Growers (1981) 7 ALRB No. 9, reconsideration den. 8 ALRB No. 93; Saticoy Lemon Association (1982) 8 ALRB No. 94.)

We disagree with the ALJ's conclusion that the individual landowners were liable for the use of labor contractor crews who worked on their land between February and March by virtue of the fact that by canceling their leases, they participated in a scheme[23] by which they became multiple alter egos with TCLM. We

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purpose of protecting their property. She does not believe that a certification which imposed a bargaining obligation upon TCLM could be expanded to create multiple certifications covering separate bargaining units employed by the individual landowners. Standing alone, the landowners were not obligated to abide by the terms and conditions established by the expired collective bargaining agreement between TCLM and the Union. Thus, had they, in fact, farmed the land as legitimate, distinct employers, they would not have been obligated to the conditions established by the terms of the TCLM collective bargaining agreement.

[22]Our conclusion that the landowners are not statutory employers also precludes a finding of joint employer status between those landowners and TCLM.

[23]While the issue of whether the modular farming system was discussed and implemented was contested at the hearing, there is substantial evidence to support the conclusion that after the lease cancellations, TCLM continued to farm all parcels of land which it had farmed prior to the asserted cancellations, paid for

reject the ALJ's alter ego theory for some of the same reasons the ALJ himself rejected the single employer concept—the General Counsel did not prove that the landowners and TCLM shared substantially identical ownership and control of the enterprise.[24] Moreover, the landowners as individual entities cannot be said to have continued an enterprise which was structurally or functionally substantially identical to TCLM. TCLM consisted of all the leased farm land at issue in this case. The individual landowners as separate entities could control only their individual landholdings. TCLM, at all relevant times, was a land management company. The individual landowners were not. In addition, the "multiemployer/alter ego" concept is inappropriate for this situation and inconsistent with the limited liability recommended by the ALJ.

We also reject the OFWs "joint venture" argument. We

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work performed by agricultural employees, supplied the foremen, and continued in all other respects as the agricultural employer during all relevant times. For example, the activities of Michael Steele in arranging for pruning through labor contractors and custom harvesters supposedly on behalf of the individual landowners were indistinguishable from his duties as vice-president of TCLM in charge of cultural practices. Meanwhile, despite the fact that TCLM was continuing in all respects as the agricultural employer, it persisted in maintaining before the Board and Union the fiction that it had nothing at all to do with disputed parcels.

[24]As pointed out by the ALJ, the same criteria are generally applied to both single employer and alter ego relationships, the only difference being that many authorities consider anti-union motivation to be the sine qua non for an alter ego finding. (See, e.g., John Elmore, et al. (1982) 8 ALRB No. 20 and cases cited therein.)

agree with the ALJ that no evidence supporting such conclusions was presented in this case.25 (See Great Lakes Dredge and Dock Co. (1979) 240 NLRB 197 [100 LRRM 1284].)

Liability of Bud Steele for TCLM's Unfair Labor Practice.

The General Counsel urges that we should "pierce the corporate veil" and hold Bud Steele liable for TCLM's unfair labor practices. We decline to do so. The mere fact that Bud Steele personally co-signed on the FmHA loan to TCLM does not suggest a disregard of TCLM's separate corporate identity, particularly since this action was taken at the demand of FmHA. Further, the facts do not support a finding that there was any intermingling of TCLM's and Bud Steele's funds.

We also agree with the ALJ that Bud Steele did not go to the ranches periodically and direct the activities of the foremen, was not involved in the day-to-day management of TCLM prior to the end of January 1983, and did not make a statement to the effect that TCLM was "his" company.[26] Even were we to find that Bud Steele was involved in the day-to-day management of TCLM, that fact alone would not permit us to "pierce the corporate veil." Nothing in our Act permits us to dictate that an individual who actively manages a business in which he is the primary stockholder must forego the corporate protection provided by other

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[25]We affirm the ALJ's Decision not to pierce the corporate veil and find the various corporate officers of Respondents, who were also landowners, individually liable for makewhole and backpay.

[26]UFW excepts to these findings on the grounds, inter alia, that the testimony of Randy Steele should not have been discredited. To the extent that an ALJ's credibility resolutions are based upon demeanor of the witnesses, they will not be

California statutes. We therefore find it inappropriate to hold Bud Steele liable in his non-corporate capacity for the unfair labor practices committed by TCLM.

The Unilateral Changes

The major theme of the complaint was the claim of the General Counsel that TCLM diverted work away from bargaining unit employees and gave it to labor contractors and custom harvesters. While conceding that most of the loss of unit work took place, TCLM argues in its defense that it was blameless because it lost the right to perform the pruning and preharvest work, which it historically performed on leased lands, when (most of) the landowners canceled their leases and decided to farm their own land (at least temporarily). The details of its defense painted an unhappy picture of a father and son driven apart and of an agricultural operation struggling for survival against tremendous financial pressures. It was within this context that the alleged unfair labor practices took place, and TCLM essentially defended itself as a hapless victim of forces beyond its control.

1. The Hiring of Labor Contractors and Custom Harvesters

Michael Steele made arrangements for labor contractors and custom harvesters to prune after the landowners began

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disturbed unless a clear preponderance of the relevant evidence demonstrates that such resolutions are incorrect. (Adam Dairy dba Rancho Dos Rios (1978) 4 ALRB No. 24; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1521].) We have reviewed the evidence and find the ALJ's resolutions of witness credibility to be well-supported by the record viewed as a whole. Furthermore, there is insufficient record evidence to support the UFW's exception.

canceling their leases. The basis of the allegation that TCLM violated the Act by conduct associated with these lease cancellations was premised on the belief that the failure to employ TCLM seniority crews between February and March, on farms on which TCLM indisputably held leases prior to February and March, was unlawful.

We said in a previous case concerning this Respondent, Tex-Cal Land Management, Inc. (1982) 8 ALRB No. 85, that where a term or condition of employment is established by contractual provision and/or past practice, a unilateral change constitutes "a renunciation of the most basic collective bargaining principles, the acceptance and implementation of the bargain reached during negotiations" and that even after expiration of the contract, an employer's unilateral change of any existing working condition without notifying and bargaining with the certified bargaining representative is a per se violation of section 1153(e) and (a) of the Act. We also said that where the unilateral change relates to a mandatory subject of bargaining, "such as subcontracting and hiring," a prima facie violation of section 1153(e) and (a) is also established. As the facts in the present matter clearly establish that TCLM continued to farm the disputed land, its failure to hire seniority crews over labor contractor/custom harvester crews, as required by the terms of the expired contract, constituted a unilateral change.[27] TCLM's failure to give the

[27]This includes Ranches 40 and 78 farmed by Bonnie Bairn Farms. However, the General Counsel failed to prove that any TCLM steadies lost work after November through the end of December 1982. We also find that the General Counsel failed to make out a

Union prior notice and an opportunity to bargain before it resorted to hiring labor contractor/custom harvester employees over employees who, by virtue of TCLM's seniority system, had a right to be recalled[28] violated section 1153(e).[29] (See also D'Arrigo Brothers Company of California (1983) 9 ALRB No. 3; Robert H. Hickam (1984) 10 ALRB No. 2; Albert Valdora, Inc., et al. (1984) 10 ALRB No. 3.)[30]

2. The Changes in Hiring Practice

Pursuant to a provision in the expired collective bargaining agreement, the Union sent TCLM a list of relatives of

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violation that the subcontracting of ripping in October or November 1982, was not permitted under the parties' collective bargaining agreement. As TCLM did not have the specialized equipment, subcontracting was permissible. In addition, both parties testified regarding the extensive discussions between them on the question of whether TCLM actually needed specialized equipment and whether unit employees should drive leased equipment. The UFW more than likely would not have engaged in these discussions if it had not been of the opinion that TCLM had the right to subcontract ripping where specialized equipment was required.

[28]The ALJ declined to review each and every invoice between the late spring of 1983 and June 28 (G.C. Exhibit 145) to determine whether they related to unit work. The question of what work bargaining unit employees were entitled to perform and what work was described (or not described) in the Exhibit (see TCLM Exception No. 15) is more appropriately left to the compliance stage of these proceedings.

[29]While we concur with the ALJ that TCLM, in diverting the work of the seniority employees to labor contractor and custom harvester crews, violated section 1153(e), we find it unnecessary to reach his further conclusion that TCLM also violated section 1153(c) by engaging in conduct which was "inherently destructive" in that the remedy hereafter ordered would be the same for either violation. (See Brown Company, slip opn. (1986) 278 No. 113 and Brown Company (1979) 243 NLRB 769.)

[30]It is well-established that unilateral changes are presumptively unlawful. (NLRB v. Katz (1962) 396 U.S. 736 [50 LRRM 2177].) However, that presumption may be rebutted by a

seniority workers who were interested in working in case there might be vacancies. Caravantes advised the Union that the obligation to hire family members had ceased as of the expiration of the contract.

As a general rule, the terms and conditions of employment, including those dealing with hiring,[31] survive the agreement's expiration. But here, the relevant question is not Caravantes' statement but whether TCLM actually refused to hire the relatives of bargaining unit employees because "(a)lthough . . . state of mind may occasionally be revealed by

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respondent's establishment of a defense. (Ibid.; Joe Maggio , Inc. , et al. (1982) 8 ALRB No. 72.) The defense asserted by TCLM in this case is that of necessity. (Ibid.; Charles Malovich (1983) 9 ALRB No. 64.) Chairperson James-Massengale believes that there is ample evidence that the structural change into smaller farming units was discussed by TCLM as a possible method of accomplishing farming operations which had been delayed for financial reasons. It is undisputed that the neglect of cultural practices, which was occurring, presented a substantial and significant danger to the growing crop. It is further undisputed that with respect to the pruning operation, time was of essence. In circumstances such as existed here, she believes that an employer might have been privileged to take unilateral action necessary to salvage its crop. Here, however, TCLM failed to establish by a preponderance of evidence that it was motivated by necessity. It does not appear that TCLM was precluded from hiring a sufficient number of seniority employees to accomplish its farming operations.

[31]The NLRB has long held that hiring practices are a mandatory subject of bargaining. (See Houston Chapter, Associated General Contractors (1963) 143 NLRB 409 [53 LRRM 1299], enforced (5th Cir. 1965) 349 F.2d 449 [59 LRRM 3013], cert. den. (1966) 382 U.S. 1026 [61 LRRM 2244] (hiring hall found to be mandatory subject); see also Phelps Dodge Corp. v. NLRB (1941) 313 U.S. 177 [8 LRRM 439] (an employer may not discriminate in the hiring of job applicants on the basis of their union membership.)

declarations, ordinarily the proof must come by inference from external conduct." (Morris, The Developing Labor Law (2d ed. 1983) p. 583, quoting Cox, The Duty to Bargain in Good Faith (1958) 71 Harv.L.Rev. 1401, 1418.) The General Counsel failed to prove that TCLM refused to give preference to relatives. Indeed, the evidence is to the contrary as Miller testified that the names of family members were included on the lists from which four crews were hired by TCLM and that the vast majority hired on this occasion were workers that she sent. In fact, Miller's complaint was not that relatives of unit members had been refused hire, but rather that TCLM required all seniority workers to present a social security card to be hired, a practice which, according to her, had not been in effect previously.[32]

We conclude that the hiring of nonseniority employees on March 8, 1983 at the "jailhouse," while seniority employees were not given employment, to be a section 1153(e) violation, but we disagree with the ALJ that it was discriminatorily motivated in violation of section 1153(c). As the ALJ elsewhere concluded, it was financial problems that dominated TCLM's actions during this period, and discrimination was not proved to be the motivating factor.

3. The Failure to Maintain Benefits

The General Counsel and Union contend that TCLM made a unilateral change by failing to fund the RFK health plan at a

[32]We also disagree with the ALJ that Caravantes' statement in his letter to Miller that the obligation to hire family members had ceased was an unfair labor practice. While there are circumstances such conduct might constitute a section 1153(a)

higher level than provided for in the labor agreement in order to properly maintain benefits. Here TCLM did maintain its contribution level as required and did bargain over a maintenance of benefits clause. We affirm the ALJ that in absence of a bargained for maintenance of benefits contractual provision, TCLM was not legally required to assume such an obligation.

Post-Certification Access

On February 16, pursuant to a discussion about taking post-certification access, Caravantes wrote Miller stating that he would bargain about access, but unless the Union filed a notice of intention to take access, he would deny the request. The ALJ found a section 1153(e) violation, citing 0. P. Murphy (1978) 4 ALRB No. 106.

In 0. P. Murphy, we held that while an employer's refusal to permit a labor organization reasonable access to the employees it represented would be considered as evidence of a refusal to bargain, we specifically declined to hold that the matter of post-certification access constituted a mandatory subject of bargaining. This being the case, TCLM's change in the past practice from a requirement of oral to written notification of the intent to take access was not a violation of

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violation (see, e.g., Haberman Construction Company (1978) 236 NLRB 79, affd. NLRB v. Haberman Construction Company (5th Cir. 1981) 641 F.2d 351), here there was no evidence that Caravantes[1] remarks were addressed to or in any other way ever reached any of Respondent's employees.

section 1153(e), as only changes in mandatory subjects of bargaining can be considered unlawful unilateral changes.[33]

The Duty to Disclose Information and the Duty to Bargain

1. Information Concerning the Identity of the Current Officers/ Directors of TCLM

In general, an employer has a duty to disclose only information that is relevant and reasonably necessary to the intelligent performance of the union's function as bargaining agent. (NLRB v. Truitt Mfg. Co. (1951) 351 U.S. 149 [38 LRRM 2042].) The NLRB has held that information as to the specific relationship between different companies in the context of complaints about the transfer of unit work between them is relevant. (See, e.g., Realty Maintenance Inc. d/b/a/ National Cleaning Company (1982) 265 NLRB 1352 [112 LRRM 1150], enforced (9th Cir. 1984) 723 F.2d 746 [115 LRRM 2468].) Here, because officers and directors of the various entities were changing and their identities would not necessarily be available from public sources, TCLM was required to provide this information to the Union. The requested information was relevant to determining the interrelationship of the companies and, thus, who constituted the true employer(s). The same can be said of the names of the

[33]However, where a party's conduct causes delays, as well as where an employer refuses a labor organization reasonable access to the employees it represents, such conduct will be considered as evidence of a refusal to bargain. (O. P. Murphy, supra, 4 ALRB No. 106.) Here, Caravantes[1] insistence, contrary to past practice, that the Union had to file a formal notice before access would be granted was an indication of bad faith.

shareholders, the agents for service of process, the county and principal place of business, and the requested partnership, sole proprietorship, trust or estate information.[34] we also find that the Onion was entitled to information regarding the names and business addresses of landowners who canceled their leases, the dates of the decisions to cancel and the effective dates of those lease cancellations, as the Union was entitled to know which units it represented.[35] TCLM's failure to provide relevant information violated section 1153(e).[36]

2. Information Concerning the Lack of Funding for Grape Pruning and the Duty to Bargain Over the Effects of the Change of the Start-up Date of the Pruning.

When Caravantes turned down in toto Miller's request for financial information which she sought out of fear that the grape pruning would be delayed again in 1983, as it had in 1982, he gave as his reason that he had no control over the Steeles, the other companies, or the landowners. With respect to TCLM, he took the position that TCLM was not claiming an inability to pay, but

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[34]A11 of this information appears to have been disclosed during the hearing. There is no need for it to be supplied again absent a new showing of relevance.

[35]The Union also requested documents relating to the sale or transfer of the landowners' businesses to any other entities. There is no evidence that such documentation exists.

[36] As a policy matter, this information would not include any communications between the entities and/or landowners and their attorneys as same is protected by the attorney /client privilege so long as such communication's dominant purpose is the furtherance of the attorney/client relationship. (Montebello Rose Co., Inc., et al. (1979) 5 ALRB No. 64, fn. 9.)

only that the funds necessary for pruning (presumably from the FmHA) had not yet been received and that therefore, the request for financial data was inappropriate.

Initially, it must be determined whether the Union had a right to any of the requested information; i.e., did TCLM have a duty to inform the Union as to the start-up date of the pruning? If the starting date of pruning was not a mandatory subject of bargaining, TCLM's failure to provide the requested financial information would not be a violation of the Act. The ALJ ruled that to prove a violation, the General Counsel was required to show that the decision would have an effect on the employment relationship. He concluded that under the circumstances, the decision about when to prune did not necessarily impact on the amount of work available since there was no relationship between the delay in pruning and the decision to subcontract. Therefore, he concluded that there was no duty to bargain over when the pruning would begin.

Although the record does support the ALJ's finding that it was funding problems that delayed the pruning,[37] we also find, contrary to the ALJ's determination, that the decision as to when to prune did have an impact on seniority crews as the delay meant that more workers had to be hired and employment was for shorter periods of time. While an employer has the management right to decide when to prune (absent discriminatory motivation), where

[37]We affirm the ALJ that the decision of when to prune was not discriminatorily motivated as the record does not support such a claim. Rather, it appears, as found by the ALJ, that TCLM was in severe financial difficulty at this time and that Bud Steele's main

there is a change from a past practice which substantially impacts on the unit, effects bargaining is required. Since it was TCLM that raised the issue of finances by asserting that it would not prune until it received the necessary funds, it had a duty to turn over the records of its financial condition when requested to do so.[38] Without such information, the Union could not intelligently bargain about effects.

As to the Union's right to the financial information concerning the other Respondents, under ordinary circumstances, such information would be relevant only to the business entities and/or individuals found to be part of the single employer. Since we have determined that except for Land and Sales, no such relationship existed here, those requests concerning the other entities and individuals would normally have been properly refused. However, the NLRB recently held that such information might be relevant where a union entertained an objective factual

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concern was:

> . . . to salvage a farming operation on the brink of collapse, a goal so paramount he would pursue it where necessary though it would lead to a break with his own son. The strength of that concern vitiates the single-minded contention that everything which took place was designed to circumvent the union. (ALJD, p. 77.)

[38]There is a difference between claiming an inability to pay (unless funds were received), as was the case here, and claiming an unwillingness to meet union demands based upon a company's need to become more competitive in the industry. (See Washington Materials, Inc., et al. (1985) 276 NLRB No. 40.

basis for believing that several respondents were financially intertwined. In Washington Materials, Inc., et al., (1985) 276 NLRB No. 40, the union requested to see financial information which it said might reveal, based upon reports it had received from its members, that some of the respondents were operating nonunion companies which were taking business away from the company with whom the union had negotiated the labor agreement. The union's position was that such records would show if the competition was coming from double-breasted companies or true competitors. The NLRB concluded that the union had established that the information was relevant.

Here, the Union had a reasonable basis for believing that the various Respondents may have been financially connected. Therefore, the requests for 1981-1983 information contained in her January 26 and February 3 letters, in large part, should have been granted.[39] income and loss statements, business ledgers and bank accounts, sales records or any other records reflecting the acquisition or decline of revenues, including promissory notes or encumbrances of indebtedness, are relevant. The Union was not, however, entitled to the tax information of the Steeles, and this was appropriately rejected. And, of course, the duty to disclose information would not apply to entities not named as respondents or which were no longer in existence.

TCLM's refusal to furnish the requested financial information and its failure to bargain over the effects of the

[39]The ALJ found that Respondent's failure to disclose information concerning the financial condition of Tex-Cal Land

change constituted violations of section 1153(e) and (a) of the Act.[40]

3. Information Concerning the Pruning of the Prune Trees and the Duty to Negotiate the Rate.

On January 7, TCLM advised the Union that the removal of almond trees would be subcontracted pursuant to the labor agreement and that it would be recalling workers to prune the prune trees. As the-labor agreement provided that pruning rates were to be negotiated 30 days before the start of the operation, the Union had a number of questions about the pruning including when the work was to begin, how many workers would be needed, and how long the job would take. The Union also requested production information for the previous two years of pruning. TCLM responded that ten workers would be needed for five days and that the work had already started. In fact, the work had already been completed.

Sales and Tex-Cal Land, Inc., was excused because the request came in the context of an omnibus request for information, which he concluded was largely irrelevant. The ALJ indicated his belief that when the form of the request is so defective, a respondent cannot be held to a duty to respond to those parts which were appropriately requested. General Counsel and the UFW excepted to this ruling. As we find that most of the information requested was, in fact, relevant, we need not rule on these exceptions. We note, however, that the duty of an employer and the collective bargaining representative of its employees to provide each other with requested relevant information is well-settled in NLRB and ALRB precedents, and the employer or employee representative would be excused from such a duty only where the form of the request was so defective as to make it virtually impossible for the other party to identify which portion of the requested information should be provided.

[40]We do not credit TCLM's defense that it had no control over the other Steele entities and the landowners so that it was unable to produce the requested documents. While we have held that no single employer relationship was present (except in the case of

While TCLM provided some of the information requested by the Union, it did not furnish sufficient information to permit the Union to compute how much per tree or how much per hour employees had been paid in the past or were being paid that year. Further, it is very clear that TCLM did not inform the Union of its intention to prune in time to negotiate rates 30 days in advance of the start of pruning. We find that TCLM's conduct represented a failure to bargain over the pruning rate coupled with a refusal to furnish information upon request.[41]

TCLM's Bad Faith

It is clear that the totality of TCLM's conduct, including its refusal to bargain over acreage it was actually farming, its hiring labor contractor/custom harvester crews over seniority employees and other hiring violations, its refusal to bargain over the tree pruning rate and the effects of its change in the start-up date of the grape pruning, and its refusal to

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Land and Sales), in our view there were sufficient financial contacts so as to enable TCLM to make the information available. In the case of the landowners, as we have previously shown, it was TCLM and not they that continued to farm the land that it had farmed before the purported lease cancellations, and it was TCLM that continued to operate as the employer.

[41]We disagree with the ALJ, however, that the mere setting of the rate without consultation with the Union was a unilateral change. The ALJ reasoned that since Respondent paid an hourly wage in 1982 for pruning, the setting of a piece rate in 1983 constituted a unilateral change. However, since the labor agreement contemplated negotiating a new rate every year and seemed to allow for either hourly or piece rate, v/e do not regard Respondent's action as having been a unilateral change.

provide information, evidenced an intent not to reach an agreement with the UFW. Such conduct constitutes an unlawful refusal to bargain in good faith.[42] (Robert H. Hickam (1984) 10 ALRB No. 2; Cardinal Distributing Company, Inc., et al. (1983) 9 ALRB No. 36.)

The ALJ also found[43] that the Union was negotiating in bad faith as of May 17, 1983, and he declined to order contractual makewhole for any diversion of unit work after that date. He based this finding on Miller's May 17 letter in which she "demands" that TCLM commence paying additional sums to the Union's medical plan so that the present level of coverage could be maintained. According to the ALJ, the Union's demand overstepped its role by, in effect, insisting upon a higher contribution rate as a past due debt owing to the RFK Medical Plan's trustees in order to improve the soundness of the plan. This "illegal approach" was said to have tainted the Union's entire bargaining conduct.

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[42]We do not find bad faith in TCLM's cancellation of the negotiating session scheduled for June 30. The record does not reveal a pattern of refusals to meet or the cancellations of meetings on the part of TCLM. We also do not find that TCLM conditioned bargaining on the withdrawal of unfair labor practice charges as found by the ALJ. The negotiating session transcript, upon which he relied, does not support such a finding but is instead further evidence that TCLM was refusing to bargain about all the ranches. In addition, the complaint did not allege this conduct as a violation, and no direct testimony was put on regarding the issue.

[43]There seems little doubt that the ALJ found TCLM in bad faith, though in the context in which he was making his findings (the Union's negotiating conduct) he did not explicitly say so.

We do not agree that the Union was guilty of bad faith bargaining by its position on the medical plan as expressed in Miller's May 17 letter. We view this letter as nothing more than a proposal to deal on an interim basis with a problem considered very serious by the Union – the loss of medical benefits occasioned by the increase in costs not provided for in the previous labor agreement. Though the letter was phrased in strong language,[44] this only reflected the urgency of the situation as viewed by the Union. There is nothing in the letter to indicate that the Union was unwilling to negotiate over either an interim agreement on medical coverage or the overall contract. There is no evidence that the Union insisted to the point of impasse that TCLM was obligated to pay the additional sum of 35 cents per hour to the plan. On the contrary, it was TCLM that rejected the proposal shortly after it was made and claimed impasse.[45] we do not find that the Union engaged in bad faith bargaining. Costs

The ALJ granted the General Counsel's motions for its Caost[46] against TCLM and Sales because of what the ALJ said was

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[44]The fact that Miller used the term "demands" instead of "proposes" is of no consequence; those terms are sometimes used interchangeably during the negotiation process.

[45]Even if the Union's conduct were some evidence of bad faith, it is difficult to see how this single act so impeded the bargaining process that it overcame TCLM's extensive bad faith. There is no evidence to show that TCLM's conduct would have been any different in any way had the Union never written its alleged bad faith letter. (See. McFarland Rose Production (1980) 6 ALRB No. 18.)

[46]TCLM incorrectly states in its exceptions that costs were awarded to the Union; they were awarded to the General Counsel.

their record of multiple violations of the Act. In Autoprod, Inc. (1982) 265 NLRB 331 [111 LRRM 1521], the NLRB awarded costs (to the national board for litigation costs and not the General Counsel) for what it called "flagrant misconduct" which " . . . caps a decade of contumacy and flagrant disregard of its employees' rights under the Act during which the Respondent had flouted court-enforced orders of the Board and persistently ignored its statutory obligations." The Board found that "in light of the Respondent's long history of intransigence," traditional forms of relief were inadequate to effectuate the policies of the National Labor Relations Act and to serve the public interest and that the award of costs was necessary to restore the "status quo ante." In that TCLM's and Sales' actions here, though unlawful, do not rise to the level of misconduct found in Autoprod, costs will not be assessed against them.

The Remedy

Having determined that the Union was not in bad faith, the ALJ's cutoff of makewhole as of May 17, 1983, was in error. Makewhole should commence on February 2, 1983, which was the day TCLM commenced its refusal to bargain over a substantial part of the unit, and continue until the date TCLM ended its refusal to bargain regarding the entire bargaining unit. Respondent's remedial exception as to the mailing date is well-taken. All others were considered and are hereby rejected on the grounds that they are not in accord with Board policy and court decisions.

(See Riqi Agricultural Services, Inc. (1985) 11 ALRB No. 27 and Sandrini Brothers v. Agricultural Labor Relations Board (1984) 156 Cal.App.3rd 878 [203 Cal.Rptr. 304], hg. den. August 8, 1984.)

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondents Tex-Cal Land Management, Inc., Tex-Cal Land Inc., and Tex-Cal Land Sales, their officers, agents, and successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally changing their hiring practices by failing to hire seniority crews and instead, unilaterally contracting out bargaining unit work to labor contractors and/or subcontracting out any bargaining unit work to other agricultural employers, or otherwise making any changes in their agricultural employees' wages, hours or working conditions without first notifying the United Farm Workers of America, AFL-CIO (UFW) and affording it an opportunity to meet and bargain about the proposed changes.

(b) Failing or refusing to make available to the UFW, upon its request, information relevant to collective bargaining concerning (1) the tree pruning rate, (2) lease cancellations and subcontracting, (3) the identity of the officers and directors of Respondent Tex-Cal Land Management and the landowners, and (4) the delay in grape pruning.

(c) Failing or refusing to bargain collectively with the UFW over the tree pruning rate, the delay in grape pruning and the hiring of seniority employees.

(d) Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code section 1155.2(a), with the UFW as the certified collective bargaining representative of their agricultural employees.

(e) 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 (Act).

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

(a) Upon request of the UFW, as the certified collective bargaining representative of their agricultural employees, meet and bargain collectively in good faith over the entire bargaining unit and if agreement is reached, embody such agreement in a signed contract.

(b) Upon request of the UFW, as the certified collective bargaining representative of their agricultural employees, meet and bargain collectively in good faith over the tree pruning rate and if agreement is reached, embody such agreement in a signed contract retroactive to the time of its original implementation in 1983.

(c) Upon request of the UFW, as the certified collective bargaining representative of their agricultural

employees, meet and bargain collectively in good faith regarding the effects of the decision to delay the 1983 pruning and if agreement is reached, embody such agreement in a signed contract.

(d) Upon request of the UFW, as the certified collective bargaining representative of their agricultural employees/ provide the UFW with information, not yet provided, relevant to collective bargaining concerning the tree pruning rate, lease cancellations and subcontracting, the identity of the officers and directors of Respondent Tex-Cal Land Management and the landowners, and the lack of funding for and the delay in grape pruning.

(e) Offer to their seniority employees immediate and full reinstatement to their former or substantially equivalent positions, in accordance with the hiring system that was in effect at the time of their unlawful displacement, without prejudice to their seniority or other employment rights or privileges and make whole such employees for all losses of pay and other economic losses they have suffered as a result of Respondents' contracting out work historically performed by them during the 1983 crop year; 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.

(f) Make whole all their present and former agricultural employees for all losses of pay and other economic losses they have suffered as a result of their refusal to bargain

in good faith with the UFW; 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, the period of said obligation to begin February 2, 1983, and thereafter until such time as Respondents end their refusal to bargain regarding the entire bargaining unit and commence good faith bargaining with the UFW.

(g) 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 or makewhole period and the amounts of backpay or makewhole and interest due under the terms of this Order.

(h) 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.

(i) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from February 2, 1983, until the date on which the said Notice is mailed.

(j) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on their property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(k) Arrange for a representative of Respondents or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of their agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(l) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved. Dated: December 9, 1986

JOHN P. McCARTHY, Member

GREGORY L. GONOT, Member

CHAIRPERSON JAMES-MASSENGALE, Dissenting in part:

I respectfully disagree with the majority's conclusion that Tex-Cal Land Management, Inc., (TCLM) Tex-Cal Land Inc., (Land) and Tex-Cal Land Sales (Sales) constitute a single employer, As the majority notes, in determining whether two or more arguably separate entities constitute a single employer, the Agricultural Labor Relations Board (ALRB) has followed the National Labor Relations Board (NLRB) in examining the

(1) interrelation of their operations; (2) common management; (3) common or centralized control over labor relations; and (4) common ownership or financial control. (Radio and Television Broadcast Technicians Local 1264 v. Broadcast Services of Mobil, Inc. (1965) 380 U.S. 255, 256 [85 S.Ct. 876].) Although no single factor is controlling, the factor most heavily weighted by the NLRB is the absence or presence of common or centralized

control over labor relations. (See Fedco Freightlines (1984) 273 NLRB 399 [118 LRRM 1523]; Parklane Hosiery Co. (1973) 203 NLRB 597, 612 [83 LRRM 1630].) The exercise of such control must be actual, not merely potential. (Gerace Corp. (1971) 193 NLRB 645; see also Tex-Cal Land Management, Inc., and Dudley M. Steele (1985) 11 ALRB No. 31, p. 6.)

The General Counsel failed to satisfy his burden of establishing that the labor relations of TCLM and Land/Sales were centrally controlled. In fact, there is little evidence, if any, that Land/Sales even employed agricultural employees so as to provide a basis for our consideration of labor relations affecting employees subject to our jurisdiction.[1] The majority has cited no facts which usually indicate centralized control over labor relations such as interchange of employees between companies involved, use of common supervisors, a common structuring of or control by one entity of wages, hours, or other terms and conditions of employment pertaining to the other entity.

The majority relies on an assumed implementation (rather than what in actuality was only a mere discussion) of a modular farming system by Bud Steele as evidence that TCLM and Land/Sales had a common labor relations policy. Without any explanation or factual support, the majority attributes TCLM's labor policy to

[1]The record reflects only that Land/Sales hired one supervisor who had previously worked at TCLM.

Land/Sales. There is not one iota of evidence that Bud Steele was acting in his official capacity for Land/Sales when he made any decision regarding TCLM's labor relations practices or policies. Nor is there evidence that any other officer or director of Land/Sales was involved in making any decision affecting the labor relations policies of TCLM. Similarly, the record is devoid of evidence that TCLM's agricultural employees were affected by a labor relations policy or practice of Land/Sales or that Land/Sales had agricultural employees who were affected by TCLM's labor relations policies or practices.

A further indication of the insubstantiality of the evidence relied upon by the majority is its reliance on Bud Steele's testimony as to whom he "might" have hired or whom he "could" have hired. Such speculation is clearly insufficient to support a legal conclusion. Even if Steele possessed such power, it would not have constituted active, but merely potential control, (Gerace Corp., supra, 193 NLRB 645.) The leap the majority makes in flatly concluding that TCLM and Land/Sales had a common labor relations policy simply is not supported by substantial evidence.

I agree with the majority's finding that TCLM and Land/Sales are interrelated because TCLM grows crops which are then marketed by Land/Sales. However, insofar as the majority finds the entities interrelated based upon a lack of arm's length relationships, that conclusion is not supported by substantial record evidence. The majority has not relied upon any

substantial evidence in this record to support a finding that Land's/Sales' dealings with TCLM were any different from its dealings with other customers. The majority makes much over the fact that oral marketing agreements were entered into between Sales and the individual landowners and that one of those landowners, Robert MacDonald, was not sure if he signed a document when he borrowed over $50,000 from Sales and was not required to provide any collateral to secure the loan. However, it is undisputed that Land/Sales did not have written marketing agreements with the landowners who were individuals rather than companies.. Moreover, there is no evidence that this was not characteristic of how agricultural marketing operations function. Thus, the significance of the interrelationship of TCLM, Land and Sales to the evaluation of the alleged single employer status is greatly diminished.

The majority finds that TCLM and Land/Sales had a common management commencing in January 1983. While I agree that the record supports the finding that the entities were commonly managed at the very highest level, the significance of the common management findings is lessened by the absence of evidence pointing to common day-to-day management and common managers.

In summary, the evidence does not support the conclusion that Land/Sales and TCLM demonstrated a sufficient degree of interrelatedness on a number of levels to be considered a single employer under the Act. (John Elmore Farms, et al. (1982) 8 ALRB

No. 20.) The absence, in particular, of centralized control over labor relations and the lack of sufficient evidence to show that the business transactions were not at arm's length distinguishes this case from numerous others finding a single employer status. (See e.g., Holtville Farms, Inc., et al. (1984) 10 ALRB No. 49 [common ownership and financial control; integrated operation; considerable overlap in day-to-day management and control over labor relations; overlapping legal representation; and shared facilities]; Nakasawa Farms (1984) 10 ALRB No. 48 [common man agement and ownership; interrelation of finances]; Pappas and Company (1984) 10 ALRB No. 27 [common ownership and management]; Valdora Produce, Inc. (1984) 10 ALRB No. 3 [common ownership; common management; both entities covered by same collective bargaining agreement]; Pioneer Nursery/River West (1983) 9 ALRB No. 38 [common ownership; common management; common control of labor relations]; Perry Farms, Inc. (1978) 4 ALRB No. 25 [common ownership; common control over labor relations]; Abatti Farms (1977) 3 ALRB No. 83 [common management; common financial control; some interchange of employees, shared facilities], Rivcom Corp. v. Agricultural Labor Relations Board (1983) 34 Cal.3d 743, 769 [195 Cal.Rptr. 651] [common ownership, integrated farming and marketing operation; common control over labor relations].)

For all the foregoing reasons, I respectfully dissent from the conclusion that TCLM, Land and Sales constitute a single employer enterprise.

In all other respects I concur with the majority opinion.

Dated: December 9, 1986

JYRL JAMES-MASSENGALE, Chairperson.

MEMBERS CARRILLO and HENNING, Dissenting in part:

The Liability of the Individual Landowners for the Unfair Labor Practices Committed by Tex-Cal Land Management, Inc.

We would uphold the Administrative Law Judge's (ALJ) finding that, under the definition of "agricultural employer" in Labor Code section 1140.4(c), the landowners who cancelled their leases thereby became agricultural employers in their own right and were liable for the ensuing violations of the Agricultural Labor Relations Act (ALRA or Act). As the ALJ noted, this liability stems from the landowners acting "as the medium for another agricultural employer to carry on its business while evading its labor law responsibilities." (ALJ Decision, p. 104.)

In Western Tomato Growers & Shippers, Inc. (1977) 3 ALRB No. 51, we held that an individual, Ernest Perry, violated the ALRA by denying union organizers access to certain fields to speak with agricultural employees. In rejecting Perry's argument that he was not an agricultural employer, and therefore could not

be found to have committed an unfair labor practice, the Board relied on the definition of "agricultural employer" in Labor Code section 1140.4(c):

> The term "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 . . . .

By preventing organizers from entering the fields of two agricultural employers, Perry acted in the interest of those employers and, by virtue of this conduct, was himself chargeable with a violation of the Act. The Board ordered respondent Perry to cease and desist from his unlawful conduct, and to take certain remedial affirmative action, including the posting, reading, and mailing of a notice to employees.

In support of our finding in Western Tomato, we cited an early National Labor Relations Board (NLRB or national board) case, NLRB v. Grower-Shipper Vegetable Association (9th Cir. 1941) 122 F.2d 368 [8 LRRM 891], in which the court approved the NLRB's finding that members of a grower-shipper association were liable for the backpay of certain discriminatees because the members "participated in the scheme which produced the discrimination" [8 LRRM at 900]. The national board had relied on the definition of an "employer" in section 2(2) of the National Labor Relations Act (NLRA), which includes "any person acting in the interest of

an employer, directly or indirectly."[1] The court in Grower-Shipper stated:

> It is obvious and it is reasonable that the interpretation of the Act makes one who aids the immediate employer in contravening the statute an employer also. (Citations omitted.) Such an interpretation is an adoption of the established common law principle that an agent is accountable for his own illegal acts even though performed under conditions imposing liability on this principal.

In this case, the landowners who cancelled their leases acted in the interest of an agricultural employer (Tex-Cal Land Management, Inc. (TCLM)) and participated in a scheme which resulted in a violation of the Act. They are therefore liable as employers pursuant to section 1140.4(c) of the Act.

The NLRB has also found that, under certain circumstances, entities other than the employer of an employee may engage in conduct which violates the NLRA. For example, in Fabric Services, Inc. (1971) 190 NLRB 540 [77 LRRM 1236], a telephone company employee was sent to work on equipment located at another employer's plant. The plant's personnel manager told the employee to remove a penpocket protector that bore a union legend. The employee refused, returned to his employer and reported the incident. His employer instructed him to remove the union pocket protector and to complete the job assignment. In holding both the telephone company and the customer plant liable for a violation of

[1]Untill 1947, the description of an "employer" in section 2(2) of the NLRA paralleled the description of an agricultural employer in section 1140.4(c) of the ALRA, and it is this definition that was at issue in Grower-Shipper. In 1947, section 2(2) of the NLRA was amended to define an "employer" as "any person acting as an agent of an employer, directly or indirectly."

section 8(a)(l) of the NLRA, the NLRB rejected the plant's defense that it was not the employee's employer, and therefore could not be found to have violated section 8(a)(l). The NLRB determined that the language of the NLRA manifests a legislative purpose to extend the statute's protection beyond the immediate employer-employee relationship', and that the plant's personnel manager clearly interfered with and restrained the employee's right to wear a union insignia at work.

In the present case, the landowners, by virtue of their ownership of the properties farmed by TCLM, were in a position to cancel their leases and thereby remove the farming operations performed on their property from the ambit of the collective bargaining agreement between TCLM and the United Farm Workers of America, AFL-CIO (UFW or Union). By knowingly participating in the effectuation of an unfair labor practice (engaging in the modular farming scheme with TCLM, whereby TCLM refused to bargain over a change in the hiring procedures required by the contract), the landowners placed themselves "within the orbit of the Board's corrective jurisdiction." (Fabric Services, Inc., supra, 190 NLRB at 542.)

The NLRB has also held that, where an independent contractor knowingly participates in the effectuation of an unfair labor practice, as opposed to being an entirely innocent and unconscious instrument of the employer violating the Act, the national board will take corrective action. "Common law or statutory concepts of legal relationships must yield in so far as

is necessary to effectuate the purposes of the Act." (NLRB v. Gluek Brewing Co. (8th Cir. 1944) 144 F.2d 847 [14 LRRM 912, 9181.)

Under either the statutory definitions of an employer or the more general policy considerations set forth above/ the NLRB and Agricultural Labor Relations Board (ALRB or Board) will hold accountable entities who have acted in the interest of an employer in the commission of an unfair labor practice. The general remedial purpose of both the national act and the ALRA is served by the imposition of liability on all parties responsible for conduct which interferes with the rights established by these statutes.

We would adopt the ALJ's recommendation that the landowners be ordered to make whole only those employees who would have worked on their respective ranches but for the hiring of labor contractors/custom harvesters to perform such work during the existence of the modular farming scheme. TCLM, Tex-Cal Land, Inc. (Land) and Tex-Cal Sales (Sales) are liable, as a single employer, for the makewhole to be paid employees who suffered losses as a result of the refusal to bargain. In the circumstances of this case, we would hold TCLM, Land and Sales principally responsible for the refusal to bargain, and primarily liable for the makewhole owing. We would hold the landowners who cancelled their leases secondarily liable for losses incurred relative to their respective properties. (See Wabash Asphalt Company (1976) 224 NLRB 820 [93 LRRM 1254]; Georgia Pacific

Corporation (1975) 221 NLRB 982 [91 LRRM 11591.)[2]

Repudiation of a Contract Term

We would find that TCLM violated section 1153(e) of the Act when its negotiator, David Caravantes, advised the UFW's negotiator, Debbie Miller, that TCLM's obligation to hire family members had ceased as of the expiration of the contract. In The Bell Company, Inc. (1976) 225 NLRB 474, an employer violated section 8(a)(5) of the NLRA (analogous to section 1153(e) of the ALRA) by announcing that it would not grant an interim wage increase called for by the existing contract. The national board found that such a statement constituted "a unilateral modification and repudiation of an existing collective-bargaining agreement." (Id., p. 481.) As the majority notes, terms and conditions of employment, including those dealing with hiring, survive the expiration of a collective bargaining agreement. Therefore, Respondent's statement that it would no longer hire relatives of bargaining unit employees constituted a unilateral modification and repudiation of an existing term and condition of employment, and thus violated section 1153(e).

[2]As an alternative basis for holding the individual landowners liable for TCLM's refusal to bargain, we would find that the landowners who cancelled their leases, and then had Michael Steele arrange for cultural practices to be performed on their land, were alter egos of TCLM. (Nelson Electric (1979) 241 NLRB 545 [100 LRRM 1588].) As the land continued to be farmed in exactly the same manner it had been before the modular farming scheme was adopted, control over the farming operations was never in fact transferred to the landowners. The landowners were thus merely "disguised continuances" of TCLM, and the sham transaction resulted in the avoidance of obligations imposed by the ALRA. The landowners should therefore be held liable as alter egos of TCLM. (Dee Cee Floor Covering, Inc. (1977) 232 NLRB 421 [97 LRRM 1588]; Samuel Kosoff & Sons, Inc. (1984) 269 NLRB 424 [116 LRRM 1224].)

We disagree with the majority's statement that the relevant inquiry is whether Respondent actually refused to hire any relatives of bargaining unit employees. The majority's analysis would allow an employer carte blanche to announce unilateral changes in contract terms or terms and conditions of employment/ and place upon the collective bargaining representative the burden of "testing" the sincerity of the employer's announcement, thus requiring the union to engage in what appears to be a futile act. The announcement of a change is the change (see The Bell Company, Inc., supra, 225 NLRB 474), and to hold otherwise serves no salutory purpose and inserts an element of instability into the collective bargaining process. No policy or precedent supports excusing what was exactly what Respondent's negotiator announced it to be -- a unilateral change in Respondent's hiring policy. In all other respects we join the majority opinion.

Dated: December 9, 1986

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Tex-Cal Land Management, Inc., Tex-Cal Land, Inc., and Tex-Cal Land Sales had violated the law. After a hearing at which all sides had the opportunity to present evidence, the Board found that during 1983 we did violate the law by failing to hire seniority crews over those of labor contractors and custom harvesters, in transferring ripping, harrowing, discing, floating, cutting of canes, and flat furrowing to a custom harvester, by failing to bargain with the United Farm Workers of America, AFL-CIO, (UFW) in good faith, by failing to supply the UFW with financial and other information it had requested, by failing to inform the UFW of our intention to prune the prune trees and to provide production information about the pruning of the prune trees so that the UFW could bargain over a new rate, and by failing to inform the UFW of when grape pruning was to begin and to bargain over the effects of this decision. 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 farm workers these rights:

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

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

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

Especially:

WE WILL NOT hire crews of labor contractors and custom harvesters over our seniority employees.

WE WILL NOT subcontract or contract out work belonging to our seniority employees.

WE WILL NOT make any changes in the wages or working conditions of seniority employees without first notifying the UFW and giving them a chance to bargain about the proposed changes.

WE WILL NOT fail or refuse to bargain with the UFW regarding the effects of our decision to change the start-up date of the pruning.

WE WILL restore and reassign to our seniority employees the ripping, harrowing, discing, floating, cutting of canes, and flat furrowing and other work which we illegally subcontracted or contracted out during 1983.

WE WILL offer to our seniority employees immediate and full reinstatement to their former or substantially equivalent positions in accordance with the hiring system that was in effect at the time of their unlawful displacement.

WE WILL reimburse with interest all of our present and former employees who suffered any loss in pay or other money losses because we unlawfully contracted out or subcontracted their work, or unlawfully reduced their work by hiring additional crews during 1983.

WE WILL NOT refuse to provide the UFW with the information it needs to bargain on behalf of our seniority employees' wages and working conditions.

WE WILL in the future bargain in good faith with the UFW with the intent and purpose of reaching an agreement, if possible. In addition, we will reimburse all workers who were employed at any time during the period from February 2, 1983, to the date we begin to bargain in good faith for a contract for all losses of pay and other economic losses they have sustained as the result of our refusal to bargain with the UFW.

Dated: TEX-CAL LAND MANAGEMENT, INC.

By: _____
(Representative) (Title)

TEX-CAL LAND, INC.

By: _____
(Representative) (Title)

TEX-CAL LAND SALES

By: _____
(Representative) (Title)

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CASE SUMMARY

Tex-Cal Land Management, Inc., et al. (UFW)

12 ALRB No. 26
Case Nos. 83-CE-7-D
83-CE-45-D

ALJ DECISION

The ALJ declined to find that the various business entities and Bud Steele formed a single employer relationship with Respondent Tex-Cal Land Management, Inc. But the ALJ found that Respondents Tex-Cal Land, Inc., Tex-Cal Land Sales, and individual landowners were to be held jointly liable under sections 1153(c) and (e) for their participation in the creation of alter egos for Tex-Cal Land Management, Inc.

Specifically, the ALJ found that in 1983 Respondent, Tex-Cal Land Management, Inc., violated the Act in the following respects:

1. Respondent violated sections 1153(c) and (e) by hiring labor contractors or custom harvesters to perform work that should have been performed by bargaining unit employees.

2. Respondent violated section 1153(e) by transferring ripping, harrowing, discing, floating, cutting canes, and flat furrowing to a custom harvester when that work should have been performed by bargaining unit employees.

3. Respondent violated section 1153(e) by changing the prune tree pruning rate from hourly to piece rate without bargaining with the UFW.

4. Respondent violated section 1153(e) by refusing to bargain over the start-up for the grape pruning and the fact that it was going to be delayed.

5. Respondent violated section 1153(e) by refusing to disclose information requested by the UFW relating to the tree pruning rate.

6. Respondent failed to bargain with the UFW in good faith.

The ALJ further found that in 1983 Respondents Tex-Cal Land Management, Inc., Tex-Cal Land, Inc., Tex-Cal Land Sales and individual landowners violated the Act in the following respects:

1. Respondents violated section 1153(e) by refusing to turn over information relative to the cancellation of the leases.

2. Respondents violated section 1153(e) by refusing to turn over a list of their current officers and directors.

3. Respondents violated section 1153(e) by refusing to comply with the labor agreement provision requiring it to hire relatives.

4. Respondents violated section 1153(e) by denying the UFW post-certification access.

5. Respondents violated section 1153(e) by conditioning good faith bargaining on the withdrawal of unfair labor practice charges.

The ALJ also found that the UFW engaged in bad faith bargaining over the subject of the maintenance of medical benefits, and he declined to order contractual makewhole for any diversion of unit work after May 17, 1983.

BOARD DECISION

The Board affirmed the decision of the ALJ on many of the issues but reversed or substantially modified the ALJ's disposition on the remaining issues.

The Board agreed with the ALJ that all the various business entities and Bud Steele did not constitute a single employer with Tex-Cal Land Management, Inc. The Board also found, in conceptual agreement with the ALJ, that Tex-Cal Land Management, Inc., Tex-Cal Land, Inc., and Tex-Cal Land Sales comprised a single integrated employer based upon factors of interrelation of operations, common management, centralized control of labor relations, common financial control, and lack of arm's length relationships. However, the Board disagreed with the ALJ that the individual landowners were after egos for Tex-Cal Land Management, Inc., when they allegedly cancelled their leases and employed labor contractors to farm their land. The Board, instead, found that the General Counsel had failed to prove that the landowners and Tex-Cal Land Management, Inc., shared substantially the same ownership and control over any enterprise or that the landowners could be said to have constituted an entity which was substantially structurally or functionally identical to that of Tex-Cal Land Management, Inc. The Board also held that the landowners were not agricultural employers within the meaning of the Act and thus, could not be liable.

The Board found, as had the ALJ, that Respondent Tex-Cal Land Management, Inc.'s failure to hire seniority crews over those of labor contractors and custom harvesters, as required by the terms of the expired labor agreement, constituted a unilateral change in violation of sections 1153(e) and (a). The Board agreed with the ALJ that the failure of Respondent to hire seniority employees on March 8, 1983, at the "jailhouse" was a section 1153(e) violation, but disagreed that it was discriminatorily motivated in violation of section 1153(c). The Board found it unnecessary to reach the ALJ's further conclusion that the diversion of unit work was "inherently destructive" and violative of section 1153(c) in that the remedy for both (the (c) violation, as found by the ALJ, and the (e) violation, as found by the Board) was identical. Finally, contrary to the ALJ, the Board held that the evidence did not sustain the General Counsel's claim that Respondent failed to give

hiring preference to relatives of seniority employees, as provided for in the expired contract.

The Board did not find that Respondent Tex-Cal Land Management Inc.'s unilateral change from a requirement of oral to written notice for the UPW to take access was a violation of section 1153(e) as it was not a change affecting a mandatory subject of bargaining.

The Union's informational requests concerning the type of business Tex-Cal Land Management, Inc., was, its officers, directors, shareholders, agents for service and principal place of business were relevant and should have been granted. So too were the requests for information regarding the names and addresses of the landowners who allegedly cancelled their leases, the dates of the decisions to cancel, and the effective date of those cancellations. The refusal to turn over all this information was a violation of section 1153(e).

Likewise, another section 1153(e) violation occurred when Tex-Cal Land Management, Inc., refused to supply the UFW with financial information which presumably would have supported its position that it did not know when grape pruning would begin because it had not yet received the necessary funding. Respondent Tex-Cal Land Management, Inc., should also have disclosed financial information concerning the other Respondents as the DFW entertained an objective factual basis for believing that these several Respondents were financially intertwined. (There was no requirement, however, for the Steeles to turn over their individual returns.) Respondent also violated section 1153(e) by failing to provide production information about the pruning of the prune trees so that the UFW, pursuant to the expired labor agreement, could bargain over a new rate.

Contrary to the ALJ, the Board found that the decision of when to prune the grapes did have an impact on seniority crews as the delay meant that more workers had to be hired, and employment was for shorter periods of time. Respondent Tex-Cal Land Management Inc.'s failure to inform the Union of when grape pruning was to begin and to bargain over the effects of this decision was another section 1153(e) violation. Respondent also violated section 1153(e) by failing, as required by the expired labor agreement, to inform the Union of its intention to prune the prune trees in time for the Union to negotiate rates 30 days in advance of the start-up. However, it did not violate the Act by setting a piece rate. Since the labor agreement contemplated either a piece rate or hourly wage, Respondent's action was not a unilateral change.

The Board agreed with the ALJ that the totality of Tex-Cal Land Management, Inc.'s conduct evidenced an intent not to reach an agreement and constituted an unlawful refusal to bargain in good

faith in violation of section 1153(e). (Bad faith was not found in Respondent's cancellation of a bargaining session nor was it found guilty of conditioning good faith bargaining on the withdrawal of unfair labor practice charges.) But the Board disagreed with the ALJ that the UFW was guilty of bad faith bargaining as there was no evidence that the UFW insisted to the point of impasse that Tex-Cal Land Management, Inc., be obligated to pay the sought after additional sums to the medical plan. The Board ordered makewhole until such time as Respondent ended its refusal to bargain. The Board, unlike the ALJ, did not find the factual setting here appropriate for the awarding of costs against Tex-Cal Land Management, Inc., and Tex-Cal Land Sales.

DISSENTING OPINIONS

Chairperson James-Massengale dissented from the majority opinion insofar as it concluded that Tex-Cal Land Management, Inc., Tex-Cal Land, Inc., and Tex-Cal Land Sales comprised a single integrated employing entity. She noted the lack of substantial evidence that these companies were not dealing with each other at arm's length, e.g., that they dealt with each other the same as other customers, the fact that centralized control over labor relations had not been established, e.g., no interchange of employees, no use of common supervisors, no common structuring or control by one entity of the wages, hours or other terms of employment of the other entity, the fact that common day-to-day management had not been shown and the majority's reliance on the speculative testimony of Bud Steele as to whom he "might" or "could" have hired.

Member Carrillo and Henning dissented from the majority's conclusion that the landowners who cancelled their leases in furtherance of the modular farming scheme are not liable for the ensuing violations of the Agricultural Labor Relations Act (ALRB or Act). They noted that the landowners' cancellation of their respective leases helped Tex-Cal Land Management, Inc. (TCLM) carry on its business while evading its labor law responsibilities, and that the landowners were liable either because they acted directly or indirectly in the interest of TCLM, as set forth in Labor Code section 1140.4(c), or because in the commission of the unfair labor practice, the landowners were alter egos of TCLM.

Members Carrillo and Henning also would find that TCLM violated section 1153(e) of the Act when its negotiator advised the UFW that it would no longer hire relatives of bargaining unit employees. They noted that it was irrelevant whether Respondent actually refused to hire any relatives since the announcement itself amounted to a unilateral modification and repudiation of an existing term and condition of employment.

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: TEX-CAL LAND MANAGEMENT Inc.,et al., Respondents and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 83-CE-7-D 83-CE-45-D

Appearances:

Richard Rivera
Arocoles Aguilar
for the General Counsel

David Caravantes
Elias Munoz, Consultant
Gerald Leverett of
Werdel, Chapin & Leverett
Patricia J. Rynn of
Dressier, Quesenbery, Laws & Barsamian for
Tex-Cal Land Management, Inc.

Merl Ledford and
Frederic Hendrix
for Randy Steele, Mary Jane Steele,
Bob Bartholomew, Theda Bartholomew
and Diamond S Leasing

Clare M. McGinnis
for the United Farm Workers

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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I.

INTRODUCTION

A.

Procedural History

In February 1, 1983, General Counsel issued a complaint against Tex-Cal Land Management and Dudley M. (Bud)[1/] Steele Jr. alleging that the two Respondents constituted a single agricultural employer and, as such, were jointly and severally liable for the discriminatory refusal to recall Respondent's grape-pruning crews, .for the discriminatory subcontracting out of bargaining unit work and for the concomitant refusal to bargain over these acts construed as unilateral charges in Respondents' hiring practices.

Dudley M. Steele Jr. and Tex-Cal Land Management duly filed separate answers to the complaint. On April 4, 1983, General Counsel filed a first Amended Complaint making additional allegations of discrimination against Respondents and further alleging that they unilaterally changed the terms and conditions of employment of their employees hired through labor contractors.

On June 10, 1983, General Counsel issued another complaint against the presently named Respondents alleging that all of them constituted a single employer and, as a result, all of them were liable for refusing to recall certain crews, for discriminator!ly subcontracting out a variety of bargaining unit work, for discriminatorily refusing to hire employees referred by the United

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1. Since the actions of Dudley M. (Bud) Steele Jr. and Dudley (Randy) Steele figure prominently in the following narrative, for convenience, I have chosen to refer to them by their nicknames: Dudley M. Steele, Jr. is "Bud" and Dudley R. Steele is "Randy".

Farm Workers, and for refusing to bargain in good faith with the United Farm Workers. On June 24, 1983, Randy[2/] and Mary Jane Steele, and Robert and Theda Bartholomew filed an answer to this complaint;[3/]' on June 28, 1983, Tex-Cal Land Management filed an answer to the complaint.

On July 12, 1983, General Counsel moved to amend and to consolidate both complaints and proposed, as a First Amended and Consolidated Complaint, a complaint that essentially refined the allegations contained in the June 10, 1983 complaint to the effect that all the presently named Respondents constituted a single agricultural employer and that, as such, all of them had a bargaining obligation with the United-Farm Workers; that all of them breached it by unilaterally changing a number of terms and conditions of employment of their employees and that all of them were guilty of a variety of discriminatory acts aimed at depriving Tex Cal Land Management's organized employees of employment. General Counsel's motions were granted; the complaints were consolidated and hearing commenced on the allegations of the First Amended Consolidated Complaint on July 26, 1983.[4/] It concluded on

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2. See note 1, supra.

3. The Answer filed by Randy and Mary Jane Steele, and Robert Bartholemew and Theda Bartholemew purported to be filed on behalf of Tex-Cal Land Management, too; but Counsel for Randy and Mary Jane Steele and Robert and Theda Bartholemew was subsequently enjoined from representing Tex-Cal Land Management, see Pre-Hearing Conference July 19, 1983, p. 2.

4. During the hearing, General Counsel moved to amend the complaint to allege *a* general course of bad faith bargaining. GCX 1(P). This motion is granted.

September 7, 1983.[5/]

B.

Identification of the Named Respondents[6/]

In view of the number of Respondents in this case, identification of each of the entities and individuals and a brief description of (at least some of) their relationship(s) to each other will be helpful:

1.

Tex-Cal Land Management Corp. is a California corporation formed in December 1973 by Robert J. MacDonald, William D. Anderson and Barbara Knoke for the primary purpose of "operating and managing farm properties." (GCX 11, GCX 7 Article 2[a].) The office of Tex-Cal Land Management is at 1215 Jefferson Street, Delano, California. At present, Tex-Cal Land Management owns no land;[7/] it farms land it leases from many of the other named Respondents. The largest amount of land historically leased by Tex-Cal Land Management has been leased from Tex-Cal Land Inc. and from Bud Steele. In 1977, Tex-Cal Land Inc. and Bud Steele signed separate

5. After the hearing, General Counsel moved for the admission of GCX 226 and Tex-Cal Land Management moved for admission of RX 16, 17, 18. Both motions are granted.

6. Although for the reasons stated in Part IV of this opinion, I have rejected the precise scope of General Counsel's "single employer" theory in this case, I have chosen to outline the evidence pertaining to the various Respondents in such detail because it is pertinent to what I have found and it will be useful to the Board in reviewing my decision.

7. GCX 32, a water agreement, indicates that at one time Tex-Cal Land Management owned property identified as the north half of section 16, township 33, south range 26, east MDB&M in Tulare County. This property corresponds to parcels 17, 19, 20, 21 identified in GCX 35, Exhibit B. It is impossible to tell from GCX 35 what ranches these parcels comprise.

long term leases with Tex-Cal Land Management leasing in excess of 3,000 acres between them to Tex-Cal Land Management for farming purposes.[8/] Although none of the other Respondents owns as much land as either Tex-Cal Land Inc. or Bud Steele do, together they own in excess of 3,000 acres which, since 1976, they have leased to Tex-Cal Land Management for farming purposes.[9/]

8. Tex-Cal Land Inc. owns the following ranches: 56 (Caldwell); 57 (Crown); 66 (MacFarland); 67 (Phillips); 71 (Dulcich, 20); 75 (Poso South); 76 (Reed); 80 (Dulcich 220); 85 Poso West.) The total acreage is in excess of 2,000 acres. (GCX 2 [Tab X].)

Bud Steele owns these ranches: 33 (Lawrence); 47 (Barkley); 48 (Maloy); 49 (White River); 51 (Roberts); 58 (Garvin); 59 (Kennett); 64 (Marshall); 68 (San J); and 79 (Hamilton). The total acreage is in excess of 1,000 acres. (GCX 2 [Tab X].)

To obtain the total amount of acreage, I have added the acreage for each ranch contained in the Master Cost list attached to the leases.

9. Bud Steele initially owned some of the ranches now held by the other landowners and has an equitable interest, by way of deeds of trust, in some of them. (XII:70;)

Counsel for Randy and Mary Jane Steele also elicited testimony that Bud Steele held quit claims on ranches ostensibly owned by Randy and Mary Jane Steele and that Tex-Cal Land Inc. "could" hold quit claims to ranches that stood in the names of the other landowners. (XII:168-181.) In this often confusing hearing, this was by far the most bizarre piece of testimony to come out.

Bud Steele and his son, Randy, had a bitter falling out sometime during the pendency of these proceedings and it appears from the testimony that Randy Steele attempted to quit claim his recorded interest in the ranches to his son in order to head off his father's recording any quit claims he (Bud) might have held on the same land. Although Randy's maneuver would appear to indicate that he feared a quit-claim did exist, he denied he had ever "seen" one (IX:41) and I take this as a denial that he had ever executed one. (Randy's testimony was the second instance in which hints of forged documents surfaced in the fight between the two men. (IX:41.) Bob Bartholemew, Randy's ally in the corporate split, earlier alleged that Bud had forged Randy's name to certain documents. See GCX 48, Bartholemew Declaration, pp. 6-7.)

(Footnote continued——)

The leases require Tex-Cal Land Management to pay all taxes, make all payments required under the deeds of trust to which the leases are subject, and to grow and harvest all crops at Tex-Cal Land Management's own cost and expense. (See GCX 2, sections 3, 4, 9; also GCX 3, sections 4, 9, 21.)[10/]

The grapes grown by Tex-Cal Land Management are sold under various labels: "Diamond S"; "Tex-Cal"; "Better Test"; "Sun Test"; "Roxie" and "Steele". The Diamond-S, Tex-Cal, Sun Test and Roxie labels all identify Tex-Cal Land Inc. as the grower and shipper of the grapes sold by them. (GCX 22.)[11/]

(Footnote 9 continued----)

In view of the bitter fight between the two men, the fact that no quit claims were ever subpoenaed or produced, and most importantly, the incredible antagonism between Bud and Merle Ledford, Randy's attorney, which made all of Bud's testimony under Ledford's examination appear distorted and perverse, I am discounting this testimony.

10. There are two sets of leases for some of the ranches: most of the leases contained in GCX 2 were executed in July 1977 (one lease was executed January 1979 [GCX 2(L)], and all of them have 10 year terms; the leases contained in GCX 3 were executed in 1976, and all of them have 5 year terms. Apparently all the property leased in GCX 3 was bought from Lawrence Vineyards since all of them recognize outstanding deeds of trust held by Lawrence Vineyards. (GCX 3, section 25.) There is no explanation why there were two sets of leases. (See e.g. XII:193.) The 1976 "Lawrence" leases contain a provision, Section 25, which requires Lawrence to be given the option to farm the land in case Tex-Cal Land Management defaults on any of its obligations under the leases. If this provision in the Lawrence leases corresponds to any provision in the terms of the sale between Lawrence Vineyards and the landowners, the owners of the Lawrence parcels could not have undertaken to farm their own lands without prior permission from Lawrence Vineyards. However, the deeds of trust between Lawrence and the landowners were not produced.

11. GCX 22 is an August 14, 1980, advertising circular for California grapes. It contains a full-page ad for "Tex-Cal: Grapes from Our Delano Vineyards: Buddy Steele" and has pictures of the six labels identified above.

Randy Steele became the sole shareholder of the stock to Tex-Cal Land Management in 1973 when the stock was "given" to him, "possibly" by his father, Bud Steele. (IX:1.) Bud Steele was the first President of TCLM (IX:2) and remained president until 1979 when Randy succeeded him (IX:2).[12/] According to Bud Steele, he had nothing to do with the running of Tex-Cal Land Management since his resignation as President in 1979, XII:56, see also, RX 12, XX:52-53, except as it might have been necessary to consult on marketing questions during the harvest. (XX:53.) However, Randy Steele and Bob Bartholemew, Tex-Cal Land Management's Vice-President in Charge of Finance until June, 1983, testified that even though Bud was no longer an officer of the company, he interfered in the management of it.[13/] (IX:43, 47-48 [Randy Steele]; XIV-.79 [Bartholmew].)

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12. According to Bud, he was required by government regulations to sever connections with Tex-Cal Land Management when he began to market the grapes through Tex-Cal Sales. (XX:13-14.)

13. Bob Bartholemew testified that Bud would "override" Randy's decisions on occasion (XIV:79), but he couldn't recall any specifics. Randy Steele testified that Bud Steele was actually running the company in 1982 and 1983. (XIV:47-48.) Randy testified that when he assumed the presidency:

> There was a verbal agreement between Bud and myself that Tex-Cal Land Management would be run by myself and that I would periodically consult with him when I thought it was necessary but that based upon D.M. Steele's whims and desires at any given specific point in time, he would arbitrarily make up his mind and change any cultural operation that would be going on at that time and that was not limited to my decisions but to his decisions as well.
>
> (IX:48.)

Randy also testified that Bud went on the ranches "periodically throughout the week" and would direct the activities of the foremen. (IX:48-49.) As I will explore later, I do not credit Randy's testimony against his father because I believe Randy is out to hurt him.

(Footnote continued---)

Except for Randy's and Bartholomew's testimony, there is very little evidence of Bud's involvement in the day to day affairs of Tex-Cal Land Management prior to the end of January, 1983. However, it is clear that he performed some actions as a representative of Tex-Cal Land Management when he was ostensibly without any authority. For example, in 1982 he signed the water application on behalf of Tex-Cal Land Management. (GCX 33.)

Besides farming the land for the landowners, Tex-Cal Land Management provides other services for them; for example, insurance for the individual landowners is provided under a single policy issued to, and paid for, by Tex-Cal Land Management which, according to Betty Kruger and Linda Tipton, is reimbursed by the various non-employee insureds. (VIII:123-125, 128; VII:90, GCX 163,

(Footnote 13 continued----)

Employee Esther Sandoval testified Bud Steele looked at some grapes she was packing in November 1982. The incident occurred when she hailed Steele as he was driving by in his car. He stopped in response to her greeting, got out of his car and entered the fields to look at a few boxes of packed grapes. Other than to indicate that Steele was concerned with the quality of the crop, a fact for which his position as its sales representative already provides ample proof/ the testimony adds very little to General Counsel's case.

There is one other piece of testimony General Counsel relies on to establish Bud Steele's interest in Tex-Cal Land Management's day-to-day affairs, namely, his purported assertion that Tex-Cal Land Management was "his" company during a grievance hearing in October, 1982. Post-Hearing Brief, p. 113, 1:54-57. I do not credit the testimony. Bud Steele has been resisting being considered a joint employer with Tex-Cal Land Management since last year when General Counsel first alleged it in Case No. 81-CE-64-D. During the time he is asserted to have stated Tex-Cal Land Management was his company, trial of 81-CE-64-D was actually going on and it seems highly unlikely to me that he would assert casually what he has been at such pains to deny formally.

164.)[14/]

2.

Tex Cal Land Inc. (Land, Inc.)[15/] is a Texas Corporation formed in 1970 by Theodore Flick, Sam Minter and David Grey. (GCX 4.) Although Bud Steele testified that he has never been a shareholder, and that Respondent Earl Winebrenner is, and always has been, the sole shareholder of Tex-Cal Land Inc. (XII:6), GCX 10, a statement of the identity of the officers and owners of Tex Cal Land Inc. signed by Betty Kruger, Secretary of the corporation, identifies Bud Steele as the sole shareholder of Tex-Cal Land Inc.[16/] Whoever owns the company, Bud Steele is President,

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14. Tex-Cal Land Management's insurance policy also covers many of the employees of the other named entities in this case, such as California Agri-Sprays and Tex-Cal Supply Co. Randy testified that the other entities carried their own policies and Tex-Cal Land Management simply paid for them. (IX:45.) That seems unlikely in view of the statements contained in GCX 163 and 164.

15. The caption includes Tex Cal Land Co. as a named Respondent distinct from Tex-Cal Land Inc. Although the sign at 1215 Jefferson Street, where Tex-Cal Land Management offices are located, reads "Tex-Cal Land Co.," General Counsel concedes there is no Tex-Cal Land Co. (Post Hearing Brief, p. 8.) Accordingly, the complaint is hereby dismissed as to Tex-Cal Land Co.

16. GCX 10 is dated April 23, 1980. Because I have no idea under what circumstances this document was prepared, I cannot rely on it as necessarily more accurate than Bud Steele's denials that he ever owned any shares of Tex-Cal Land Inc. (XII:6, lines 13-14.) I should also note that, although Steele's denials of ownership (when made) were emphatic, they were preceded by testimony that he did own Tex-Cal Land Inc. (See XII:3.) Steele's internally inconsistent testimony and, in turn, the inconsistency between his ultimate denial that he ever owned Tex-Cal Land Inc. and Kruger's attribution of ownership to him raises a question about who actually owns the .company. My own confusion is shared by the Farmers Home Administation which was obviously told by someone in Tex-Cal Land Management that Tex-Cal Land Inc. is "owned by Dudley M. Steele, Jr., the father of Dudley R. Steele . . . " since that statement

(Footnote continued----)

Marshall Platt is Vice-President and Betty Kruger is Seeretary/Treasurer. (VIII:71; XII:4.) Earl Winebrenner is Chairman of the Board, and according to Bud Steele, actively participates as an officer and director in running the company.[17/] (XII:5.) Randy Steele was formerly an officer.[18/]

(Footnote 16 continued----)

appears in Note to State Director in connection with Tex-Cal Land Management's October 31, 1982 Application for a $14,000,000 loan. (See RX 8(0), p. 2.)

In general, I can understand that the proliferation of business entities in this case could create some confusion about who owns what in even the most pertinacious of minds, and I believe the record does contain examples of Bud Steele's genuine confusion about what he owns, (See, e.g., his testimony about whether he owned California Agri-Sprayers or Tex-Cal Supply Co., XII:15, 17); however, the record also reveals that Bud has, by turns, denied and asserted interests in certain entities as may have been convenient to him. For example, in 1982 he claimed to have divested himself of all interest in Diamond-S Leasing (RX 12); yet at the hearing he denied that this was so.

17. Earl Winebrenner granted Bud Steele Power of Attorney for himself on June 30, 1979, including the powers to buy, sell or transfer any shares of stock and to transact any business of whatever nature for him. (GCX 27.) Since Winebrenner is a resident of Texas, Bud Steele might have needed the Power of Attorney in order to act on his behalf in out-of-state transactions. Thus, the mere possession of the Power of Attorney is not necessarily inconsistent with Steele's testimony that he only acts after consultation with Winebrenner. On the other hand, with the Power of Attorney, Steele doesn't need to consult with Winebrenner. The actual relationship is a question of fact about which no testimony other than Steele's was elicited. It will not be necessary in this case to decide to what extent or ends Bud Steele utilizes the power of attorney.

18. See GCX 10 (Randy is listed as Vice-President); also, IX:15 (Randy "thinks" he was Secretary of Land Inc. at one time). I should also point out that Bud Steele was given Power of Attorney for Tex-Cal Land Inc. on November 13, 1972, with apparently full power to act on behalf of the corporation in all contractual and real estate matters as well as in matters relating to the buying, selling, mortgaging or dealing of certificates of shares of stock in the corporation. (GCX 25.)

3.

Tex-Cal Sales (Sales) is a subsidiary of Tex Cal Land Inc.;[19/] it sells the crops (grapes, almonds and kiwis) grown and harvested by Tex-Cal Land Management. Approximately two-thirds of all the grapes sold by Sales are grown and harvested by Tex-Cal Land Management; all of Sales' almond sales are almonds grown and harvested by Tex-Cal Land Management; and half of Sales' kiwi sales are kiwis grown and harvested by Tex-Cal Land Management. (XII:7.) Tex-Cal Sales gets a 3% commission on crops sold by it. (IX:41.) It has no staff separate and apart from the employees of Tex-Cal Land Inc.; indeed, its employees are those of Tex-Cal Land Inc. assigned by that company (XII:6)[20/] to perform functions considered to be Tex-Cal Sales' functions. As we shall see, Tex-Cal Sales has "rolled over" money from its sale of these crops to Tex-Cal Land Management in order to provide Tex-Cal Land Management with operating capital (XI:24, 31), essentially loaning money for Tex-Cal Land Management's use which, pursuant to crop liens, was actually owing to the Farmer's Home Administration. (XII:45.) Tex-Cal Sales has no written agreements from any of the landowners to market the crops grown on their land. (XII:45.)

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19. See GCX 156, a financing statement which indicates Tex-Cal Sales is a dba for Tex Cal Land Inc; also XII:8 (Testimony of Bud Steele).

20. Tex-Cal Sales was created in 1980; for one year (1979) before the creation of Sales, Tex-Cal Land Inc. sold the crops grown and harvested by Tex-Cal Land Management. (XII:8.) Before 1979, Tex-Cal Land Management sold the crops it harvested through Tenneco, Nash-de-Camp, Pandol Brothers and Charles Gilb Co. (XII:8.) Charles Gilb is now Sales Manager of Tex-Cal Sales. (XII:8.)

4.

Tex-Cal Supply Co. (the Supply company) is a California Corporation formed in 1974 for the primary purpose of engaging in "the manufacture, sale and application of farm fertilizers and chemicals and [the] supply of farm equipment." (GCX 9(a), Article 2(a).) Two of its original incorporators, Robert J. MacDonald and Barbara Knoke, were among the original incorporators and directors of Tex-Cal Land Management Inc. (GCX 9(a), pp. 4, 5.) Bud Steele was the first and has been the only President of the corporation. (XII:21.) Apparently, the Supply company is a wholly owned subsidiary of Land Inc. (GCX 294; IX:45.) The Directors of the corporation are Bud Steele, Betty Kruger and Carl Steele (Bud Steele's brother). The officers are Bud Steele (President and Chief Financial Officer) and Betty Kruger (Secretary). (GCX 9(b); XIII:84; XII:21 et seq.) Tex-Cal Supply is essentially the purchasing agent for the various business entities named as Respondents with respect to items such as chemicals, paper supplies (IX:45; XII:21) and some spare parts for machinery. (XII:22.) The Supply company also provides maintenance to Tex-Cal Land Management's machinery. (XII:23; IX:45.)[21/] Its offices are at 1215 Jefferson Street, Delano, California. (G.C. 9(b).) It stores equipment at a building called the Edison Building on County Line

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21. Bud Steele testified that the Supply company ceased servicing TCLM's machinery during the period of time TCLM was not working the leases. (XII:23.)

Road, Delano.[22/] (XII:27.)

5.

Tex-Cal Cold Storage(s) provide storage for the crops marketed by Tex-Cal Sales. (XII:149.) The storages are owned either by Tex-Cal Land Inc. or by Bud Steele. (XII:90.)[23/]

6.

California Agri-Sprayers (Cal-Ag) is apparently owned by Bud Steele. (VIII:4; OCX 203.)[24/] Bud Steele is President of the company (XII:19); Michael Steele is Vice-President (VIII:4); Betty Kruger is Secretary-Treasurer (VIII:87, XII:19). Michael Steele is also the Chief Executive Officer. (XII:18; VIII:3.) Cal-Ag. shares a yard with Tex-Cal Supply (XII:27)[25/] which performs mechanical

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22. Bud Steele testified the building on County Line Road was owned by Earl Winebrenner. (XII:26.) GCX 155, a recorded financing statement executed on behalf of MCS Leasing Co., a company owned by Bud Steele (XII:28), indicates that Bud Steele owns the building. The filing was not signed by Steele himself but by someone whose name is illegible purporting to act pursuant to a power of attorney.

23. There are three cold storage facilities; Betty Kruger testified at least two of them are owned by Tex Cal Land Inc. (XII:90.) She also testified that Bud Steele owns the storages. (XII:90, XII:88.) As noted earlier, Steele testified that he does not own Tex-Cal Land Inc., supra at 8.

24. Steele testified he owns either Tex-Cal Supply or California-Agri Sprayers and the one not owned by him is owned by Land Inc. GCX 203 and 204 indicate that Land Inc. owns Supply (GCX 204) and Steele owns California Agri-Sprayers. (GCX 208.)

25. The building on the yard also houses two other entities, 3-S Accounting and MCS Leasing. Ibid. 3-S Accounting is a bookkeeping service which provides services to Tex-Cal Land Management, Tex-Cal Land Inc., Tex-Cal Sales, California Agri-Sprayers, and MCS Leasing. It also provides services to many other entities, including labor contractors such as Gilbert Renteria. (XII:28-29.) It is owned by Bud Steele. (VIII:90.) The offices of 3-S used to be at 1215 Jefferson St. (VII:167.)

work for Cal-Ag equipment. (VIII:4.) Cal-Ag has helicopters, and grape, herbicide and orchard spray rigs which are used for applying chemicals to trees and vines. (VIII:3.) It leases some vehicles from Diamond S Leasing and some from MCS Leasing (not named in the complaint). (VIII:5.) Cal-Ag provides sufficient services to the Land Management company to have been invited to a general meeting to discuss the state of affairs of the company. (VIII:7-8.)

7.

Table King Ranch (Ranch 69) is owned by Marshall and Ethel Platt. (XII:10) According to Bud Steele, he farms Table King Ranch through Bonnie Bairn Farms, a subsidiary of Tex-Cal Sales. (XII:35.) Sales assigns personnel to Bonnie Bairn as needed. (XII:36.) Bonnie Bairn's offices are at the Edison Building. (XII:36.) Bonnie Bairn is in the business of "overseeing properties of absentee owners that the Sales company has a marketing agreement or marketing contract [with] . . . ." (XII:35.)[26/] Bonnie Bairn Farms also farms Ranch 40, Ranch 49, Ranch 48. (XII:35-36.) Considered as an entity separate from any of the other named Respondents, Table King Ranch is not an agricultural employer; it is simply a piece of property. I therefore recommend dismissal of the complaint against it.[27/]

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26. As noted, Steele testified there are no written marketing agreements between Sales and the landowners.

27. Table King Ranch is named in the caption of the First Amended Consolidated Complaint and in Paragraph 3 as a Respondent. I shall separately consider the question of the status of ranches 48, 49 and 69 in this complaint.

8.

Diamond S. Leasing Company is/was a partnership between Randy and Bud Steels. (IX:5; XII:30, OCX 16.) Although Randy testified that he became the sole owner of Diamond S in 1981 when he bought out his father (IX:7), Bud testified that he was still a partner. (XII:30, 34-35.)[28/] Diamond S leases vehicles and equipment to Tex-Cal Land Management. (IX:11.) Bud Steele testified the company was "dormant" in 1983 (XII:30), but OCX 209 indicates that Tex-Cal Land Management was the registered owner of quite a few vehicles legally owned by Diamond S Leasing Company during 1983[29/] and GCX 206, 207A, B and 208 indicate that in August 1983, Tex-Cal Land Management made the loan payments on behalf of certain pieces of equipment bought by Diamond S and financed by the Bank of Stockton.[30/] Randy testified that Diamond S equipment was "switched over" to MCS leasing by Bud Steele and Betty Kruger. (IX:12.)[31/] Diamond S also leases agricultural land to TCLM. (See GCX 2 Ranch 81 (Master Cost List).)

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28. However, Bud Steele did testify he plans to dissolve the partnership. (XII:35.) Bob Bartholomew, corroborating Randy, treated the dissolution as a fait accompli, (XIV: 68-69), and RX 12, a letter written by Bud Steele, contradicts his testimony since it asserts that Bud severed all ties with Diamond S on March 1, 1982. On March 7, 1983, Bud Steele purported to cancel the lease on Ranch 81, a ranch which, according to Respondent's Master Cost, was owned by Diamond S Leasing Company. (See GCX 2(A) Master Cost List.)

29. GCX 209 contains part of the 1973-74 registration forms for Chevy pickups, License numbers: 1R70385, 1R70383, 1R70382, and one Chevy flatbed, License number 1W25728.

30. The attachment to GCX 207B lists a variety of equipment (from calculators to tractors) leased from Diamond S by Tex-Cal. The list is not dated.

31. Randy did not proffer any evidence of such transfers.

9. The Individual

Landowners

a.

Dudley M. (Bud) Steele, Jr.

As noted earlier, Bud Steele owns approximately 1200 acres of land, most of which are leased to Tex-Cal Land Management. (XII:9.) He also holds the Power of Attorney for Earl Winebrenner, and Imogene Winebrenner. (GCX 27.) He has an office at 1215 Jefferson Street, Delano, California.

b.

Dudley R. (Randy) Steele

Like his father, and in addition to the previously described capacities, Randy Steele also leases land to Tex-Cal Land Management. (See GCX 2A, GCX 3.) He was given Power of Attorney for his father on March 15, 1979. (See GCX 27.) Among the specifically enumerated powers granted by that instrument was included the power:

> (4) To act for me in any and all ways in any business in which I now am, or have been, or may be, engaged or interested in any way[32/]

For most of the period this litigation concerns, Randy was pretty much out of the picture; hospitalized in the winter of 1982, he didn't return to work until spring (March or April), 1983 shortly before he was ousted as a Director of Tex-Cal Land Management on June 24, 1983. (GCX 14a.)

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32. This Power of Attorney was revoked on June 27, 1983. See RX 13(A) and (B).

c.

Mary Jane Steele

Mary Jane Steele is the wife of Randy Steele. She is the owner, with her husband, of land leased to Tex-Cal Land Management. (GCX 2C.) As will be described, for a brief period of time she was Acting President of Tex-Cal Land Management.

d.

Carl and Grace Steele

Carl Steele is Bud Steele's brother; Grace Steele is Carl Steele's wife. They lease agricultural land to Tex-Cal Land Management. (GCX 21(D); GCX 3.) Carl Steele used to work for TCLM; he -receives a "pension" from Tex-Cal Land Management and occasionally provides consulting services, particularly on pumping systems. (XIX:1-2.)

e.

Michael and Gayle Steele

Michael Steele is Carl and Grace Steele's son; he is the nephew of Bud Steele. Besides holding various positions in the companies described above, Michael Steele, along with his wife, leases agricultural land to Tex-Cal Land Management. (GCX 2F, 2G, 21, 3.)

f.

C.A. and Weltha B. Hansen, Steve Hansen[33/]

Steve Hansen, C. A. Hansen and Weltha B. Hansen lease agricultural land to Tex-Cal Land Management. (GCX 26; GCX 3.)

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33. Steve Hansen owns part of Ranch 31 with Mary Jane Steele. (GCX 2 (Tab C).)

g

Robert J. and Jean MacDonald

Robert J. MacDonald and his wife Jean MacDonald lease agricultural land to Tex-Cal Land Management. (GCX 2F, 21, GCX 3.)[34/]

h.

Dovie Horton

Respondent Dovie Horton leases agricultural land to Tex-Cal Land Management. (GCX 2F; GCX 3 .)

i.

Wanda Guerber

Respondent Wanda L.Guerber leases agricultural land to Respondent Tex-Cal Land Management. (GCX 2F; GCX 3.)

j

Earl and Imogene Winebrenner

Respondents Earl Winebrenner and Imogene Winebrenner lease agricultural land to Respondent Tex-Cal Land Management. (GCX 2S, 2T; 2W.)

k.

Betty and Robert Kruger

Respondents Betty Kruger and Robert Kruger lease agricultural land to Tex-Cal Land Management. (GCX 2L, 2M.)

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34. Robert MacDonald is also an attorney; as such he has performed services for Bud Steele (such as preparation of the proxy Bud holds to vote Randy's shares of Tex-Cal Land Management stock) as well as the other landowners (such as representing them in the acceleration hearing before the Farmers Home Administration, See GCX:175; and in cancelling the leases of various landowners, XII: 200).

l.

Robert and Theda Bartholemew

Respondents Robert Bartholemew and Theda Bartholemew lease agricultural land to Respondent Tex-Cal Land Management. (GCX 2N, 20, 2Q.)

m.

Marshall and Ethel Platt

Respondents Marshall and Ethel Platt lease agricutlural land to Respondent Tex-Cal Land Management. (GCX 2P.)

C.

The Parties' Contentions

1.

General Counsel's theory of the case is variously stated,[35/] but its thrust is always the same: that all of these Respondents comprise a single agricultural employer and that, as such, all of them had an obligation to bargain with the United Farm Workers which they breached, in a variety of ways, including failing to bargain in good faith, and that all of them violated Labor Code section 1153(c) by discriminatorily diverting the work ordinarily

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35. For example, General Counsel's brief characterizes Tex-Cal Land Management as an "alter ego" used by approximately forty joint ventures, by which I presume she means the other landowners, and all of the Respondents as constituting a single integrated enterprise which, in turn, is merely an "alter ego" of Bud Steele.

So far as the "joint venture" argument is concerned, I reject it summarily. See Great Lakes Dredge and Dock Co. (1979) 240 NLRB 197 in which the Board finds a joint venture based upon detailed analysis of the particular contractual relationship between several entities, including identification of a specific "Joint Venture" to be conducted between them. No such evidence of a joint venture is present in this case.

performed by their union-represented employees to labor contractors. Essentially, General Counsel contends (and it is largely borne out by the evidence) that the operations of Respondent Tex-Cal Land Management were shifted to non-union labor contractor crews-

Before briefly describing Respondents' defense, it must be noted that very few of them even answered the complaint. Of the thirty-two Respondents, only Tex-Cal Land Management, Inc.; Bud Steele, Randy and Mary Jane Steele, and Robert and Theda Bartholomew filed answers. Bud Steele answered the complaint on his own behalf; Randy and Mary Jane Steele, Robert and Theda Bartholemew were represented by the same counsel who filed an answer on behalf of all of them. Of these answering Respondents, only Tex-Cal Land Management; Randy and Mary Jane Steele and Robert and Theda Bartholemew participated in the hearing to the extent of having representatives present some of the time and only Tex-Cal Land Management had representatives present throughout the hearing. Finally, only Tex-Cal Land Management actually put on a defense. To speak of Respondents' defense, then, is primarily to speak of Tex-Cal Land Management's defense, although, answering for himself, Bud Steele has generally denied the allegations of the complaint and, relying on Alaska Roughnecks and Driller Association v. N.L.R.B. (9th Cir. 1977) 555 F.2d 732, cert. den. 434 U.S. 1069, has contested the Board's power to impose a bargaining obligation on him in these proceedings.[36/]

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36. In my interim ruling dated May 17, 1983, I ruled that if General Counsel could show some change in the employing entity pursuant to actions taken by Bud Steele, the Board was not without power to impose a bargaining obligation on him.

Tex-Cal Land Management's defense to the bad faith bargaining is simple: it contends that the union's unyielding and hostile attitude toward it, made ageement impossible. It's defense to the major allegations of the complaint involving the diversion of unit work is also easy to state although the evidence adduced in support of it is hard to follow: it concedes that most of the loss of unit work took place, but it argues that it is blameless because it lost the right to perform the pruning and pre-harvest work which it historically performed on leased lands when (most of) the landowners cancelled their leases and decided to farm their own land (at least temporarily). The details of its defense paint an unhappy picture of a father and son driven apart and of an agricultural operation struggling for survival against tremendous financial pressures. It is within this context that the alleged unfair labor practice took place and Respondent Tex-Cal Land Management essentially defends itself as a hapless victim of forces beyond its control.

D.

Summary Dismissals

Before turning to detailed consideration of the major allegations of the complaint, there are a number of allegations that may be summarily disposed of: these are, (1) the allegation of a pattern of discrimination against union employees commencing in November, 1982; (2) the allegation of illegal subcontracting of the ripping in the fall of 1982; (3) the allegation of discrimination against union employees on March 2, 1983 and, finally, (4) the allegations concerning ranches 48, 49 and 69. My reason for

dismissing the first three allegations is failure of proof; my reason for dismissing the remaining allegation is essentially equitable.

1.

The Alleged Discrimination Against the Steadies from November 1982 through December 1982

According to General Counsel, "uncontradicted [Tex-Cal Land Management] workers' testimony, and [Tex-Cal Land Management's] own payroll labor distribution sheets demonstrate that the [Tex-Cal Land Management] steadies were not given year-round employment after November, 1982." (Brief, p. 17.) With respect to the period November 1982-December 31, 1982, General Counsel has overstated the case considerably.[37/]

a.

General Counsel presented the testimony of a few steadies to identify the tasks they perform. Erasmo Espinosa, a steady tractor driver, testified that he did all kinds of tractor work for Respondent Tex-Cal Land Management, including discing, ripping, driving a "bercerritas"[38/] and shredding. (IV:7-10.) However, the primary tractor operation he performed was discing, which was ordinarily done from December through mid-July when he would begin to swamp again until mid-November when the heavy tractor work (discing or ripping) once again began. (IV:13-15.) Manuel Ayala

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37. I have chosen to separate 1982 activity from 1983 because, as I have noted, even Tex-Cal Land Management concedes that in 1983, its regular employees lost work.

38. A "bercerritas" is a tractor attachment which is used to knock down the border from a vineyard. (IV:9.)

testified that, as a steady irrigator (IVi74}, he typically dug holes for the posts; repaired posts and stakes; set down the wire, crosses and stakes for installation; occasionally weeded during January and February (IV:65-66); prepared the pipes for laying out in March and April; irrigated in May and June; swamped through November (IV:67) and cleaned up in December. (IV:68.) Both of the witnesses, then, described tasks they performed through November and December.

b.

So far as proof of the alleged change in their work patterns goes, Erasmo Espinosa testified that he did not work in December, 1982 although he had worked in previous Decembers. (IV:20-21.) However, Augustin Gonzales, another steady tractor driver (XI:43), testified he was laid off toward the end of November and throughout December "because of the rains." (XI:43.) The testimonial evidence concerning the cutback in the steady irrigator's hours is equally weak. General Counsel offered a stipulation in lieu of testimony which was accepted by the parties (XI:55) that Hernandez did not work in November and December, 1982. However, it was also stipulated that he did not work during December in 1979, 1980 and 1981. Further, the stipulation provided that some years he started in January (1977); some years in February (1980 and 1982) and some years on March 30 (1981). (See generally XI:55.) Thus, it cannot be said that the pattern of employment established by the evidence established a prima facie case that lack of employment for one month was even a change in his work patterns, let alone a discriminatory one.

Moreover, the records in evidence do not support General Counsel's claim. GCX 144 contains labor contractor/custom harvester invoices for the period in question. As such, it ought to contain any checks for work performed from November-December 31, 1982. In fact, throughout the hundreds of pages of documents, there are only two invoices for work performed in 1982. They are from Coy Vaught and are dated December 27, 1982, and they do not indicate what they are for. Nor do the Payroll Distribution sheets provide proof of General Counsel's assertion concerning loss of steady work from November through December 30, 1982. These sheets, collected in GCX 63, contain detailed job breakdowns by ranch and by task.[39/] There are approximately 60 pages of computer printout sheets for November, most of which list hundreds of employee names, the ranch each employee worked, the specific job he performed and how much he earned. A review of these sheets indicates that many high seniority employees performed steady tasks during November and December.[40/] Certainly there are some low seniority code employees listed as

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39. The code for understanding the job descriptions and the seniority of the employees performing the jobs is contained in GCX 153 and 213.

40. Comparing the list of steady seniority employees contained in Exhibit I attached to GCX 41 (the Board's June 28, 1983 OSC and TRO), it is apparent that many of the steady names appear on the Payroll Labor Distribution Sheets. To take the sheets for the week ending 11/07/82, for example, the Labor Distribution Sheets indicate that many of the steady employees listed in Exhibit I worked in crews 65, 67, 69, and 72. See also weeks ending 11/14/82, 11/21/82 and 11/28/82.

In general, David Caravantes testified that farming operations were at a standstill in December and the Payroll Labor Distribution Sheets appear to confirm this. However, even in December, high seniority employees are at work. See GCX 63, week ending 12/05/72 crews 65, 67, 69. (This is the only week represented for December 1982.)

performing steady tasks, but I have no way o£ telling from the raw information contained in the lists, whether any higher seniority employees were passed over in selecting the employees who did work. Accordingly, I do not find that General Counsel has proved that any steady employees were discriminated against from November through December 1982.

2.

Subcontracting of the Ripping

Before leaving 1982, we must consider one further allegation. General Counsel contends that Tex-Cal Land Management unlawfully subcontracted out the ripping in October or November of 1982.[41/] It is undisputed that David Caravantes met with union representatives to discuss the subcontracting of ripping, a process by which the hardpan is broken up to facilitate drainage. Because forecasts for the winter of 1982-83 predicted abundant rainfall, Caravantes wanted to prepare the ground to take advantage of the rainfall. Although ripping for nutrient penetration may be accomplished with relatively small tractors, for penetrating the hardpan only large pieces of equipment will do. (XVI:13.) According to David Caravantes, Tex-Cal Land Management did not have the equipment necessary to do the job. (XVIt il.)[42/] In any event,

41. At the hearing, there was some dispute about when this episode took place. There is no need to resolve that question here since the main lines of the controversy are not in dispute.

42. Although workers testified that the company had tractors that could do the ripping (IV:41), absent some specific reason to discredit Caravantes on this issue, I must credit him. (S. Kuramura (1977) 3 ALRB No. 49.)

the union was willing to permit Tex-Cal Land Management to rent what Caravantes said he needed; it wanted the company to rent the equipment, but to use union drivers.[43/] However, Lem Lefler, who, Caravantes testified, offered him the best deal on tractors, wanted to supply his own drivers. According to Caravantes, Lefler's insurance would not permit any but his own drivers on the tractors. (XVI:15.)[44/] The upshot of the dispute was that the company used two union drivers on two company tractors, two Lefler-supplied tractors with Lefler-supplied drivers (IV:45) and the union charged it as, and the General Counsel now alleges it to be, an unfair labor practice.

The starting point for analysis must be the Subcontracting Clause of the collective bargaining agreement which provides:

> A. The Company shall have the right to subcontract under the following conditions:
>
> 1. When the Company employees do not have the skills to perform the work to be subcontracted and when the operation to be subcontracted requires specialized equipment not owned by the Company.
>
> B. When the Company does subcontract, such subcontracting shall be limited to the following:
>
> 1. Harvesting of grapes for the winery, alcohol and raisins.
>
> 2. Harvesting of almonds and prunes by machine.

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43. As General Counsel says in her brief, " . . . the union wanted the company to lease the tractors and put TCLM workers on the tractors." (Brief, p. 19.)

44. Although I tend to doubt this, whether Respondent violated Labor Code Section 1153(e) in this instance has nothing to do with Caravantes[1] veracity: it turns solely on whether what Tex-Cal Land Management did was permitted by the contract.

3. Tree-topping.

4. Installation of stakes and cross arms for new vines.

5. Installation of stakes and cross arras for new vines.

6. Where specialized equipment is needed for the removal of vineyards.

7. The removal of almond trees and supporting devices.

8. All labor involved in the planting of permanent crops.

9. All transportation of wine grapes/ raisins, canning grapes, grapes for alcohol, kiwis, almond and prunes from field to buyer.

10. Training and hoeing of young grape vines for the first two years after planting.

C. All operations subcontracted in Section B above shall not be subject to terms and conditions of this Agreement. (GCX 53, Article 17.)

If subcontracting the ripping is not permitted by this Article, and it is not otherwise permitted by law, the subcontracting must be deemed a unilateral change. No party introduced any evidence of the bargaining history behind the clause.[45/]

The clause is not a model of clarity. Section A appears to create two (possibly alternative) conditions for permissive subcontracting and Section B appears to create ten categories to which the conditions apply. Under a literal interpretation, if a task is not included in any of the ten categories, it would appear that there would be no need to see if the further limiting conditions of Section A applied: if the operation which it is

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45. The only evidence that bore on the question was Miller's testimony that the workers were "tired" of Lefler's getting their work.

proposed to subcontract is not listed in Section B, it may not be subcontracted at all. Since the ripping work is not among the categories listed in Section B, it could not be subcontracted.

However, General Counsel does not offer *a.* strictly literal interpretation of Article 17; instead, she opts for an interpretation that does not treat section A as imposing further limiting conditions on the operations as to which Tex-Cal Land Management has the right to subcontract contained in Section B; rather, she treats Section A as describing two separate categories of work that may be subcontracted. Her brief states:

> Article 17 of the Collective Bargaining Agreement sets forth detailed limits on TCLM's right to subcontract and permitted TCLM to subcontract only: (a) where its employees do not have the skills to perform the work to be subcontracted; (b) when the operation to be subcontracted requires specialized equipment or machinery not owned by TCLM; or (c) when the operation to be subcontracted has been subcontracted in the past by TCLM. (General Counsel's Post-Hearing Brief, pp. 118-119.) 46/

Under the interpretation propounded by General Counsel, it is difficult to see that an unfair labor practice is made out. Tex-Cal Land Management did not have the equipment; under General Counsel's interpretation of Article 17, that is sufficient to permit subcontracting.

I must conclude that General Counsel has not made out a violation of the Act with respect to the incident.

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46. This is the same interpretation given by the Board to a slightly different version of the same Article in the parties' second collective bargaining agreement. (Although the article is somewhat different, the clauses under discussion are exactly the same. See GCX 14, 79-CE-84-D, 8 ALRB No. 85, pp. 4, 7.)

The March 2, 1983 Incident

Respondent's unionized crews were back at work by February 20, 1983. (GCX 63.) One of the union crews was working in Arvin in March, 1983 for forelady Elizabeth Lumitap. Jorge Orozco testified that he didn't work on March 2, 1983, because Elizabeth said it was too wet in Arvin. (1:18, see also 1:154.) However, Orozco and some others went to some other fields in different areas where he saw people working in deep water. (I:23.)[47/] On Cross-examination Orozco admitted that it was not uncommon to be laid off in Arvin when the fields were wet (1:42), and that on March 2, the roads near Arvin where the ranch was located were flooded. (1:43.) I find that the crew was laid off because the fields were inaccessible.[48/] I also find there was no convincing testimony that workers had been given other fields to work in similar circumstances in the past. The crew went back to work the next day.

There is no contention that the March 2 layoff was discriminatorily motivated; rather, General Counsel contends that work being available to contractor crews[49/] in other areas, even a

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47. Ranch 32 is in the Earlimart area in Tulare County; Stip. XIV:2, the Arvin area, where the crew was working on March 2, is outside Bakersfield. The areas are quite a distance apart.

48. I make this finding because nothing in the record points to any motive for "getting" Orozco's crew and Orozco admitted the roads were flooded on March 2, 1983.

49. The labor contractor invoices indicate that there was (some) labor contractor work performed on March 2, 1983. See GCX 144, Invoices collected behind check dated 4/25/83 payable to Reuben Mendoza and specifically the invoice dated March 4, 1983 in the amount of $7,244.92. March 2 work is indicated by the payment for 1 foreman that day.

non-discriminatorily motivated layoff was unlawful, because the unionized employees were deprived of work. (See e.g. 1:147-48.)

There is a superficial plausibility to General Counsel's theory that will not withstand analysis. Since I have found that the decision to lay off the crew was not discriminatorily motivated, General Counsel has only made out a violation if a one-day layoff may be said to be "inherently destructive" of statutory rights. (N.L.R.B. v. Great Dane Trailers (1967) 388 U.S. 26.)[50/] In considering this question, it must be emphasized that this particular incident took place when the seniority crews were back at work and stands entirely apart from the pattern of replacement of unionized crews by labor contractor/custom harvester-supplied crews which characterizes the other aspects of this case.

In general, there is no agreed-upon definition of what constitutes actions which are "inherently destructive" and which, as a result, bear their own indicia of unlawful motive, although the Fourth Circuit has attempted one: actions will be deemed "inherently destructive" of employee rights if they create "visible and continuing obstacles to the future exercise of employee rights." (Loomis Courier Service, Inc. v. N.L.R.B. [4th Cir. 1979] 595 F.2d 591, 594.) By this test, a layoff of one day for non-discriminatory reasons can hardly be said to chill the very thought of unionism in employee minds.

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50. This analysis assumes that another standard element of General Counsel's case, the necessity of showing an act of discrimination, see, Radio Officers' Union v. N.L.R.B. (1954) 347 U.S. 17, is satisfied by showing that some labor contractor supplied employees worked and some unionized employees did not.

Moreover, I have found no cases and General Counsel has cited none, as authority for the proposition that a one day layoff is "inherently destructive."[51/] And, following Great Dane, supra, if the effect on employees is "comparatively slight", as I believe the effect of this layoff to be, the burden then shifts to the General Counsel to prove anti-union motivation once Respondent came forward with a business reason for it. (N.L.R.B. v. Great Dane Trailers, Inc., Ibid.) As I have stated, General Counsel has completely ignored this as an element of her case. Accordingly, I recommend dismissal of this allegation.[52/]

4.

The Status of Ranches 48, 49 and 69

Among the ranches as to which unilateral and discriminatory subcontracting is alleged to have taken place during the period in question are ranches 48, 49 and 69. Tex-Cal Land Management contends that it has not farmed these ranches since 1981, when Marshall Platt and Bud Steele ceased using Tex-Cal Land Management personnel to farm the land. (See RX 15.) According to Bud Steele's testimony, Bonnie Bairn Farms, a subsidiary of Tex-Cal Sales, farms these ranches. Although a review of the payroll Labor Distribution records reveals that no Tex-Cal Land Management employees were assigned to these ranches during 1982-83, the labor

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51. Indeed, our Board's cases typically treat such layoffs as calling for a conventional motivational analysis in order to make out an 1153(c) violation.

52. In my dismissing this allegation, I am not intimating any opinion on the ultimate issue of whether the use of the labor contractor crews in the first place, so far as it is alleged to be either discriminatory or a refusal to bargain, violates the Act.

contractor/custom harvester invoices contained in GCX 144 and 145 indicate that Tex-Cal Land Management has paid for services supplied to them in 1983. Accordingly, were it not for other, equitable considerations, I would consider the allegations concerning them within the scope of the present complaint.[53/]

My reason for recommending dismissal of these allegations within the framework of the instant complaint is that General Counsel already litigated the same allegations in Case No. 81-CE-64-D. It is true that in that case, General Counsel modestly claimed that only two of the presently-named 32 Respondents constituted a single employer, but the general theory of the previous complaint, as opposed to its scope, was exactly the same. Moreover, the Hearing Officer has now issued her decision in Case No. 81-CE-64-D and the case is now pending before the Board upon exceptions.

In Peyton Packing Company, Inc., the Board said:

> Generally speaking, sound administrative practice, as well as fairness to respondents, requires the consolidation of all pending charges into one complaint. The same considerations dictate that, wherever practicable, there be but a single hearing on all outstanding violations of the Act involving the same respondent. To act otherwise results in the unnecessary harassment of respondents.

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53. Assuming Tex-Cal Land Management actually ceased "farming" the ranches in 1981 – an assumption which appears to be unwarranted in light of the invoices contained in GCX 144 and 145 -- it might be wondered whether the statute of limitations precludes litigation of them in this hearing. However, since the statute was never plead, it must be considered waived. George Arakelian Farms (1982) 8 ALRB No. 36.

> We would note here that the Board does not grant respondents second hearings to relitigate allegations made against them because they may have mishandled their defense in the original presentation of the case. Only in the exceptional instance, such as where evidence is newly discovered, or where a hearing has been conducted in a prejudicial manner, does the Board grant respondents further hearings. The General Counsel's status before the Board in these adversary proceedings is no greater than that of any respondent. In short, the General Counsel is not a favored litigant, and he is not entitled to any privileges not accorded any other litigant appearing before the Board. (Peyton Packing Co. (1961) 129 NLRB 1358, 1361; see also Monroe Feed Store (1955) 112 NLRB 1336.)

Since the "splitting off" of ranches 48, 49 and 69 obviously came to the attention of General Counel well in advance of the events litigated in this case, it is clear that the genesis of any unfair labor practice that arises in connection with it, must lie outside the scope of the allegations in this complaint. Any continued separation of those ranches from the unit which was evidenced in this case, therefore, becomes merely a matter for compliance should the decision of the hearing officer in Case No. 81-CE-64-D be upheld, rather than another unfair labor practice in this case.[54/]

Accordingly, I shall not consider any allegations relating to these ranches.

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54. Although the Board could reverse the determination of the Administrative Law Judge in Case No. 81-CE-64-D, I do not believe the existence of that possibility sufficient to justify giving the General Counsel a chance to re-try those allegations in this complaint.

II.

FINDINGS OF FACT

A.

Financial Problems of Tex-Cal Land Management

With these allegations disposed of, we may turn to consider the main events of this case. Before beginning that discussion, however, it is necessary to provide some background concerning the financing of the agricultural operation.

As previously noted, Tex-Cal Land Management grows and harvests a variety of crops on lands leased from a number of the named Respondents. Pursuant to the leases, Tex-Cal Land Management is responsible for performing all the farming operations. Although it is not clear how the growing and harvesting of crops were financed at the time the leases were executed, by July 1979, Tex-Cal Land Management began to borrow money from the Farmer's Home Administration (FmHA). Pursuant to FmHA guidelines, the company qualified for a series of loans because of production losses sustained in the 1978 harvest, PX8 (0) Note to State Director, p. 2. Its first loan was a production loss loan for $250,000 on July 16, 1979. The initial loan was followed by two major adjustment loans for $12,000,000.[55/] According to FmHA documents, the purpose of

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55. One of the purposes of loans authorized by the Farm and Rural Development Act is the refinancing of existing indebtedness. See Harl, Agricultural Law, §96.02[3], p. 96-17. Emergency loans, which Tex-Cal Land Management was receiving, may be used for this purpose too, see generally, Harl, Agricultural Law, §96.02[3]. p. 96-31. In order to qualify the borrower must show that it has sustained physical or production losses. The initial $250,000 "actual loss" loan was limited by then existing FmHA regulations which provided a $250,000 ceiling on the actual loss portion of any loan approved after October 1, 1979, but based on a loss occuring before October 1, 1979.

these loans was to refinance the corporation's indebtedness.

Since 1979, the corporation's primary source of operating capital has been FmHA. In 1980, Tex-Cal Land Management obtained a production loan in the amount of $9,749,000 for the 1980 crop. Although Tex-Cal Land Management became delinquent on those loans in January 1980, RX 8 (0), in 1981 it obtained a production loan in the amount of $9,100,000 for its 1981 crop, and in July 1982 it applied for a $9,000,000 loan for its 1982 crop. Although FmHA declined to loan the full amount requested because Tex-Cal Land Management had already used approximately $4,500,000 owing to FmHA from the sale of crops upon which FmHA held liens,[56/] it did approve a $5,000,000 loan. Besides approving this loan, FmHA also took two other actions with respect to the July, 1982 loan application which were to become of considerable significance in this case.

Of greatest future import was the fact that FmHA demanded additional security to support the loan. The security for the original loans was the real estate owned by the landowners[57/] and liens on crops harvested by Tex-Cal Land Management. Whether because of Tex-Cal Land Management's past delinquencies, or because Sales had remitted proceeds from the sale of prior year's crops to

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56. This is called "rolling over" funds and it was to become of great concern to the FmHA because it compromised the security for the loans.

57. The landowners have taken the position with FmHA that only the first $12,250,00 in loans in 1979 are secured by the ranches and that they are not liable with Tex-Cal Land Management for payment of any loans after 1979 since they didn't sign the notes, see GCX 175. Resolution of this question does not concern us here.

Tex-Cal Land Management instead of to FmHA,58/ FmHA now insisted on obtaining the "personal guarantee of Dudley M. Steele, Jr. father of Dudley R. Steele. . . [as additional security for the loan] to be accomplished by obtaining his signature as a co-signer on the promissory note." RX 5, p. 5. In return for co-making the note, Bud Steele imposed a condition of his own: he asked for, and on July 15, 1982, he received, the irrevocable proxy of Randy Steele permitting him (Bud) to vote the shares of stock held by Randy, See GCX 15.59/ With receipt of the proxy, Bud Steele effectively held ultimate control over Tex-Cal Land Management. We shall see what the consequences of this were.

Besides requiring additional security, FmHA also imposed certain accounting conditions on Tex-Cal Land Management, including a complete statement detailing the use of "roll over" funds, RX 5, p. 2 ch. 5, and further required Tex-Cal Land Management to pursue

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58. As I have noted, FmHA is under the impression that Bud Steele owns Tex-Cal Land Inc., which is the parent organization of Tex-Cal Sales. Bud Steele testified that when he was approached by Bob Bartholemew, then Tex-Cal Land Management's Vice President for financial affairs, to co-make the notes, he resisted, see XX:26-28; see also RX 12, because he had completely disassociated himself from Tex-Cal Land Management in 1979. XII:55-56.

59. Bud Steele testified that, besides the proxy, there was one other condition for his co-making the note, namely, that "any monies that [come] in in that current year, that loan would have been paid off first in preference [to] all the past loans." XII:56 The proxy does not contain that condition, and I believe this testimony relates more to disputes between the FmHA and the landowners than it does to this case.

steps to "graduate" from the program. RX 5, p. 2. [60/] "Graduation" means that Tex-Cal Land Management was being required to seek and obtain conventional financing (if it could do so on reasonable terms and conditions) in order to repay FmHA. Harl, Agricultural Law, Farm and Rural Development Act, 596.02[5] p 96-49; see also 7 USC 1983(c); 7 C.F.R. §1980.147. Graduation is enforceable by acceleration of the debt and by foreclosure. United States v. Anderson (9th Cir, 1977) 542 F.2d 516; Harl, Agricultural Law §96.02, p 96-50.) Although, Tex-Cal Land Management was to receive permission from FmHA to use rollover funds in order to complete the 1982 crop year, FmHA refused to loan it any money after 1982 and, in fact, commenced foreclosure proceedings in spring of 1983.

Matters between the FmHA and Tex-Cal Land Management came to a head in connection with yet another loan application. Despite having been advised in June of its responsibility to graduate from the FmHA loan program, by fall 1982 , Tex-Cal Land Management sought; another loan from FmHA in order to finance its 1983 crop. On October 11, 1982 after Bartholemew advised the Board of Directors of

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60. The FmHA memo on Tex-Cal Land Management' s loan request reads in pertinent part:

> 9. As loan closing condition, the State Director or his designee will review and execute with authorized TCLM representative, Form FmHA 1924-14, as prescribed in 2 1924.57 (f)(3) of FmHA Instruction 1924-B. During this review, special emphasis should be placed on the borrower responsibility of "GRADUATION."
>
> 10. During the remainder,of the 1982 calendar year, the State Director or his designee will monitor at least monthly, the borrower's efforts to achieve graduation. All efforts should be documented and made a part of the borrower's FmHA county case file with a copy submitted to the National Office, directed to the Emergency Division.

Tex-Cal Land Management that no commercial credit would be available for financing a farm of its size, the Board authorized him to seek $14,000,000 more from the FmHA, as well as to use $2,000,000 from the sale of its 1982 crops "if necessary" for 1983 operations. RX 8 (A) p 3, Minutes: Special Meeting of the Board of Directors of Tex-Cal Land Management.

Tex-Cal Land Management was not to receive another loan from FmHA, although it did receive authorization to use $1,640,000 in proceeds from the sale of 1982 crops to meet its final expenses for October and November 1982. However, the company was further advised that any further use of crop proceeds to meet expenses would require specific approval of FmHA during the pendency of its loan application. On January 10, 1983 Tex-Cal Land Management was once again advised that no money from the sale of crops was to be used to meet 1983 expenses. RX 8(k). Although Tex-Cal was advised on February 1, 1983 that its loan application had passed the first stage of review and was certified eligible by the County Commitee, David Caravantes testified that by February 3, 1983, the only money he was expecting from FmHA was "protective advances" — money issued to a debtor simply to carry on its farming operation in order not to jeopardize the security held by FmHA. (XVI:95.) Finally, on March 29, 1983, Tex-Cal Land Management and the landowners received notice that the loans were accelerated and foreclosure proceedings would begin. RX 8(V), (J). Throughout January and February, 1983, then, Tex-Cal Land Management was waiting for money to finance its crops and was operating under a tight leash held by the FmHa.

We may turn to consider the events that occupy center stage.

B.

The Alleged Unfair Labor Practices

1.

Background to Bargaining

The collective bargaining agreement between Tex-Cal Land Management and the UFW expired on June 6, 1982, after which the parties agreed to extend it on a day-to-day basis (VI:11) (V:6; GCX 76.) The parties began to bargain prior to the expiration of the contract and early on agreed that many of the 41 articles of the 1981-82 agreement would remain unchanged.[61/]

Although the company originally had been proposing minor changes in the Leave of Absence article, by June 3, 1982 it had

61. A comparison of the union's May 10, 1982 (GCX 190) proposal with the company's May 28, 1982 (GCX 189) response shows agreement on the following articles :

Article	1.	Recognition
	2.	Union Security
	7.	Location of Company Operations
	9.	No Discrimination
	11.	Rest periods
	12.	Maintenance of Standards
	13.	New or Changed Operations
	14.	Union Label
	19.	Injury on the Job
	20.	Employee Security
	21.	Reporting and Standby Time
	25.	Credit Union Withholding
	26	Bereavement Pay
	27.	Jury Duty and Witness Pay
	29.	Income Tax Withholding
	33.	Family Housing
	34.	Modification
	35.	Savings Clause
	36.	Successor Clause

Two additional articles, Article 28, Records and Pay Periods, and Article 5, Grievance and Arbitration, were initialed on May 28, 1982. (See GCX 143 [Grievance and Arbitration].

accepted the union's June 1, 1982 proposal to leave the article unchanged from the 1981-82 contract. (GCX 189, Letter of June 3, 1982.) The parties exchanged detailed proposals on a variety of outstanding articles between early and mid-June and soon reached further agreement on Management Rights. (GCX 190, UFW Summary of Agreed Upon Articles: June 17, 1982.) From this base of agreement, they were to narrow the number of outstanding issues until those that were to continue to divide them during the period this litigation concerns had finally emerged; namely, economics, including the medical plan, wages and retroactivity, subcontracting and access.[62/] The points of greatest friction proved to be subcontracting and the medical plan. In comparison to the dominance of these concerns, the other issues emerge only sporadically to trouble the negotiations.

In order to understand the primacy of the parties' concerns over these two issues, some background discussion is necessary. The already written history of Tex-Cal Land Management's and the UFW's relationship bears witness to the conflict engendered by the subcontracting issue. Thus, in Tex-Cal Land Management (1982) 8 ALRB No. 85, the Board held that Respondent had illegally subcontracted unit work under the first and second collective bargaining agreements and in Tex-Cal Land Management v. Agricultural

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62. The parties basically agree that these were the major substantive issues dividing them. Thus, General Counsel contends that Respondent's "bad faith bargaining really comes down to . . . TCLM's positions regarding wages, economic benefits, health plan, subcontracting [and] access . . . ." (General Counsel's Post Hearing Brief, p. 87.) For its part, Respondent contends that the union was unyielding on wages and the medical plan. (Respondent's Post-Hearing Brief, pp. 25-27.)

Labor Relations Board (1982) 135 Cal.App.3d 986, the Court of Appeals held that the parties could not even agree upon the meaning of the subcontracting clause in negotiations for their third collective bargaining agreement. Moreover, while the parties were negotiating during the period under discussion, Respondent was defending itself against more allegations of illegal subcontracting in Cases Nos. 81-CE-64-D[63/] and fears that the events alleged to constitute illegal subcontracting in 1982 would repeat themselves in 1983 were never far from union negotiator Debbie Miller's mind. The importance of the issue of the medical plan to the union was of another kind, since it was not anything Respondent had done, but concerns expressed by the trustees of the medical plan, which underlay the union's position on it. When the negotiations which are the subject of this hearing began, Respondent was contributing $.22/hour to the medical plan but Miller had been advised by the trustees of the medical plan that the cost of providing benefits under the plan in effect was already at $.35/hour and could go higher. Accordingly, on September 2, 1982, the union had proposed (as part of a package) a maintenance of benefits provision which provided that:

> Commencing with the first payroll period in March, 1983 the Company will contribute to the RFK Farm Workers Medical Plan the rate necessary to maintain the Robert -F. Kennedy Farm Workers Medical Plan, including medical and vision benefits. The Union will inform the Company of the contribution rate for the RFK Farm Workers Medical Plan as of the first payroll period in March, 1983. (GCX 190, Proposal of September 2, 1982 .)

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63. Although Administrative Law Judge Beverly Axelrod's decision in that case has issued, I do not rely on it in any way in this case, since review of it is now pending before the Board.

2.

1982 Negotiations

On November 24, 1982, David Caravantes, Respondent's negotiator, sent the union a package consisting of two articles -- Subcontracting and the Robert F. Kennedy Medical Plan. (GCX 66, 67.) On subcontracting, he proposed continuing the language in the previous contract (including a side letter). On RFK, he proposed the vision and medical plan at a $.40/hour contribution rate effective upon execution of the contract, with any increase necessary to maintain benefits after March 1, 1983, to be paid for by reducing wages in the amount of the contribution rate in excess of $.40/hour necessary to maintain benefits.

The proposal was discussed at a meeting on December 8, 1982. It was a short meeting, devoted solely to discussion of the contending maintenance of benefits proposals. In the context of this single issue, however, some of the other themes which divided the parties also emerged,[64/] and it is an indication of how crucial the principle of the company's responsibility for maintenance of benefits was to the union -- and how crucial rejection of that principle was to the company -- that discussion of these other themes were subordinated to discussion of maintenance of

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64. General Counsel makes much of Miller's testimony that Caravantes forgot there was a bargaining session that day; however, the parties did meet on December 8, 1982 and, as the transcripts of the session show, Caravantes was prepared to discuss anything Debbie Miller, the union's negotiator, was ready to discuss.

benefits.[65/]

In his letter of November 24, 1982, offering to maintain benefits by reducing wages, Caravantes had written: "We do not wish to imply that future maintenance of benefits result (sic) in a reduction of the present wage rate." Miller began the meeting by acknowledging that the proposal represented a $.02/hour increase over Caravantes[1] last one; but she immediately disputed his contention that the proposal did not "imply" that future maintenance of benefits meant a reduction of wages: because Respondent was offering no increase in wages, she argued, if the cost of benefits did go beyond $.40/hour, they would have to be reduced. Caravantes replied that there was no certainty the cost of benefits would rise so that no pass-through of costs might be necessary but, in any event, he could not agree to an open-ended maintenance of benefits provision since it would not permit Respondent to anticipate its costs. Finally, he asserted that even though there was no wage increase on the table, he expected to make one as soon as some of the other costs pursuant to the contract could be determined:

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65. For example, one of Miller's grounds for rejecting Caravantes' proposal was that it only increased benefits for three months — December, January and February — before it placed a lid on them. According to Miller, because December was typically a period of low employment, few workers would qualify for benefits even with the increase Respondent was offering and she feared the same would be true in January and February, if Respondent delayed the start of pruning again. (RX 11, Transcript of Negotiations December 8, 1982, page 5, 10.) Another of Miller's grounds for rejecting the Caravantes proposal was that it didn't provide for retroactivity of past health plan costs which were above the $.22/hour level Respondent was presently contributing. Although both retroactivity and fears of a delay in pruning were problems between the parties, on December 8, 1982, they were submerged in discussion of RFK.

> We expressed an indication [in his letter] that if it goes up.... at that time frame, that money will be deducted from the increase. (RX 11, Notes 12/8/82, p. 4.)
>
> Well, I don't think the wages will [stay the same], I expect some increase and that will depend on the other items we negotiate . . . . (RX 11, Notes 12/8/82, p. 5.)

Miller rejected Caravantes[1] proposal and countered with the union's October 21 proposal, a package which incorporated the union's September 24 package (V:17; GCX 190 Proposal of October 21, 1982),[66/] which, so far as RFK was concerned, continued to adhere to the maintenance of benefits concept. The meeting broke off after discussion of RFK with the parties seeking another date. (V:17.) Caravantes initially wanted the 17th of December, but Miller said she would be on vacation. (V:17.) Caravantes pressed for a January meeting and accused her of not being available for negotiations. Miller denied the accusation and accused Caravantes of failing to make any movement.[67/]

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66. The package covered Hiring, Seniority, Subcontracting, Access; Holidays; Disciplines and Discharge; Supervisors; Holidays; Vacations; Mechanization; Robert F. Kennedy Medical Plan; Juan de la Cruz Pension Plan; No-Strike Clause; Wages; Duration; Holiday; Martin Luther King Fund; Delinquencies; Union Representatives; and local demands concerning equipment and irrigators.

67. One of the dismaying features of these negotiations is the degree to which the parties appear to be looking beyond the negotiations themselves in order to make a record for possible unfair labor practice proceedings. Thus, no indicia of bad faith charged by one side is unopposed by charges of countervailing indicia of bad faith on the part of the other side.

3.

1983 Negotiations

a.

Introduction

If the 1982 session reveals the major issues dividing the parties, they do not prepare us for the extraordinary change of tone which was to take place in their relationship during 1983. Substantive proposals would be discussed less and less frequently as the parties' correspondence and the negotiation sessions themselves focussed primarily on the union's concerns that Respondent was either actually diverting, or preparing to divert bargaining unit work to labor contractors and custom harvesters. For his part, Caravantes shows mounting impatience towards the union's attempt to obtain any information about what was actually going on. Indeed, from January forward, the prevailing impression to be derived from the negotiation and correspondence between the parties is that each side was trying to stay one step ahead of the other -- a cycle which can often lead, as it did in this case, to a rapid acceleration of the pace of events.

In order to adequately reconstruct what led to the development of these attitudes, we must briefly pause to consider some of the forces at work because what happened at the table did not occur in isolation. Without a doubt, the greatest source of irritation between the parties was Miller's suspicion that Respondent intended to delay the start of pruning in 1983. She was already on the look-out for it in December and by the end of January

she was sure her suspicions were confirmed.[68/] Pruning of Tex-Cal Land Management's vineyards, which is one its most labor intensive operations, ordinarily begins in the middle of January and lasts through the first weeks of March, XIV:2, thus providing employees with 2½ months of steady employment. In the 1982 season, however, the traditional start of pruning had been delayed and when Tex-Cal Land Management did begin to prune, it pruned so intensively that its regular employees worked only 2½ weeks instead of the usual 2½ months. The company was able to compress its pruning into a quarter of the usual time because it brought in additional employees through labor contractors and custom harvesters to do some of the work.

Respondents, too, could not help but be concerned about the delay since late pruning can jeopardize the health of the vineyards, lowering their productivity and, hence, their profitability. (See e.g., XVI 67-70; XVIII:4; VIII:34 [Mike Steele]; XVI:84-85 [David Caravantes]; XII:48 [Bud Steele]; VIII:100 [Betty Kruger].) To the landowners and the people inside Tex-Cal Land Management, however, the delay in pruning was merely symptomatic of other troubles facing the company and the entire agricultural operation. I have already noted that in 1982 Tex-Cal Land Management had been advised that it had to wean itself from FmHA, but when efforts to secure financing from conventional sources proved unsuccessful, see e.g. RX 8(A) Attached Requests for Verification of Lender's Applications, XVI:38, 45, Tex-Cal Land Management was looking to an anything but receptive FmHA for money for its 1983 crop year. On January 10, 1983, FmHA

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68. Miller filed a charge alleging a discriminatory delay in pruning on January 21, 1983. (See GCX 1-A.)

repeated its earlier prohibition on the use of any 1982 crop proceeds to fund 1983 operations (RX 8(K)) so that the means of financing of current operations was up in the air. And, FmHA was not the only threat to the landowners, for Tex-Cal Land Management had failed to pay the first installment of the taxes for 1982-83,(See GCX 37)[69/] as well as to make the payments required under the trust deeds.[70/]

Adding to these pressures from without the corporation, were serious problems within it. There are intimations of trouble brewing between Randy and his father in December when, Mary Jane Steele testified, she heard that Randy was considering suing his father (VII:139), and though the final break between the two men did not take place until June 1983, it seems clear from what took place in the early months of 1983 that people inside Tex-Cal Land Management were choosing sides.[71/]

It is against this backdrop that the parties' conducted their 1983 negotiations.

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69. The exhibit indicates that delinquencies in both installments of 1982-83 taxes were not cured until 5/3/84 for most of the landowners. Tex-Cal Land Inc. and Robert and Jean MacDonald cured the delinquencies on their first installment somewhat earlier. There is no explanation for this difference.

70. GCX 181, 182, 183 indicate late payments on the notes held by Lawrence Vineyards, Coldwell Banker Aetna, and Northwestern Mutual Life. The latter two notes apparently had been declared in default. See GCX 182, 183. According to Bud, foreclosure notices had issued on some of the land. (XII:48.)

71. Indeed, Caravantes testfied bitterly about Randy's being, at best, a hindrance during later 1982, XVI: 123-124, and he spoke of Randy's role in the corporation as occasionally "showing up and being obnoxious."

b.

Negotiations

The union's concerns about subcontracting were highlighted by a series of correspondence initiated by Tex-Cal Land Management. On January 7, 1983, after an unproductive bargaining session[72/] Linda Tipton, Tex-Cal Land Management's Assistant Director of Industrial Relations, wrote to advise the union that removal of almond trees would be subcontracted pursuant to Article 17, section B(7), and Caravantes wrote to advise the union that the company would be recalling workers to prune the prune trees. (GCX 68,69.)[73/]

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72. The meeting was essentially a reprise of the December 8, 1982 meeting. Caravantes rejected the union's October 21 package and reproposed his November 24 package of RFK and 1981-82 subcontracting. Miller agreed to take another look at it since the union didn't have anything else to offer. (RX 11; TR. Jan. 7, 1983.) Miller agreed to call Caravantes to set up the next meeting.

73. Throughout January, Miller was so preoccupied by the issue of subcontracting the almonds, negotiating the prune tree rate, and delay in the start of pruning that she was apparently unaware that Tex-Cal Land Management had subcontracted a variety of tractor work to Lem Lefler. Although the fact that some tractor work was done in January would appear to contradict David Caravantes general testimony that the fields were so wet in January he couldn't get heavy equipment into them, XVI:23-24, the amount of tractor work done was so small, there is little question that Caravantes' general statement is correct. Thus, FmHA field inspectors prepared a report in April, 1983 which concluded "[g]enerally speaking the condition of the ranches were very weedy as compared to other ranches in the area. Weeds are in direct competition with the trees and vine for water and fertilizer as well as sun for the smaller vines. The ranch is in the process of shreding (sic) the pruned vines and discing. (RX 8(Q).)" There follows a ranch-by-ranch description of the state of cultural practices indicating that many of the fields of mature vines were not disced and shredded. (I am not even considering the fields containing immature, non-producing vines.) Thus on Ranches 31, 33, 36, 37, 51, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 70, 76, 77, 79, 80, 81 and 85, the vineyards were way behind in their appropriate tractor work as late as April, 1984.

(Footnote continued——)

On January 12, Miller replied to both letters with a series of questions. With respect to subcontracting of almond trees, she wanted to know what ranches would be affected, when work would begin 747 and who the subcontractor was.[74/] She also asked a number of questions about the pruning of prune trees, including how many people would be needed, when work would start and how long the job would take as well as production information about the previous two years' pruning. She requested the information in order to bargain about a pruning rate. According to the contract, pruning rates were to be negotiated 30 days before the start of the operation. See GCX

(Footnote 73 continued----)

In any event, GCX 144 does indicate that on January 2, Lefler ripped ranches 34 and 75; on January 11, he harrowed, ripped or disced ranches 31, 59, 61, 62, 64, 70, 71, 85 and 88; on January 18, he ripped or harrowed ranches 58, 60, 65, 77, 85, 88; (On January 17 and 26, he hauled bins; however, I do not think this is unit work. GCX 53, Art. 17, Section B.) See Invoices collected behind check dated April 25, 1983 and made payable to Lefler Custom Harvesting in the amount of $68,468.50. The Lefler tractor work identified above was unit work and constitutes a violation of Labor Code section 1153(e). Tex-Cal Land Management (1982) 8 ALRB No. 85.

Also in January, Gilbert Renteria provided a variety of services on various ranches, including sorting stakes for 3 consecutive weeks on ranch 34. See GCX 144, Invoices collected behind check dated April 28, 1983, and made payable to Renteria Farm Services in the amount of $14,729.00. Since Article 17 of the contract, GCX 53, permits subcontracting of training of young vines and Ranch 34 has young vines, I cannot conclude that unit work was diverted in this instance. See RX 14 (List of young vines: 38 acres of Emperor, Planted 82). Other Renteria invoices for January do not indicate the kind of work performed. Since some work may be subcontracted pursuant to contract, it is General Counsel who has the burden of proving that work that was subcontracted was unit work. This is not satisfied by merely producing evidence that a labor contractor invoice exists.

74. She asked these questions because she had been advised by the workers that only a few dead trees were being removed and they claimed this was unit work. (V:22.)

70. (OCX 53, Article 40.) Finally, she asked when grape pruning would begin.

While the parties were exchanging correspondence, the union was acting. On January 21, 1983, Miller filed charge no. 83-CE-7-D, alleging that Tex-Cal Land Management and Dudley M. Steele were delaying the start of pruning in order to deprive their union employees of work and requesting the Board to seek an injunction. (GCX 1-A.)[75/]

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75. The charge reads:

> Since on or about January 2, 1983, and continuing thereafter, the above-named employer has violated the Act by not recalling employees in crews 51, 52, 54, 55, 56, 57, 58, 59, and 64 to do the pruning and tying and by delaying the start of the pruning and tying season for the purpose of displacing and reducing pruning and tying work for employees represented by and supportive of the UFW. The employer is thereby continuing the discriminatory practice of 1982 in which the start of the pruning was delayed and thrity additional crews were employed resulting in displacement and reduced pruning and tying work for employees supportive of the UFW.
>
> Since on or about November 23, 1982, and continuing thereafter, the above-named employer has violated the Act by employing labor contractor Lemuel. Lefler to displace irrigators, tractor drivers and other workers represented by and supportive of the UFW. [This aspect of the charge refers to the ripping discussed earlier. Nowhere in her testimony or in the correspondence does Miller advert to any knowledge of Lefler's doing tractor work in January. Indeed, the injunction sought by the Board does not even mention tractor work.]
>
> All of the above was done without notice to or bargaining with the UFW and is part of the Employer's continuous course of conduct designed to disaffect, displace, and discriminate against employees supportive of the UFW for the purpose of undermining and eventually decertifying the UFW as the exclusive bargaining representative for Respondent's employees.
>
> Wherefore, injunctive relief is requested in addition to such other relief as will effectuate the policies of the Agricultural Labor Relations Act.

On January 25, 1983, Caravantes replied to Miller's January 12, 1983 letter. In the letter, he denied the company had any obligation to bargain over the removal of almond trees, contending that the contract specifically provided that the company could subcontract "the removal of almond trees and supporting devices." (GCX 53, Article 17(B)(7).)[76/] With respect to the pruning of prune trees, Caravantes advised Miller that (1) approximately 10 people would be needed for the pruning; (2) that work had already started and (3) that it would take about 5 days. In fact, it appears from GCX 63 that work had already been completed as of the date of his letter.[77/] Caravantes identified the ranches where the pruning would be done (he indicated it was really training of young trees) and that they had been paying hourly, but he did not really respond to any of her requests for information, in the main contending that

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76. The contract does plainly provide this. Despite this, General Counsel argues that since it was only removal of a few dead trees it was bargaining unit work. No extrinsic evidence was put on as to the meaning of the exclusion in Article 17(B)(7) and the only testimony on the point was that the workers thought removal of a few trees was unit work. (V:22, 31.) The contract is too clear on its face to warrant further consideration of the matter here. I find no unfair labor practice with respect to this issue.

77. GCX 63 indicates the pruning began on January 15, 1983 when the Pritchetts, whom Caravantes identified as employed for that purpose, were called to work. See V:27. Caravantes advised Miller that only they had seniority in the pruning of prune trees. GCX 71. Miller testified she couldn't tell if it was true because she had no seniority list. (V:27-28.) Because General Counsel has the burden of proving discrimination, I will only consider this aspect of the case as a 1153(e) violation of Labor Code Section.

no information was available.[78] He requested a meeting to negotiate the rate on January 28, 1983. (GCX 71.) Whether it was in response to Miller's letter about when pruning would commence, or in response to receipt of the charge (which was served by mail on January 21 and would almost certainly have been received by January 25 when Caravantes wrote his letter), Caravantes also wrote:

> We presently have no intention of pruning the grape vines this year unless the company receives the necessary funds to do so.
>
> We demand that you negotiate this issue as well on January 28, 1983. (GCX 71.)

Because of schedule conflicts, the partes were not to meet until February 3, 1983.[79]

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78. At the parties February 3, 1983 meeting Caravantes would admit that the workers were paid piece rate, not hourly. FX 11, TR 2/3/83, p. 1. Accordingly, the setting of the rate without consultation with the union violates 1153(e) (as well as constitutes a breach of contract) because it is a unilateral charge. If Caravantes had paid the workers hourly, as he had in 1982, in the absence of General Counsel's showing that the hourly rate had changed, it is not clear that anything but a contractual violation would have been made out. Except for the remaining question of failing to provide information, I shall not discuss this issue further.

79. In the meantime, Miller and Caravantes were laying down a paper trail to cover their actions. Caravantes wrote to Miller regretting her inability to meet on January 28 and suggesting February 3. (GCX 72.) Miller wrote to Caravantes explaining that she was available before January 26, but not on the 28th and corfirming a meeting date set up by Jamie Quintana for the 31st of January. (GCX 73.) Caravantes replied to Miller that Quintana not only did not set up a January 31 meeting, but had no authority to set up meetings at all. (GCX 75.)

Before the next meeting, Miller replied to Caravantes:

> You state that you do not intend to prune the grape vines this year "unless the Company receives the necessary funds to do so." We request to examine the financial records for the following entities:
>
> Tex-Cal Land Management, Inc.
> Tex-Cal Land Co.
> Tex-Cal Land Inc.
> Tex-Cal Land Cold Storage
> Tex-Cal Land Inc. Cold Storage No. 2
> Tex-Cal Land Management Inc. Storage No. 3
> Tex-Cal Supply Company
> Tex-Cal Land Sales
> Diamond S. Leasing Company
> Universal Heritage Farming Corp.
> Bonnie Barren Farms
> Dudley M. Steele Jr.
> Dudley R. Steele
>
> The specific documents that we need to examine at this time for each entity are:
>
> Income and expense reports and
> balance sheets for 1981, 1982 and 1983 to date
>
> Sales records for 1981, 1982 and 1983 to date
>
> Income tax returns for 1981 and 1982, including personal tax returns for Dudley M. Steele Jr. and Dudley R. Steele.
>
> (GCX 73.)

Miller requested the information for two reasons. First, as already noted, was her belief that the delay in pruning was discriminatorily motivated:

> . . . [T]his year, when it appeared that the same thing was happening again -- Because it had already been a month, and they still hadn't started the pruning -- we decided this year to request proof that it was, in fact, for financial reasons, and they did really have some justification for delaying the start of the pruning? because it appeared to us that they were headed in the same director (sic) as the prior year. And the prior year, that had been one of the -- When I took over negotiations in 1982, that was one of the biggest complaints that I heard from the workers — Was that they hadn't been working. They had only gotten a couple of weeks of work in the pruning. (V:36-37.)

* * *

Second, was her:

> . . . understanding . . . that all of these entities were under the control of Dudley M. Steele, and that they were — In terms of being able to reflect accurately any financial problems that the company many in fact be having, it was necessary to see all the records related to all the entities. Because I anticipated that, probably, the Tex-Cal Land Management books may not show a lot of money; but that, since the entities were all related -- It's very common in agriculture that you can have an entity that's just a tax shelter, and is losing money; while the other entities that are related are making money for tax purposes. (V:36-37.)

She also renewed her request for information concerning subcontracting of almond trees and the pruning of prune trees. (GCX 73.)[80/]

On January 21, Caravantes wrote a letter in which he stated:

> Tex-Cal Land Management requests to meet and negotiate its annual Collective Bargaining Agreement on Friday, April 22, 1983. The contract could expectedly cover the later six-months of 1983 and any future time agreed by the parties. (GCX 74.)

By this letter, Caravantes indicated he would not bargain over retroactivity. It was a position he would take throughout subsequent negotiations.

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80. On January 31, 1983, Caravantes denied her request for financial information in toto. As to financial information about Tex-Cal Land Management, he argued that he was not claiming an inability to pay, but only that the funds necessary for pruning had not yet been received and her request for financial information was, therefore, inappropriate (XVII:83; GCX 75). With respect to the other entities or individuals about whom Miller had requested information, Caravantes claimed he had no control over them. With respect to the information Miller requested regarding the prune trees, Caravantes indicated that there were no payroll distribution sheets for 1981 and 1982, but that some for 1983 would be available soon. He never supplied them. (GCX 75.) By a separate letter dated the same day, he advised Miller that Tex-Cal was cancelling the contract effective February 2, 1983. (GCX 76.)

That same day, Bud Steele exercised his proxy and called a meeting for the sole purpose, he testified, of electing new directors of Tex-Cal Land Management. He was compelled to act, he said, because the company was facing a crisis of a number of dimensions: Randy was undergoing treatment for alcohol addiction and was unable to provide direction; (XX:45); the company was in serious financial straits (XX:46) since the loan had not been approved by FmHA (XII:61), and it was not permitted to use any roll over money; there were labor problems with the union (XII:61) and problems with the ALRB (XII:59). According to him, he exercised the proxy for the sole purpose of electing directors who would then elect officers to run the company in Randy's stead, (XII:57; XII:48; XX:47; see also GCX 13(a));[81/] after he elected the directors, he had nothing else to do with the meeting. The Board took all subsequent actions on its own initiative, (XX:48); he simply sat in on its discussions. (XX:49.) Mary Jane Steele was elected Acting President (XII:58; GCX 13(b)) and Michael Steele was elected Vice-President in charge of cultural practices.[82/] (GCX 13(b).)

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81. GCX 13(a) Minutes of the Special Meeting to Elect the new Directors is signed by Betty Kruger, Secretary GCX 13(b) are the minutes of the special meeting itself also signed by Kruger.

82. Although Betty Kruger was to refer to Randy as being "dismissed" at this meeting, VII:96, according to Bud Steele, Mary Jane Steele was chosen Acting President because he did want to cause undue strain to his son Randy.

> It was family affair. . . . We had a very delicate situation there. I don't think she wanted to cause undue strain or problems with her husband. After all he was my son. I had a certain amount of compassion. I didn't want to hurt her or him in any way.

Despite Bud Steele's testimony that he exercised the proxy solely for the purpose of electing directors, it seems clear from the rest of his testimony, as well as the testimony of others, that his role was more expansive than that. In the first place, he also related that, prior to the meeting he secured Mary Jane Steele's and Michael Steele's consent to serve as new officers of the corporation, XII:57-58, which means that he essentially chose them and, having chosen them, it seems highly unlikely he didn't discuss, at least with Mike Steele, why he wanted them to serve.[83/]

Moreover, Mary Jane Steele testified that Bud Steele actually chaired the meeting. (VII:140.) The minutes for the meeting indicate that "efficiency and confidentiality on the running of the company was . . . emphasized" and that Mary Jane Steele as the new President was apprised "of the numerous Union problems and the current litigation going on with the United Farm Workers and the business and financial problems facing the company at the time." (GCX 13(b).) However, she could remember nothing specific of any discussions except the lack of funds for pruning (VII:134, 141) and no other witness who was present at the meeting providing any further details about what was discussed in it.

The parties next met on February 3, 1983. Caravantes told Miller he was there to hear the union's proposal on the tree pruning rate. Miller pressed him for information about what the company was

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83. It was Mike Steele who was to emerge as the President of Tex-Cal Land Management when Randy was finally dismissed. As between Mary Jane and Mike, only Mike knows enough about farming to be able to run a farming operation. It seems unlikely Mary Jane Steele was chosen Acting President except, as Bud testified, not to distress Randy.

paying and told him that in the absence of the information she couldn't even make a proposal. The parties discussed what information was available and discussion ended with Miller requesting whatever information Caravantes had. Nothing was ever received.[84/] (V:46.)

Miller then questioned Caravantes about the grape pruning. He said they planned to prune as soon as they got their operations "together" and that depended, to a large extent, on the weather. (V:47.) Caravantes said he planned to begin pruning by mid- to end February and to finish in March. (V:47.) When pressed by Miller about when he would recall the crews, he said "the same as the past". Wary of last season's experience, Miller inquired which past years was he talking about, to which Caravantes replied he would check. (V:47.) As he had done with respect to the tree pruning rate, Caravantes now tried to deflect Miller's questions concerning pruning, by asking her what she proposed concerning it. Once again, Miller said she could have no proposals without knowing what the company planned to do. (RX 11, Transcript 2/3/83, p. 10.) Miller asked Caravantes why the pruning had been delayed. Caravantes replied:

> I don't think it has been delayed abnormally from any other seasons, it's our position, its the same, we usually prune in the spring, our prerogative as to when, where, how [is a] management right. (RX 11, TR. 2/8/83, p. 11.)

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84. George Johnston, Elias Munoz and Caravantes finally denied the relevance of her request for information. The gist of the company's position was that Miller only wanted to know what was actually paid in order to propose a higher rate. (RX 11, Tr. Feb. 3, 1983, pp. 4-6.) That is not grounds to deny her request for information. This is surely a violation of 1153(e).

Caravantes did rule out beginning to prune the second week of February because so much tractor work remained to be done.

When Miller requested information about the "money problem", Caravantes said they didn't have the funds. He would provide no further information, except to repeat several times that funding was late and that "when they received funding for the next year they would proceed with their operations." (See e.g. RX 11, TR. 2/3/83, p. 14, 16. See also V:50.) Miller again asked for the financial information since "in the absence of financial records, ". . . it appears that pruning was being intentionally delayed." (RX 11, TR. 2/8/82, p. 17; see also V:50.)

Amidst this wrangling, Miller pressed for maintenance of benefits. She told Caravantes that she had been advised by the trustees that RFK rates would remain stable until September, 1983. Accordingly, she presented a new RFK proposal to be incorporated into the union's October 21 package. She now proposed $.35/hour from June 1982 through September 1982 and $.40/hour from September 1982 to September 1983 after which the company would be responsible for maintenance of benefits. (V:53, RX 11, p. 19.) Caravantes didn't reply to the proposal: he simply requested another meeting date. Miller asked him to look at her RFK and think about it. (RX 11, p. 20.) After a brief discussion about the grievance procedure, the meeting concluded. That same day Miller wrote to Caravantes, renewing her request for the financial information. (GCX 78.)

On February 8, 1983, the Board sought and obtained a

temporary restraining order[85/] preventing Respondent Tex-Gal Land Management and Dudley M. Steele Jr. from:

> 1. Recalling, hiring or employing labor contractors, supervisors, foremen, crew bosses and pruning crews other than those seniority crews that have, in prior seasons, performed fruning and tying work as exclusively listed in Exhibit G (attached hereto and incorporated by reference herein), upon commencing 1983 vineyard pruning and tying operations.
>
> 2. Recalling, hiring or employing more than 40 seniority workers in each crew listed in Exhibit G.
>
> IT IS FURTHER ORDERED that, if Defendant because of exigencies beyond its control, requires modification of the Temporary Restraining Order, pending hearing on the Other to Show Cause shall notify the ALRB Delano Regional Director and petition the Superior Court to modify the Order. (GCX 37.)

On February 18, after an Order to Show Cause hearing, the Court entered a preliminary injunction to the same effect. (GCX 37.)

C.

Modular Farming

From this point forward, the chronology of events becomes extremely difficult to reconstruct. Although what happened on the ranches is clear enough from the testimony and the labor contractor/custom harvester invoices, it is only by piecing together fragments from the welter of often contradictory testimony given by the landowners and David Caravantes that one can hope to draw any conclusions about what actually happened inside Tex-Cal Land Management and why it happened. The lack of a firm chronology is of particular difficulty in assessing motive since a clue to motive often inheres in the sequence of events. Nevertheless, upon

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85. The TRO was based on the complaint which issued on February 2, 1983.

consideration of the entire record, I find that what was identified at the hearing as the concept of modular farming was put into effect after issuance of the injunction and an elaborate fiction was created according to which landowners would appear to cancel their leases so that labor contractor/custom harvester crews plausibly could be hired to perform the necessary cultural practices on their ranches. In advance of detailing the evidence supporting my conclusion, I will quickly outline the pattern of seniority crew and labor contractor/custom harvester activity which ensued after issuance of the preliminary injunction.

The Payroll Labor Distribution sheets indicate that from February 15, 1983 until March 10, 1983, when they were laid off, the seniority crews pruned and tied on the following ranches only: 31, 47, 54, 56, 57, 62, 64, 65, 66, 67, 70, 71, 76, 77, 80, 81, 85, 88. They performed no work on ranches 32, 33, 34, 35, 36, 37, 51, 58, 59, 60, 61, 68, 72, 73, 75, 79. (OCX 63.) Before, during and after the seniority crews finished working, labor contractor crews were in these other fields pruning and tying.[86/]

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86. There was also a smattering of sorting and repairing stakes on ranches 47, 77 and 81 performed by crews supplied by Gilbert Renteria throughout the month of February and into March, (GCX 144, Invoices collected behind check payable 4/25/83 to Renteria Farm Services in the amount of $14, 729.90.) and some hoeing of young vines in mid-February performed by Renteria Farm Services on ranches 47 and 81. (See GCX 144, Invoices collected behind check payable to Renteria Farm Services dated 3/25/83 in the amount of $83,533.44.) Since training and hoeing of young vines up to two years old is not unit work, (see GCX 53, Article 17, Section B(10), and GCX 214 and RX 14 indicate that there are young vines on this acreage, I cannot conclude that these invoices reflect unit work. (I reach the same conclusion with respect to the hoeing of young vines on ranches 31 and 85 reflected in Renteria invoices of 3/23/83 in the same collection.)

1.

HIRING OF LABOR CONTRACTORS/CUSTOM HARVESTERS

1. On February 24-28 Reuben Mendoza supplied crews to prune ranch 34; [87]

2. On March 2, 3, 4, Reuben Mendoza supplied crews to prune and tie ranch 88; [88]

3. On March 2, 3, 4 Reuben Mendoza supplied crews to prune and tie ranch 33; [89]

4. On March 4, 5 and 7 Reuben Mendoza supplied crews to prune and tie ranch 73; [90]

5. On March 4, 5, 7 Reuben Mendoza supplied crews to ranch 34; [91]

6. On March 7 Coy Vaught supplied crews to prune ranches 36 and 72; [92]

7. On March 4, 5, 7, 8, 9 Mario Martinez supplied crews to prune and tie ranches 35, 60, 79 and 73; [93]

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87. See Invoice dated 2/28/83; total amount due: $32,675.44 behind check payable to Reuben Mendoza dated 4/5/83 payable in the amount of $98,622.40. GCX 144.

88. See two invoices dated 3/4/83 for pruning and tying vines on Ranch 88, collected with the invoices referred to in the previous note.

89. See two invoices dated 3/8/83 for pruning and tying ranch 32 collected with the invoices referred to in the previous note.

90. See two invoices dated 3/7/83 for pruning and tying ranch 73 collected with the invoiced referred to in the previous note.

91. See invoice dated 3/7/83 tying ranch 34 collected with the invoices referred to in the previous note.

92. See invoices dated 3/7/82 for each of the named ranches collected behind check dated 4/25/83 payable to Coy Vaught in the amount of $58,188.16. Although no operation is described, the rate appears to be a pruning rate.

93. See invoices collected behind check made payable to Mario Martinez contractor dated 4/25/83 in the amount of $31,0128.84.

[94]

8. On March 8, 9 Reuben Mendoza supplied crews to prune ranch 51; [95]

9. On March 11 San Joaquin Farm Labor supplied crews to prune and the vines on ranches 47 and 81; [96]

10. On March 15-19 John V. Galindo supplied crews to prune and tie ranches 56, 77 and 66; [97]

11. Around the same time (since the invoice number precedes the invoice listed in Item 12 above) John V. Galindo supplied crews to prune ranch 58; [98]

12. The weekending March 16, Coy Vaught supplied crews to work on ranches 33, 36, 59, 61, 64, 68 and 72. [99]

13. On March 21, John V. Galindo supplied crews to prune and tie ranch 51. [100]

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94. Although the invoices show work performed on ranch 49 on March 7-12, as explained previously, I am not considering work performed on these ranches. See invoices for those dates headed "§3,811.91 Total Ok'd" collected behind check made payable to E. B. Galapon dated 4/25/83 in the amount of $6,087.78.

95. See invoice dated 3/10/83 collected behind the invoices refereed to in notes supra.

96. See three invoices dated 3/11/83 collected behind check dated 4/25/83 made payable to San Joaquin Farm Labor in the amount of $21,805.87.

97. See invoice #2455 collected behind check made payable to John V. Galindo dated 4/25/83 in the amount of $28,861.77.

98. Ibid.

99. See invoices collected behind check dated 4/25/83 payable to Coy Vaught, supra, note 92. Some of the work done on the ranches is not indentified, but the rates given for the work are either pruning or tying rates.

100. See Invoice #2454, supra, note 97.

14. During the week ending March 25, San Joaquin Farm Labor supplied crews to prune and tie ranches 47 and 81;[101]

15. On March 31 Edwin Galapon supplied crews to prune ranch 48.[102]

GCX 144 also indicates that Lem Lefler did a considerable amount of discing, ripping or floating on ranches 35, 57, 59, 61, 75, and 85 toward the end of February.[103]

Tex-Cal Land Management stipulated that from March 11 until June 28, 1984, practically all work at Tex-Cal Land Management dried up for the unionized crews. (XIV:3.)[104] Early in March, Debbie Miller began to receive daily reports that labor contractor people were working in the fields in violation of the injunction (V:96) and after March 11, 1983, efforts by steady employees to find work at various ranches were unsuccessful. When they sought work at the various ranches, they saw crews at work in the fields, often under

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101. See invoice numbered 349106, supra, note 96. Other invoices for work performed on ranches 47 and 81 in late March are for other kinds of labor. Since, as will be discussed, it has been stipulated that after the seniority crews ceased pruning on March 10, 1983, there was no pre-harvest work available to any of the crews with the exception of crew 54, I will not detail this work here. Stipulation XIV:2.

102. See invoice dated 3/31/83, note 94, supra.

103. See invoices behind check made payable to Lefler Custom Harvesting, dated 4/25/83 in the amount of $6,846.00 and also invoices behind check made payable to Lem Lefler dated 4/25/83 in the amount of $68,468.00. Many of the invoices behind the two checks are the same.

104. GCX 144 and 145 contain numerous invoices for labor contractor/custom harvester work performed on the landowners' ranches and paid for by Tex-Cal Land Management throughout the spring and early summer of 1983. It is clear that non-union crews were doing the work historically performed by Tex-Cal Land Management's organized employees from April through the end of June, 1983. (XIV:3.)

people they knew to be Tex-Cal Land Management foremen, but were told that Tex-Cal Land Management no longer farmed them. Efforts to find work at the office were equally unsuccessful. Jorge Orozco testified that about a week after he was laid off -- sometime around March 17, therefore — he asked David Caravantes for a job and was told Tex-Cal Land Management had only 780 acres left. (1:32.) Esther Sandoval testified that on March 19th, she went to the company's offices and asked George Johnston for a job and Johnston told her Tex-Cal Land Management had sold the Arvin fields and had only a few ranches left. (11:120-122.)[105/]

2.

Cancellation of the Leases; Modular Farming From the end of February, groups of landowners started to "cancel" leases on their ranches until, by mid-March 1983 Caravantes would assert to Miller, (as he had earlier asserted to the employees who asked him for work,) that he only farmed five ranches. Although Bud Steele professed never to have heard of "modular Farming";[106/] Michael Steele, Mary Jane Steele and Randy Steele testified they discussed it with him. Even David Caravantes, who denied attending meetings in which the term "modular farming" was used, nevertheless admitted, first, that he "overheard" and, second, that he actually engaged in discussions with Michael Steele and Bud Steele about

105. As noted, some employees were told this on March 17-19; Miller was not to be formally told until the negotiating session of 3/28/83. The employees' recollection is entirely consistent with the pattern of cancelled leases; the last of them were purportedly cancelled on March 14, 1983 (GCX 113).

106. Robert MacDonald also testified he knew no more than Bud about modular farming.

"units of farms and how they were going to finance them." (XVI1:96-97; XIX:6.)[107/] Bob Bartholemew and Betty Kruger, too, recalled discussion of the concept of modular farming, but both treated it as idea merely thrown about, never actually implemented. Bartholemew recalled discussions with Bud Steele and David Caravantes in February or March 1983 about whether FmHA would approve financing for "modular" farming (XIV:72), and Betty Kruger recalled a spring meeting (at which Bud Steele might have been present) when Michael Steele presented a plan for modular farming, but what it was she couldn't say. (VII:96-98.)

I do not credit Bud's and MacDonald's denials or Kruger's, Bartholemew's or Carvantes' evasions. The testimony of the other landowner witnesses is too consistent with the events in this case not to be true. In the midst of the chaos of Respondents'

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107. The text of part of Caravantes testimony follows:

Q: (By General Counsel) Do you remember a meeting at the end of March or the first part of April with Michael Steele, D.M. Steele and Betty Kruger, where there was a discussion of dividing up the properties that you — had been farmed by TEX-CAL prior to the alleged lease cancellations into modules?

A: No. I attended a couple of meetings where there was discussions about financing farming operations of various small farms.

Q: What farms were those?

A: I don't recall the exact areas, but the landowners were — from what I could recall -- were putting, or joining together -- some of the farms for financing purposes. They wanted to seek outside financing for various assortments of the farms. I think D.M. Steele was financing some of his own and Michael Steele and Betty, but I don't remember the exact proportions that they were trying to do. Ibid.

testimony, the idea of modular farming stands as a fixed pole around which everything else finds its place. Although every witness who admitted hearing about the concept of modular farming defined it in the same way, it is in the testimony of Randy, Mary Jane Steele and Michael Steele that the concept received its fullest exposition. Randy Steele testified that his wife told him a new approach to farming was discussed at a Board meeting he didn't attend. He placed the conversation on January 28, 1983, or in the beginning of February.[108/] The new approach was intended to be more cost conscious and consisted of creating different modules for different ranches to go into: "in other words, there would be a breakup of the management company's acreage that it was farming." (IX:17.) Randy Steele also described a conversation with his father in March or April during which the concept of modular farming was further elaborated:

> Q: (By General Counsel) And what did your father tell you about modular farming during that discussion?
>
> A. He told me that in order to circumvent the union contract and to get out from underneath the union that he was going to modular out certain ranches and put them under non-union workers. Use non-union or non-bargaining unit workers to work the ground, eventually harvest the grapes, cultivate the ground, irrigate the ground.
>
> Q: At the time did he also tell you that he was going to leave in your properties and the Bartholemew[1]s properties, your wife's properties and Diamond S Leasing properties?
>
> A: Yes, he did.

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108. As I have noted, the Tex-Cal Board of Directors met January 28, 1983. Mary Jane Steele testified it met weekly after that.

Q: Did he tell you why those properties were going to be left in the Tex-Cal Land Management operation?

A: I can't remember specifically why he said it was or why he left those particular properties in the contract but I remember asking if -- if --

He related to me that he needed somebody to front for the Management Company. David Caravantes was going to have to be it. And take that 787 acres and according to his scheme or diagram that he drew up, David Caravantes or somebody was going to have to head up that particular module which was Tex-Cal Land Management, which had gone from 7,000 down to 787 acres.

* * *

Q: You made reference to a diagram. Did your father have a diagram there or did he draw one at the time that he was talking to you?

A: No. He had drawn one up or wrote one out where it was said different ranches were in paragraphs and it listed the agent for the specific ranches and then the foremen or supervisor.

And there was roughly probably 6 different modules set * up, run by different foremen with different supervisors and different modules?

A: I specifically can't remember. No.

Q: Do you remember if D.M. Steele was heading one of the modules?

A: I think I think he was heading the one over Poso. The ranches of Poso because I made a -- I remember when I looked at it in the vestings that he has, which is Tex-Cal Land, owns a lot of ground at Poso and he himself personally owns a lot on ground at Poso, on this so-called Poso Ranch.

(IX:19-21; see also IX:56.)

Michael Steele described the concept of modular farming similarly, although, as I have noted, he placed implementation of the scheme in April. According to him, the landowners broke into 4 or 5 different modules, with each module headed up by a landowner responsible for doing all the hiring. (VIII:34-35.) According to Michael Steele, however, the reason for the scheme was to obtain financing. It was thought that if they broke into smaller units they could get FmHA financing easier. (VIII:37.)

Mary Jane Steele testified that the decision to have a modular farming system was made sometime in February (maybe at a Board meeting she didn't attend) and it was conveyed to her by Bud Steele:

A: (Mary Jane Steele) Okay, this was after the restraining order, that they were going to separate the individual landowners off,, take them away from Management, in order to get the crop pruned.

Q: (General Counsel) And when he said they, who did you refer him to be referring to?

A: The individual landowners, you know, of the different parcels of land that were separated out. He called it, well, I remember him calling it moduling it off.

Q: Did he use a term called "modular farming?"

A: Could have. Modulars are what I remember, and he described them as separate little entities and they would farm their own or prune their own, meaning the land holders.

Q: Did he indicate whether this plan had been discussed at that meeting?

A: No, he just explained to me this is what was going to be done, so I assumed it was discussed at the meeting.

Q: Did he give you any indication at the time table that any of this was going to be happening? Did he say when?

A: It was being effected as of then.

Q: Did he state that?

A: Yeah, basically, yeah. It went into effect as of then.

Q: And did he tell you specifically which landowners were being pulled out?

A: No. He did let me know that myself and Randy and Bob, Bob Bartholomew's and Mike Steele's were going to stay in Management, Tex-Cal Land Management.

Q: Exactly what did he say?

A: Well, just that he was going to leave our particular pieces in the Management structure and we weren't going to go off and separate and do our own thing.

Q: And did he give you any explanation of this decision?

A: What do you mean, explanation?

Q: Why this was being done?

A: In order to get the crop pruned in time. To my understanding, the way the restraining order was read with the limited amount of people at such a late time, they would have not gotten all the crops pruned in time. It would have strung it out till June.

(VII:153-154.)

From mid-February forward this is exactly what happened: "landowners" started "cancelling" their leases: arrangements were apparently made by Michael Steele to farm their land and Tex-Cal Land Management claimed not to have anything to do with the farming. However, nothing essential changed in the relationship between Tex-Cal Land Management and the various landowners except for the pretense, apparently maintained only before the union and the Board,[109/] that Tex-Cal Land Management had nothing to do with

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109. Thus, FmHA was not notified of the break-up of the farming operation even though it was providing Tex-Cal Land Management with protective advances to farm the entire operation.

farming the land. Tex-Cal Land Management officers arranged to farm the ranches; David Caravantes arranged to pay for the farming, and FmHA funds, through Tex-Cal Land Management, were used to finance it.[110/]

It is primarily Michael Steele, by then Vice President of Cultural Practices for Tex-Cal Land Management, who began to make arrangement for labor contractors and custom harvesters to prune the ranches of the landowners who had cancelled their leases. At first, he arranged to prune only his and his co-owners ranches and he said he made the arrangements for his co-owners only as a favor since his primary concern was to prune his own land (VIII:32). Soon his favor cut a wide arc and, he admitted, he began to organize the work to be done for the other landowners, VIII:27-28, just as was envisaged by the modular concept of farming. According to Michael Steele he borrowed the money from Tex-Cal Sales, and Bud Steele[111/] to pay for this work; additionally some contractors agreed to "carry them"

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110. Randy also testified that regular Tex-Cal Land Management foremen were shifted over to head up the various modules. IX:26. This is consistent with workers testimony that Tex-Cal Land Management foremen were in the fields. Moreover, Board agent Al Mestas and various workers observed Tex-Cal Land Management equipment in the fields, see e.g. 11:58, 65, 87. Also George Johnston, Tex-Cal Land Management's Director of Personnel, went to work for Tex-Cal Sales as "field inspector" of the crops during the pruning and pre-harvest work. (XII:43-44.)

111. Bud denied loaning any of his own money to Michael Steele; according to him, he advanced money from Tex-Cal Sales only. (XII:80.) I cannot conclude that Bud advanced any of his own money to the modular units. Bud spoke about using his own money with what appeared to be a genuine expression of amusement at the absurdity of such a proposition.

Michael Steele also testified he borrowed money from Tex-Cal Land, Inc. (XIV:32.) See also OCX 187, Note from Michael Steele to Tex-Cal Land Inc.

for awhile. (VIII :25.)[112/]

According to Michael Steele, the individual landowners were supposed to pay for the services performed on each ranch and he had the invoices sent to each individual landowner through Tex-Cal Land's office at 1215 Jefferson Street where the 3-S accounting service used to be located (before it moved to the Edison Building). (VIII : 30-31.) The bills were sent to Martha Fernando who works for Tex-Cal Sales. (VIII: 32.) After making these arrangements, Steele "lost track" of what was to happen next but David Caravantes testified that he stepped in and made arrangements, unknown to any of the landowners or to Steele, to have Tex-Cal Land Management pay for all the work on the various ranches from "protective advances " received from the FmHA. According to Caravantes, this was done in an effort to get the leases reinstated: he simply instructed the accounting service to send him the bills.

I discredit Michael Steele's and Caravantes' testimony on this point. It is incredible to me that Steele undertook to incur

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112. It appears from the fact that almost all the labor contractors and custom harvesters were paid after FmHA released protective advances, that Michael Steele's testimony about being carried by labor contractors and custom harvesters may be true. Additionally, despite his and Bud Steele's testimony that Sales and Land Inc. advanced money for the purposes of farming the modules, it is also possible that the testimony about receiving advances may only have been designed to support the claim that the landowners were capable of farming. In this connection, FmHA official Bob Anderson could not say that Tex-Cal Land Management actually did use rollover money, but only that the agency was looking into it. Since there is only one check payable to labor contractor/custom harvesters dated earlier than the date protective advances issued, it is even possible that, if rollover money was used, it was used to pay the union crews in March. But this is all speculative. Michael Steele testified Sales and Land advanced him the money to farm and for the purposes of this decision I will take him at his word.

the tremendous financial obligation which farming that land entailed without knowing how he was going to pay for it. Moreover, how could the landowners have cancelled their leases, ostensibly for the purpose of having them timely pruned without knowing how the pruning was going to be accomplished? And since it is clear that Caravantes did pay for it, it seems clear to me that that was the idea from the beginning. Accordingly, I find that from or or about February 23, 1983, a scheme was devised by Bud Steele, and implemented by Michael Steele and David Caravantes whereby the landowners would purport to cancel their leases so that their land could be farmed by labor contractors and custom harvesters employed for that purpose.[113/]

It is not immediately clear, however, what the motive for the scheme was. Randy Steele testified that the impetus for the plan lay in Bud Steele's union animus; Mary Jane Steele and others testified that the motive behind it was to get the pruning done and Michael Steele and Bob Bartholemew characterized the genesis of the scheme as a concern with obtaining financing. At the outset, I

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113. I shall separately consider the question of liability for the scheme in Part___, below. Before resuming the discussion, I should note that contrary to General Counsel's contentions, I cannot conclude that the delay in commencing pruning was discriminatorily motivated. It is clear that FmHA money was unavailable and FmHA was keeping a particular watch on use of "roll over" funds. Indeed, General Counsel concedes that Respondent had funding problems but, she.argues, since it was prepared to use "rollover funds" to hire labor contractors, the fact that it wouldn't use them to hire its steady crews, compels a finding of animus. In the first place, it was improper, perhaps unlawful, to use rollover money and in view of that, it seems just as likely that Respondent was waiting until the last possible moment to start pruning in order to avoid resorting to the money. Secondly, since failure to timely prune jeopardized the crop and was one of the reasons for FmHA's concern about loaning any new money to Tex-Cal

(Footnote continued---)

(Footnote 113 continued——)

Land Management, it is hard to view so self-destructive a course of action (delay and the use of rollover money, both of which threatened FmHA funding) as a strategy aimed at the union.

Moreover, no matter whether General Counsel's inference of discriminatory intent based on the use of "rollover money" depends on the extravagant proposition that Respondent was required to use the money improperly in order to hire union supporters or if it is based on the more reasonable proposition that if Respondent used the money improperly, it had to do so in a non-discriminatory manner, so long as it was either reluctance to use rollover money at all or the desire to do the work more cheaply with non-union labor which was behind the delay in pruning, the motive has to be considered economic. Fibreboard Paper Products v. N.L.R.B. (1965) 382 U.S. 826.

reject, Bartholemew's and Michael Steele's testimony that the concept was designed to obtain financing. As Bartholemew also testified, FmHA, to whom Tex-Cal Land Management was still looking for funding, would not fund an operation without the leases because without the land, there is no farming operation. (XIV:73; see also Testimony of Bob Anderson, FmHA loan specialist, XI:9; Bud Steele XII:50.)

It is more plausible that it was the Board's obtaining the injunction that triggered implementation of the modular farming system as Mary Jane Steele, Robert MacDonald, David Caravantes and Michael Steele testified. (See RX 9 [MacDonald's lease cancellation]; XIV: 84-85 [Caravantes].)[114/] Thus, Michael Steele testified:

> Q: (By General Counsel) Why did you pick February 23rd to cancel your lease?
>
> A: It was getting late in the season, my vines were in real trouble, and *I* felt that if *I* didn't do something then I was going to probably lose the 1983 crop on those particular ranches.
>
> Q: But you were aware that Tex-Cal Land Management had already begun its pruning operation?
>
> A: I was aware that they had begun it.
>
> Q: Okay.
>
> A: But I was also aware that they were, because of the injunction, the people that they were only allowed to hire would never get to my property.
>
> Q: How were you aware of that?
>
> A: I was told how many people showed up for work, and I think there was nine crews, 20 or 30 per crew, and Tex-Cal has 5000 some-odd acres, and I couldn't see how they would do that on a timely basis and I got scared, so I cancelled the lease.

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114. Betty Kruger testified, however, that the injunction was not instrumental in the decision to cancel her lease.

Q: And did you cancel the lease for any other reason?

A: I cancelled the lease because the taxes hadn't been paid, the land payments hadn't been paid, the vines were in horrible shape, no cultural practices had been done, and the buds were starting to push and if they didn't get pruned then, we were in trouble, or I was in trouble, and that's what I did that for. And I'll probably do it again if the situation arises again. (VIII:42-43.)

It is clear merely from looking at the amount of time the seniority crews spent on the ranches they did work, that all the ranches could not have been pruned in short order by the seniority crews.[115/] However, even this explanation fails to completely satisfy, for if it accounts for the hiring of labor contractor crews during the time the seniority crews were at work, it does not explain why it was necessary to keep them after the seniority crews were laid off on March 11.[116/] Nor does it explain why custom harvesters were hired to do tractor work historically performed by the steadies: the February injunction never even applied to them and their replacement by custom harvester crews makes the replacement of the seniority crews seem but part of a larger pattern of displacement of union crews that was formulated independently of the existence of the

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115. Perry Aminian, a vitaculturalist called as an expert witness by Respondent, testified that to assure a good crop the vines had to be pruned by March 15, 1983. (XVIII:7 .)

116. See Items 10-13 referred to above in Part II, Section (B)(3)(d)(l), pp. 61-62.

injunction.[117/]

In view of my doubts about the injunction being the "cause" of modular farming, I do not need to decide whether evasion of an injunction could be considered a legitimate and substantial business reason. We are left, then, with Randy's testimony and Bartholomew's prior statement that the modular system was designed to circumvent the union.[118/] However, there is reason to believe that the

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117. Moreover, it doesn't explain why even while the hearing was going on custom harvesters continued to be used: Tex-Cal Land Management was using labor contractors and custom harvesters during August, 1983. See Post Hearing Brief, pp. 35, 36; Motion to Admit General Counsel Exhibit by Stipulation filed October 7, 1983. I discount the invoices contained in GCX 191 and 196 since Caravantes testified that Lefler was using specialized equipment to disc and float the almonds and that he was performing essentially a harvesting operation in the almonds which may be subcontracted. See XIX: 54, 60, 63; XIX:56.

As far as the invoices in GCX 192 are concerned, General Counsel only claims that discing on ranch 57 and on 66 on August 1, 1983 are unit work. Caravantes claimed that seniority employees did the invoiced work on Lefler tractors. However, GCX 226 reveals no discing work on those ranches by seniority employees. Thus, it appears that General Counsel is correct as to those invoices.

As far as the invoices contained in GCX 193 are concerned, General Counsel contends that only the discing of Calmerias and cutting Emperor canes on ranch 76, the flat furrowing on ranch 32 and the cutting of Thompson and Calmeria canes on ranch 72 are at issue. Caravantes testified that seniority employees drove Lefler tractors on these ranches. XIX:51, 52, 53. Once again, GCX 226 indicates no unit employees performed work on these ranches on 8/15/83, the date of the invoices.

As far as the issues contained in GCX 199 are concerned, Genreal Counsel contends that only the discing and furrowing at ranch 76 on August 21, 1983; the discing and ripping at ranch 51 on August 21, 1983, and the cutting of canes and discing on Ranch 66 on August 22, 1983 are at issue. Once again Caravantes claimed steady employees drove Lefler's tractors on those days. XIX:58. Once again, GCX 226 does not contain any indication that steady employees worked on those ranches on those days.

118. At the hearing, Bob Bartholomew testified he did not know why Bud Steele wanted to inaugurate the modular system; but in

(Footnote continued——)

testimony of the Randy/Bartholemew faction was designed to make Bud Steele appear more culpable than he may be in order to establish the lack of culpability of Randy, Mary Jane Steele and Bob Bartholemew. Throughout Randy's testimony, the theme of himself as the cast-off innocent is so consistently played that I quickly wondered whether its companion -- that of his father as a wrongdoer -- was not more a reflection of how Randy feels about him rather than of what actually happened.[119/] Indeed, there are aspects of Randy's, Bartholemew's and Mary Jane Steele's testimony -- Bud's adversaries in the bitter corporate fight that has spawned several lawsuits -- in which it appears that the three of them are studiedly tailoring their testimony to avoid any implication of personal liability in the events of this case.

For example, Bartholemew testified he was not present at a Board of Directors meeting of March 7, 1983 when the minutes of the meeting indicate his presence. There is no reason on the record why the minutes would be inaccurate, but there is every reason in the charges and countercharges of defrauding the FmHA which flew at this

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(Footnote 118 continued---)

At the hearing, Bob Bartholemew testified he did not know why Bud Steele wanted to inaugurate the modular system; but in a declaration filed in connection with injunctive proceedings, he stated that Bud was using "labor contractors who purported to work for independent landowners in order to circumvent the UFW." (OCX 48, XIV:72-73.) I can treat this inconsistent statement as evidence. Evidence Code section 1235.

119. It is ironic that, as between the two men, one of whom plainly tried to conceal and the other of whom tried to reveal "all", it is the testimony of the one who tried to tell "all" that gives me greatest pause. I might not believe Bud, but I don't trust Randy.

(Footnote continued---)

hearing for Bartholemew to deny being present at the meeting when the landowners ostensibly indicated they wanted to cancel their leases. (GCX 179.) Similarly, Randy's testimony that he started an investigation into the use of labor contractors when he returned to work in the spring smacks of theatre in light of his other testimony that he was kept informed by both his wife and his father of the modular scheme. The motive for such a story can only be to demonstrate his own lack of knowledge, and, therefore, culpability, in the scheme. Even Mary Jane Steele's testimony evidences an intent to keep her outside the corporate decision making process-Thus, even though the minutes of the January 28 meeting indicate "corporate efficiency and union problems" -- which could well be code words for modular farming -- were discussed, she remembered none of the details of the meeting. She could only recall a discussion of modular farming taking place outside the meetings she attended. [120/]

(Footnote 119 continued---)

Of the two men, only Bud showed any emotion in talking about the other; in fact, at one point during his testimony his eyes filled with tears in discussing his relationship with his son. Randy, on the other hand, testified unemotionally, coldly, implacably, generally sparing himself and implicating his father whenever he could. I could not avoid the impression he was trying to hurt his father. And it is unclear whether the truth alone would be sufficient to satisfy his purposes or whether he might feel a need to embellish it. This goes especially towards his testimony about Bud's and his attitude towards collective bargaining; in his telling, of course, Bud was obsessed with getting rid of the union while he was prepared to do his duty (although not much liking it.) In assessing motive, then, I am not relying on Randy's testimony.

120. Since Randy testified his wife told him that the concept was discussed at the Board meeting, her placing discussion of it outside the meeting is consistent with my sense of a conscious strategem on the part of the Randy/Bartholemew faction to placethemselves outside the chain of events in this case.

To these doubts about the veracity of Randy and Mary Jane Steele's testimony are added others engendered by the totality of the circumstances in this case. The difficulties facing Tex-Cal Land Management were so many that to isolate concern about the union and say that this clearly dominated anyone's thoughts seems disproportionate to the scope of the rest of the problems the farming operation faced. Apparent throughout Bud's testimony and even more apparent in his attitude while testifying, was a ferocious concern to salvage a farming operation on the brink of collapse, a goal so paramount he would pursue it where necessary though it would lead to a break with his own son. The strength of that concern vitiates the single-minded contention that everything which took place was designed to circumvent the union.

But if these doubts weaken the force of Randy's testimony, for the reasons stated below, they are not sufficient to meet Respondents' burden of proving a legitimate business justification for their actions. Conduct such as took place in this case must be considered "inherently destructive".[121/] Such conduct may be deemed proscribed without need for proof of an underlying improper motive, because it carries with it unavoidable consequences which the employer must be held to have not only foreseen but also to have intended; as a result, it bears "its own indicia of intent." N.L.R.B. v. Great Dane Trailers 1967) 388 U.S. 26, 33. If the

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121. As the Supreme Court noted in Rivcom Corporation v. Agricultural Labor Relations Board (1983) 34 Cal.3d 743, 758: "Wholesale replacement of union with non-union employees has a manifest and substantial adverse impact on organizational rights." (See Phelps Dodge Corp., 313 U.S. 177, 185.)

conduct in question falls within this "inherently destructive" category, the employer has the burden of explaining away, justifying or characterizing his actions as something different than they appear on their face, and if he fails, "an unfair labor practice charge is made out." Id., at 228. Against the doubts as to Resondents' real motives raised by the considerations detailed above stands the general incoherence of the defense in this case. There are so many evasions, half-truths and contradictions that to attempt to find out what was actually going on, is to do more than any of the Respondents cared to assist me in doing. On this record, I cannot say for sure why Respondents acted as they did. Accordingly, I conclude that Respondents have not met their burden of proof in presenting legitmate and substantial business justification for implementing the modular farming scheme, and I find that, in diverting the work of their union employees to labor contractors and custom harvesters crews through implementation of the modular farming scheme they violated Labor Code section 1153(c) and (e). By all accounts, the pretense of using modular farming ended in late June when the landowners "reinstanted"[122/] their leases and seniority crew were recalled.(Stip. XIV :.3)[123/]

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122. The reinstatement of the leases was accomplished with as little formality as their cancellations had been. Indeed, Bud Steele speaks of the end of modular farming as "simulated", which, of course, I have found its beginnings to be.

Q: (By General Counsel) When was the lease [reinstated] on your properties?

(Footnote 122 and 123 continued---)

d.

The Course of Bargaining after the Modular System was in Place

The parties relationship was pretty much epistolary throughout the month of February. On February 4 Miller again requested the financial information she had sought in her earlier letters:

> Regarding pruning of grape vineyards; As we alleged in charge number 83-CE-7-D, it is our position that the Company is intetionally (sic) delaying the start of the pruning season to displace workers supportive of the UFWA. At our meeting on February 3, 1983, you presented no information to substantiate any other reason for delaying the pruning. You said you were waiting for funding. However, you again refused to provide any financial records to support your position.
>
> We again request all the financial records and information requested in our letters of January 26, 1983 and February 3, 1983 and any other information or records which support your position that you do not have the necessary funding to commence pruning. This includes any correspondence or communications between funding sources and Tex-Cal Land Management Co. Inc. or between funding sources and any of the entities listed in my letter of February 3, 1983.
>
> (GCX 79.)

(Footnote 122 continued---)

> A: The exact date I can't recall but it was the latter part of late spring. I would imagine, and I'm just guessing, it was kind of a -- it wasn't just a deadline there, it was kind of a simulated type of deal that, say, in June, possibly May. There were three outstanding problems that I, as a landowner, was facing. One, the lease called for specific performance of the lessee to debt service, pay all the taxes, interest, keep the lands free from liens and above all, work them in a husbandrylike manner. They failed in all those points.
>
> (XII:48.)

123. Because of the complexity of my findings regarding the work performed under the modular system, I shall collect all the findings in a special summary of Findings of Fact at the end of this opinion.

She also requested the pruning information:

- Payroll Labor Distribution for 1983 tree pruning and any other records if necessary to show the production information requested in our January 12, 1983 letter.

- Names and address (sic) of workers who pruned trees in 1982 and 1983.

On February 11 she sent another copy of her February 3 package including the new RFK proposal. (GCX 80.) On February 11, she requested the current names and addresses of the officers and directors of Tex-Cal Land Management. Also on February 11, she requested information concerning the identity, hours worked, and gross pay of all employees who received a vacation in 1982 and corresponding information for all employees who worked over 1,000 hours in 1982. (GCX 82.) She requested this information in order to be able to bargain over vacation; she wanted to find out who was eligible for vacation since employees had not received vacation pay yet and the union was concerned that they would not receive any. (V:58.) Miller wanted to bargain for a guaranteed vacation for those who had received one in 1981, since there was such a reduction of hours in 1982 and 1983. (V:58.) The names of people who received vacation in 1981 were provided. On April 20, 1983, she received GCX 65, the 1982 hours and gross pay for the people who received vacation in 1981.[124/]

Concerned about Tex-Cal Land Management hiring, Miller sent GCX 83, a list of relatives of seniority workers who were interested in working for Tex-Cal Land Management in case there might be

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124. She also received similar information for previous year showing number of people who qualified for vacation. (GCX 64.)

vacancies since GCX 53, Article 5, Section 3, provides for a preference in hiring to family members of unit employees. On February 14, 1983, Caravantes advised Miller that the obligation to hire family members had ceased as of the expiration of the contract. (GCX 85.)[125/] On February 14, 1983, Caravantes repeated his position that they were not obligated to hire people under the terms of the contract. (GCX 86.)[126/]

On February 16, 1983, pursuant to a discussion about taking access, Caravantes wrote Miller stating he would bargain about access, but unless the union filed a notice of intention to take access, he would not permit the union to take it. (GCX 87.)[127/]

On February 19, 1983, Caravantes advised Miller that her new package was unacceptable and in bad faith; in his words, it was "patently unacceptable because of many reasons." He didn't

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125. As a general rule, the terms and conditions of employment survive the expiration of a contract, but those aspects of the contract regulating the employee-union relationship do not. Bay Area Sealers (1980) 251 NLRB 89. Thus, union security and check-off provisions lapse, Industrial Union of Marine and Shipbuilding Workers of America v. N.L.R.B. (3d Cir. 1963) 320 F.2d 615,cert, denied (1964)375 U.S 984, but I have found no cases indicating that hiring provisions lapse. Indeed, Kheel, in his Labor Law treatise, section 20.05, implies that even a provision for the hiring hall does not lapse and if the hiring hall (which seems most clearly a part of the union-employee hiring relationship) survives, so must a provision to hire relatives of workers. Accordingly, I conclude Respondent violated Labor Code section 1153(e) by repudiating the contractual provision to hire relativies and by failing to hire relatives.

126. On February 17, 1983 Miller sent the names of more relatives of seniority workers who were interested in working. GCX 88, GCX 90, 91 also names of people who wanted to work.

127. This is a violation of 1153(e). See O. P. Murphy (1978) 4 ALRB No. 106 (Union entitled to post-certification access); Bruce Church (1981) 7 ALRB No. 20.

elaborate on the reasons, but he did request conciliation and agree to the UFW's proposed mechanization article of June 17, 1982. (GCX 89.)[128/]

On February 23, 1983, there was a meeting at the ALRB office among Tex-Cal Land Management representatives Elias Munoz, David Caravantes and George Johnston, and Board and UFW representatives to discuss modification of the court order to obtain more crews. (V:75.) Although Miller offered to help if they would give her a list of additional workers, (V:75), she was told it was none of her business.

On February 24, 1983, Caravantes wrote to Miller advising her that he had given up ranches 37, 36 and 34 and offering to effects bargain. (GCX 92; V:76.) Miller responded by requesting information about names and addresses of landowners who cancelled their leases, copies of any correspondence concerning the transactions, and any documents relating to the sale or transfer of the business to any other entities. (GCX 93.)[129/] She then sent requests to bargain by certified mail to all the named Respondents. (V:79; GCX 95.) Many of the letters went unclaimed.

Tex-Cal Land Management then sought leave to modify the Preliminary Injunction in order to hire up to eight additional crews of up to 40 workers in each crew. On March 7, 1983, the Court

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128. This exact article had been proposed as part of a package by the company: what Caravantes did was to take it out of the package. (V:71.)

129. Miller received some, but not all information requested. (V:77.) She never received any documentation concerning the transfers.

granted the motion upon the following conditions.

> Before hiring the additional 8 crews all previous orders shall remain in effect in that the nine seniority crews already authorized shall be filled by seniority workers duly recalled, plus additional workers to bring the crews up to full strength, in accordance with the previous order of the court.
>
> The company will notify the union prior to hiring any of the additional eight emergency crews and give the union an opportunity to furnish the required workers. The company shall then give preference to the workers supplied by the union before hiring any additional workers necessary to bring the eight emergency crews to full strength.
>
> (GCX 42.)

After the modification hearing, George Johnston, told Miller that the company wanted the crews to be ready at the "Jailhouse" -- a common hiring location -- at 6:30 a.m.[130/] the next morning. Johnston called Miller later in the afternpon to ask how many workers the union would be supplying and Miller told him, "all of them":

> And he said, "Oh, really?" and was very surprised that I said we were going to be providing all of them the next morning. And then he said, "Well, you know they have to bring pruning shears. We don't have enough pruning shears. We only have pruning shears for about 50 or 60 people. And if they don't have pruning shears they aren't going to be able to prune."
>
> And I said well the Company has to provide the equipment and he said, "Well, we don't have the pruning shears." I said "Well, how do you expect to have, you know, 8 crews pruning if you don't have pruning shears for them?"
>
> He said, "Well, they have to bring the pruning shears if they want to work."
>
> (VI:16.)

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130. Miller first testified hiring was to begin at 6:00 a.m.; later she said this was a mistake: hiring would begin at 6:30 a.m. (VI:19.)

That evening Miller and some UFW staff people began to call workers. They started with the list of family members that had previously been supplied to Carvantes and then, calling on ranch committee people from various other area ranches/ the Union established a network of telephone callers which by 5:00 the next morning had signed up 320 prospective workers. Miller gave Elias Munoz, Caravantes' assistant, a list of 262 names and social security numbers at 6:45 a.m. and another list containing 58 names and social security numbers at 8:00 a.m. (GCX 146.)[131/]

After Miller gave Munoz the list, Munoz climbed aboard a truck and addressed the assembled workers. He told them that the company had sent recall letters to all the 40 crews that had worked in the prior years' pruning season — approximately 1400 employees — but that he could only hire according to the court order. He also said he would hire only if an employee had pruning shears and a social security card in his possession. (VI:21-24.)[132/] According

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131. GCX 146 also contains some names with a line through them. The line denotes workers who were solicited the previous evening but didn't show up. (VI:20.)

132. Munoz, who represented Tex-Cal Land Management during the hearing, stipulated that the company denied jobs to people who did not present social security cards. (XI:38.) Augustine Gonzalez testified that when he was hired by Tex-Cal Land Management in 1982, he did not have to present his social security cards. (XI:40.) George Johnson testified that presentation of the card has been a condition of hiring since "some time last year" and especially during "mass hirings." (XV:145.) I do not credit Johnston's testimony. But I am not sure that hiring pursuant to the injunction required adherence to the terms of the contract. As I will discuss below, I believe the March 8 incident is *a.* violation of Labor Code section 1153(c) for other reasons. Accordingly, I will not treat imposition or a requirement to present a social security card as a separate violation of 1153(e) but as a tactic for eliminating some workers referred by the union.

to Miller, about 40-50 employees without social security cards were turned away, but it doesn't appear that lack of pruning shears cost anyone employment. (VI:24-25.)[133/] By 10:15, the company had hired only three crews and Munoz announced only one more crew would be hired. Miller asked why only 4 crews were going to be hired when the company had gone to court to demand a ceiling of up to eight crews. Munoz said he didn't know; she should ask David. Miller tried to speak to Caravantes in the field that day, but he refused to talk to her. George Johnston testified that the reason only half the number of crews was hired was that additional leases had been pulled on the morning of the modification hearing. (XV:119.)

After the hiring was completed, Miller asked for a list of the employees actually hired in order to be able to give priority to those not hired in the event the company did more hiring. (VI:30.) Munoz refused to provide one. She renewed her request to Caravantes in a telephone conversation later that day and, he, too, denied it.

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133. Miller said some 40 to 50 people were turned away because they didn't have cards.

In the same conversation, she also attempted to discuss access, but Caravantes refused, saying "You know, I don't discuss proposals on the phone and if you want to do anything sent it in writing. " (VI:31.)

At around this time, Miller began to experience difficulties even leaving mail. On March 9, 1983, when she went to the Jefferson Street office to deliver a letter to Caravantes, the receptionist, a woman she had never seen before, refused to take it without approval from a woman named Martha whom she called on the telephone. After calling Martha, the receptionist said she couldn't accept it just as another unidentified woman came out to tell Miller they didn't work for Tex-Cal- Land Management. (VI:33.)[134/]

Meanwhile, the parties were attempting to arrange a meeting to negotiate the effects of the loss of ranches 34, 36 and 37. However, there was some difficulty in arranging it; in fact, Tipton called to cancel an already scheduled March 15 meeting on advise of counsel. (VI:38.) She did propose other meeting dates. (GCX 101.) Apparently another meeting was scheduled for March 24, 1983, since Miller refers to that date in GCX 104, a letter to Caravantes reminding him of the meeting and renewing her request for various information including what was happening to the ranches.[135/]

On March 21, 1983, Caravantes wrote to Miller advising her that Tex-Cal Land Management was farming only ranches 31, 62, 65, 70

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134. Miller testified about similar problems delivering mail on March 22, 1983. (VI:40-41.)

135. Caravantes cancelled the scheduled March 23, 1983, meeting because of illness. It was rescheduled for March 28. GCX 106.

and 77. (GCX 105.) Miller's response was to send, by certified mail, letters to each of the landowners, containing a list of steady seniority employees and identifying the seniority crews who were available for work. See GCX 108; GCX 109 (certified letters).

The parties finally met on March 28, 1983. The meeting began with Caravantes presenting Miller with a letter detailing the lease concellations, pertinent parts of which follow:

> Dear Ms. Miller:
>
> As per my letter of March 21, 1983, I informed you which ranches Tex-Cal Land Management, Inc. has retained under lease agreement. You have previously been given on ranch maps, so you are well aware which ranches Tex-Cal Land Management farmed in the past. (sic) Simply deduct the ranches Tex-Cal Land Management presently farms from your ranch maps and you can summarize which ranches I was forced to surrender.
>
> I presently do not possess the leases to any of the ranches. They are recorded leases and for a little effort you can obtain them at the county recorder's office. I understand that you may obtain all pertinent information regarding landowners from the deeds, but enclosed you will find a list of ranch owners and their addresses and dates of cancellation. Regarding your request for information of communications, it is my position that all communications between Tex-Cal Land Management's lawyers and the lawyer's of the landowners are privileged. But to further our position, I fail to see how the information you requested has any bearing on negotiating the impact on the bargaining unit.
>
> Why you obviously want this information is relatively clever. This information is solely related to a successor employer's case you are attempting to manufacture.
>
> As to the reason why the landowners cancelled their leases, you should know that Tex-Cal Land Management was prevented from maintaining the ranches as prescribed in its recorded leases.

You prevented Tex-Cal Land Management from doing that and you will be held responsible.

Attached was the following list :

RANCHES	EFFECTIVE DATE OF TERMINATION	LANDOWNER
32	3/2/83	Carl & Grace Steele
33	3/7/83	D.M. Steele
34	3/23/83	Mike Gayle Steele Robert & Jean McDonald
35	3/7/83	C.A. & Weltha Hansen
36	2/23/83	Mike & Gyale Steele
37	2/23/83	Robert & Jean MaDonald Dovie Horton Wanda Guerber
47	3/7/83	D.M. Steele
51	3/7/83	D.M. Steele
58	3/7/83	D.M. Steele
59	3/7/83	D.M. Steele
60	3/7/83	Robert & Betty Kruger
61	3/7/83	Robert & Betty Kruger
64	3/7/83	D.M. Steele
68	3/7/83	D.M. Steele
72	2/28/83	Earl & Imogene Winebrenner
73	2/28/83	Earl & Imogene Winebrenner
70	3/7/83	D.M. Steele
81	3/7/83	D.M. Steele
88	2/28/83	Earl & Imogene Winebrenner

MANAGEMENT LEASES - Ranches 31, 62, 65, 70 & 77.

After reading the letter Miller asked, "are you saying that these 5 ranches [ranches 31, 62, 65, 70 and 77] are the only ranches that are being farmed by Tex-Cal Land Management?" (RX 11, TR. 3/28/83, p. 1; VI:46.) Caravantes replied affirmatively.

The union took a caucus to read the letter and quickly concluded that the list of cancelled didn't account for ranches 48, 49, 56, 57, 66, 67, 69, 71, 74, 75, 76, 78, 80, 85 and 89. Miller asked Caravantes what the status of these leases were. Caravantes said ranch 48, 49 and 60 were not in the unit and Miller replied "those have already been litigated". He said the others must have been left off by mistake; he only had 5 ranches. He said he would mail her the information about the other leases "tomorrow". (RX 11; TR. 3/28/83, p. 3.) [136/] When Miller pressed him for more information — copies of letters cancelling the leases, phone numbers of the landowners — Caravantes denied any obligation to supply the information. (RX 11, Tr. 3/2/83, p. 5.) Moreover, he told her he didn't know the phone numbers of the landowners. Miller was incredulous. She then asked how many employees would be needed for the 5 ranches; Caravantes said maybe 12 drivers and 12 irrigators. When she requested a seniority list, Caravantes said he would provide one, but never did. (VI:50.) She renewed her request for information concerning the lease cancellations, the officers and directors of Tex-Cal, and financial information about the other entities. (VI:52.) Finally, she stated that as far as the union was concerned Tex-Cal Land Management was still in control of the land. (VI:52.) Caravantes made it clear he was only bargaining for 5 ranches. (VI:53.)

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136. The additional information was not to be mailed to Miller until April 19, 1983 when Caravantes advised her that Marshall Platt, for Tex-Cal Land Inc. had cancelled ranches 56, 57, 66, 67, 71, 75, 76, 78, 80 and 85 effective March 14, 1983. He further contended that ranches 48, 49, 69, 74 and 89 were not part of the bargaining unit. (GCX 113.)

Miller asked about RFK. Caravantes said they had sent in February payment and, they would only continue benefits for 90 more days; if the trustees wouldn't accept payment they might become self-insured.

On May 17, 1983, Miller wrote to Tex-Cal advising him that the company had to continue to make contributions to the pension plan (JDLC) and RFK even though the contract had expired. (GCX 116.) Moreover, she advised him the company would have to maintain the benefits.

> As you are well aware, the cost of the R.F.K. Medical Plan (basic benefits without vision or dental) has been thirty-five (35¢) cents per hour since the first payroll week in September, 1982. Tex-Cal has continued to pay only twenty-two (22¢) cents per hour to the R.F.K. Medical Plan and to be subsidized the remaining 13£ per hour. Frank Denison, attorney for the RFK Medical Plan, has informed me and has informed you, that the plan is no longer willing to subsidize Tex-Cal.
>
> Accordingly, so that Tex-Cal employees may continue to be covered by the R.F.K. Medical Plan, the Union demands the following:
>
> (1) That Tex-Cal contribute 35¢ per hour to the R.F.K. Medical Plan retroactive to September, 1982. The amount which must be paid to that Tex-Cal employees may continue to be covered is $28,630.16 (see attached sheet).
>
> (2) That Tex-Cal contribute 35¢ per hour for hours worked in April, 1983 and subsequent months until such time that the R.F.K. Medical Plan indicates that the Contribution rate necessary to maintain current benefits has changed or until a new rate is agreed to as part of a new collective bargaining agreement.
>
> This does not change our negotiating proposal. Our proposal for vision benefits however, will be resolved as part of overall negotiations for a new contract.
>
> The demand we made in this letter for contributions of 35£ per hour is so that the R.F.K. Medical benefits currently in effect may be maintained. To refuse to maintain them

would constitute a unilateral change in terms and conditions of work and would be a violation of the A.L.R.A.

(GCX 116, see also VI: 91 et seq.[137/], see also OCX 117.) Miller's letter reflected the position of the... trustees of the medical plan that Tex-Cal Land Management would only be permitted to remain a participating employer if it paid 35¢/hour retroactive to September 1982. Kent Winterrowd had previously written Miller. Dear Debbie:

> This will confirm our conversation of Monday, April 18, 1983, as follows. I advised you that the Robert F. Kennedy Farm Workers Medical Plan Board of Trustees would, of course, allow Tex-Cal Land Management, Inc. to continue to be a Participating Employer if they agree to contribute at the rate of 35¢ per hour effective the first payroll in September of last year. . . .
>
> (GCX 117)

Winterrowd had taken the same position in correspondence with Caravantes. (GCX 116.) Caravantes wrote back rejecting the union demand, offering to pay 22£ per hour and requesting mediation. (G.C. 118.) He also claimed impasse.

On May 23, 1983, Caravantes proposed 1981-82 contract language on access and discipline and discharge, (GCX 119) thereby abandoning their proposal to bar organizers who violated contract. That same day, Caravantes also wrote proposing an "expiration" of the year's bargaining:

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137. Although there was some testimony by Miller that Tex-Cal Land Management's April contribution check had been dishonored, her letter in May does not advert to the company's not being current even at 22¢/hour. Accordingly, I conclude that until the Trustees "cancelled" coverage, Tex-Cal Land Management had maintained coverage at 22¢.

> As you well know, Tex-Cal Land Management, Inc. will not agree to a two year collective bargaining agreement. It is Tex-Cal Land Mgmt's position that the time period we have been negotiating will expire mid-June 1983.
>
> As you well know, Tex-Cal Land Management, Inc. expects major changes in many proposals and in language. I am requesting a meeting date to commence negotiating the new collective bargaining agreement for June 1983 thru June 1984.
>
> I have previously requested a negotiation session and you blatantly refused to do so. A further continued refusal will be interpreted as an abandonment of the UFW certification.
>
> Understand that Tex-Cal Land Managment, Inc. is willing and has been willing to meet regarding the 82-83 proposal also. (GCX 120; see also VI:104; see also GCX 126.) Put cites

By this point, the parties relationship had broken down. Miller would continue to press for bargaining with each landowner, GCX 121, 122, 123, and Caravantes would nibble at bargaining, agreeing on small points, such as her acceptance of the "company's mechanization article and its access, discipline and discharge offer," see GCX 124; but the rift between them had become impassable: The workers wanted their jobs; Caravantes wanted an end to the litigation. By the final meeting on June 8, 1983, feelings ran so high that the workers took over the meeting to accuse Caravantes of taking away their jobs.

Caravantes began the meeting by presenting a package of four articles for a one year, 1983-84 contract. Miller expressed her confusion over what he was actually proposing and Caravantes explained that he was beginning to negotiate for one year only, although he was otherwise ready to negotiate separately for a 1982-83 contract. He explained:

> No, basically this meeting was to begin our negotiations for this round, the upcoming contract, and that's all the

> menu will cover as far as I'm concerned, and if you want to set another date, you know, for the other one, if you have any proposals we'll entertain them, and file them accordingly. (RX 11, TR. 6/8/83, p. 2 .)

When Miller inquired how he thought he could leave the past year's negotiations still in limbo, Caravantes explained that he "had traditionally and historically" had a one year contract and would not entertain anything other than a one year contract. (Ibid.) Miller insisted the negotiations could not be broken up in that way. She next inquried who Caravantes was there to bargain for and he once again insisted that he would bargain for 700 acres only.

The parties then discussed Caravantes' accusation that Miller had fraudulently substituted a withdrawn mechanization article when she purportedly acepted the company's proposal on June 17. (VI:117-118; RX 10 6/8/83, pp. 5-7.) When Miller checked her proposal book, she discovered Caravantes was correct, but she explained that the substitution of the article was not only meaningless but also inadvertant. [138/] The parties discussed access. Caravantes insisted that she sign a contract or file an access petition. (VI:120.) The union caucussed and returned.

It was the workers, not Miller, who next spoke. The head of the ranch committee rejected Caravatnes' proposal; he stated he wanted the company to rehire everybody and negotiate for all the acreage. Another worker spoke and Munoz asked him to identify himself. The worker refused, saying only, he worked for the company. Another worker said, these are my gunmen. The workers

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138. I credit Miller's testimony that she made an honest mistake.

then demanded to speak to the real boss. Miller and a representative from another union who was apparently present, also questioned Caravantes' authority to agree to anything at all. Elias Munoz then told Miller that if she would drop the charges, the landowners would reinstate the leases.[138a/] With discussion of these issues, the meeting sputtered to a conclusion:

Elias Munoz (E.M.):

E.M. You know what you can do about that (putting the people back to work) Debbie, we told you yesterday.

D.M. What?

E.M. You can help us get our property back.

D.M. Drop the charges for nothing?

E.M. You can help us get our property back, put everybody back to work.

D.M. That was a great deal you gave me, drop the charges, and nothing in return.

L.T. Nothing in return?

D.C. Well, if you don't have any further proposals, I don't see any.

M.E. We got more time anyway.

D.M. Our position, in terms of the bargaining goes, is that when you're ready to bargain for the whole 7,000 acres, let us know, you guys aren't bargaining now, you're still bargaining in bad faith, you're only bargaining for a tiny tiny part of what you've got•

E.M. So, are you telling us Debbie, that we're not going to have another negotiation session until we've got the 7,000 acres?

138a. This is a violation of the Act since it conditions good faith bargaining on withdrawal of the charges. N.L.R.B. v. Kit Mfg. Co. (9th Cir. 1964) 335 F.2d 166.

D.M. I'm telling you when you get serious and you want to bargain for a contract, for a contract for everybody that we represent, what do you expect, do you expect us to sign a contract for one crew? You're going to change the contract to match your fantasy, your little 700 acre ranch, there's no such thing as a 700 acre Tex-Cal, Tex-Cal is 7,000 acres, you can't expect us to come in here and bargain for a little tiny piece of it. We're ready at any time to consider your proposals.

(TR 6/8/83, p. 12.)

Sometime around June 20, 1983, Caravantes called to indicate that he had proposals on "last year's contract" and "next year's contract" but they were no different from what Miller had already heard. (VI:122.) Miller told him he if had any new proposals to send them to her. Caravantes pressed her for a meeting. She said there is no point unless you have a change in your proposals. (VI:123.) Caravantes sent her a letter indicating his outrage at her refusal to meet.[139/]

Caravantes called to see if she had received the letter and indicated the landowners were considering reinstating the leases. "He said that landowners were saying . . . we got them into it so we

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139. You refused to meet unless I present a written proposal first. Who the hell do you think you are? A small negotiation session could well result in all of your people going back to work next week.

To date the lowest wage you have offered Tex-Cal Land Management, Inc. is $4.85 on 9/24/83. Yet you agreed to a contract at $4.70 with the rest of the Delano Growers. Tex-Cal Land Management will not pay above the industry rate just because the United Farm Workers singles Tex-Cal Land Management.

I demand that you meet and negotiate Thursday, June 30, 1983, at 2:00 p.m. I have reserved the Civic Center Hall for that purpose. If you have any interest in seeing that all your employees are rehired, be there. (GCX 134.)

have to get them out of it." (VI:124.) Pursuant to Caravantes' demand, a meeting was scheduled for June 30, 1983, but Tipton canceled the meeting. Miller and members of the ranch committee presented themselves anyway and, confronting Caravantes, demanded to meet. He told them to leave his office or he would call the police.ii£/ (VI:127.)

This hearing followed.

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140. Without citation of any authority* General Counsel alleges this is an indicia of bad faith. (OCX 1(P) Amendment to Complaint.) I don't see it that way. Although cancellation of the meeting itself reflects on the company's good faith, once the meeting was cancelled, Miller's invasion of Caravantes' offices is not privileged and has no part in the bargaining process. Moreover, whatever force Caravantes refusal to meet has in impelling a conclusion of bad faith is more than dispelled by Miller's invasion of his offices.

III.

ANALYSIS AND CONCLUSIONS

A.

Single Employer Issue

General Counsel argues that all the business entities and individual landowners constitute a "single employer"[141/] according to the criteria enunciated by our Board in Abatti Farms (1977)

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141. In this opinion, I am treating the rubrics "single integrated enterprise" and "joint employer" as equivalent, although some commentators and courts have maintained the two terms are conceptually distinct. Even those who do argue for the existence of a distinction between "single-integrated enterprises" and "joint employers" admit that the national Board and many reviewing courts frequently treat the two concepts as one. See e.g. Morris, Developing Labor Law, 2d Ed., p. 144? N.L.R.B. v. Browing-Ferris Industries (3rd Cir. 1982) 691 F.2d 1117.

According to the Browning-Ferris court, the four-factor "single-intergrated enterprise"test is reserved for cases in which only "nominally" separate enterprises are under consideration, while the single-factor "joint employer" test applies to cases in which multiple entities which "in reality" are separate, but which have chosen to share control over labor relations policy, are under consideration. In elucidating the difference between the two tests, the Browning-Ferris s Court traces the pedigree of the truncated "joint employer" test to its own 1942 opinion in National Labor Board Condenser Corporation v. N.L.R.B., 128 F.2d 67, 71-72, in which it affirmed the national Board's conclusion that, because both respondents controlled the labor relations of a group of employees, they were to be considered a single employer. The court ignores the fact that the Condenser Corporation opinion merely affirms the Board's opinion that the enterprises in question were a "single integrated enterprise". (22 NLRB 347, 447-449.)

In Saticoy Lemon Association (1972) 8 ALRB No. 94, the distinction between the two was put this way:

> While many NLRB cases appear to treat the concept of joint employer as identical to that of single employer, there is an important distinction. Joint employer status may be conferred on two separate businesses, without regard to the presence of common ownership and common management. The critical factor is whether the two businesses possess joint control over the terms and conditions of employment of a single work force. (Ibid, IHE Decision, at 19.)

(Footnote continued——)

(Footnote 141 continued——)

The distinction is useful, except that, as the NLRB 21st Annual Report puts it, single-integrated enterprise status may also be conferred on two separate businesses despite the absence of common ownership and control:

> [T]he Board early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer for the purpose of determining whether to assert jurisdiction. The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together....
>
> The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:
>
> 1. Interrelation of operations;
> 2. Centralized control of labor relations;
> 3. Common management; and
> 4. Common ownership or financial control.
>
> No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show "operational integration," particularly centralized control of labor relations. The Board has declined in several cases to find integration merely upon the basis of common ownership or financial control. (NLRB 21st Annual Report (1956) pp. 14-15.)

As the report makes clear, it is "centralized control of labor relations", the single factor relied upon in the so called discrete "joint employer" analysis, that is critical to the finding of a single-integrated enterprise. It seems clear, then, that the focus of the single-integrated enterprise test as originally conceived, was no different than that of the joint employer test. Indeed, the Board's Annual Report quoted above actually calls single-integrated enterprises "Joint" employers.

Of course, some Board cases have found the existence of a single-integrated enterprise even in the absence of evidence of common control of labor relations, see e.g., Abatti Farms (1977) 3 ALRB No. 83, IHE Dec. p. 19, but it seems to me that the obviously relaxed application of the "rigorous" four factor test and its loss of integrity through being merged with a supposedly distinct and simpler "joint employer" test indicates that there is no real difference between the two. Both "tests" are simply different ways to frame the same ultimate inquiry; namely, as our Board put it in John J. Elmore Farms (1982) 8 ALRB No. 20, do two or more business

(Footnote 141 continued——)

3 ALRB No. 83 and applied in cases following Abatti Farms, Ibid., e.g. Rivcom Corp. (1979) 5 ARLB No. 55, enf'd. 34 Cal.3d 743; John J. Elmore (1982) 8 ALRB No. 20. The controlling criteria, not all of which need to be present in any give case, are (1) interrelation of operations, (2) common management, (3) common ownership and (4) centralized control of labor relations – are met in this case, General Counsel argues, by proof, so far as the various business entities are concerned, that (among other things), all of them are "controlled directly or indirectly by Buddy Steele" "who treats [their] assets as his own", that many of them share office space and exchange personnel and exist for the purpose of aiding the farming operation of Tex-Cal Land Management, including the lending of money to Tex-Cal Land Management without taking any security therefor; and by proof, so far as the landowners are concerned, that (among other things) "they" have held themselves liable for the debts of Tex-Cal Land Management; that "they" have loaned money to it without any collateral; that "they" have lodged control of labor relations on their ranches in Buddy Steele and Michael Steele who "orchestrated" the modular system of farming in order to conduct the cultural practices on their land. (Post-Hearing Brief, pp. 113-114.)

(Footnote 141 continued---)

entities demonstrate a sufficient degree of interrelatedness that it makes sense to treat them as co-responsible for labor relations? This ultimate policy question which is but a variant of the "totality of the circumstances" test corresponds to how several circuits have framed the single-integrated enterprise test. It also captured what is contended to be the distinctive flavor of the "joint employer" test. See, e.g. Soule Glass and Glazing co. v. N.L.R.B. (1st Cir. 1981) 652 F.2d 1055, 1075 and authorities cited.

It should be immediately apparent from my summary of the salient features of General Counsel's argument that not all of the criteria she relies upon apply equally to all of the Respondents. Thus, no entities other than Tex-Cal Sales or Tex-Cal Land Inc. advanced money to Tex-Cal Land Management; only some of the landowners have any interest in any of the other business entities named as Respondents, only some of the landowners play any part in the management of the various corporations and not all of the landowners even participated in the modular farming scheme. Indeed, the evidence presented forms a crazy-quilt pattern of some Respondents involved in every decision relevant to these proceedings, some involved in this case in one or two capacities other than as landowners, and some concerned only as landowners. Moreover, as far as the business entities are concerned, there is no evidence that any of them — except Tex-Cal Land Inc. (as a landowner) and Tex-Cal Sales (through the advance of "rollover money") — was involved in the diversion of unit work through the modular system. For the reasons stated below, I believe a single-employer analysis is inappropriate in this case; to my mind, the modular system of farming is a peculiar example of the creation of a number of alter egos "to take over" the business of Respondent.

1.

The Status of the Individuals as Landowners

Some of the respondents appear in this case only as landowners who lease their land to Tex-Cal Land Management for farming purposes. The amounts of land leased by them vary greatly. Steve Hansen, for example, leases 67 acres of Ranch 31; Dovie Horton

leases 160 acres of Ranch 37, Wanda Guerber leases 45 acres of Ranch 37. These landowners did not sit on the Board of Directors of Tex-Cal Land Management or any of the other business entities in this case, have no ownership interest in them and exercised no degree of control over the labor relations of Tex-Cal Land Management. In fact, under the leases, Tex-Cal Land Management had the exclusive right to perform all necessary agricultural operations on the land leased to it and so complete is the delegation of responsibilities to Tex-Cal Land Management that the landowners themselves are not even responsible for keeping up the obligations ordinarily incident to ownership, such as debt servicing and payment of taxes.[142/]

Not only is there no evidence that all of the landowners had any degree of actual control or even the potential for influencing Tex-Cal Land Management decisions, there is no evidence

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142. Indeed, had Tex-Cal Land Management simply diverted unit work without the participation of the landowners through the "lease cancellations" I do not believe the landowners would have committed an unfair labor practice. General Counsel overlooks this when she moves to strike the lease cancellations from the record. Since I have found modular farming to be a pretense, without the lease cancellations, there would be no evidence that many of the landowners participated in the pretense. Indeed, considering the contractual relationship between Tex-Cal Land Management and the landowners, it is difficult to see how any of the landowners, as a landowner, could have stopped Tex-Cal Land Management from making whatever arrangements it wanted to farm their land. It is possible, then, that none of the landowners was consulted about the lease cancellations and that the sham of cancelled leases was undertaken without their knowledge or consent. This would certainly account for the fact that no lease cancellations were produced prior to the hearing. If this surmise be correct, all the landowners needed to do to avoid liability would have been to timely disavow or repudiate the acts taken in their name. Since most of them refused to even defend themselves in this hearing and those that did insisted they cancelled their leases, I have to take them "at their word."

that they could influence the decisions of the other landowners. To take the previous examples once again, how could Steve Hansen, Dovie Horton or Wanda Guerber influence the decisions of Tex-Cal Land, Inc., Bud Steele or Robert MacDonald? Even Bud Steele (who, of course, could cancel the leases on his own land and, as President of Tex-Cal Land Inc. and a partner of record in Diamond S Leasing Co. could cancel the leases on land owned by those entities,) could not cancel the leases on land owned by Robert and Jean MacDonald, C.A. and Weltha Hansen, Michael and Gayle Steele, Robert and Betty Kruger. He might have been able to influence the decisions of these landowners based on whatever personal relationship he may have had with them, but short of proof that he had some concealed power over the lands not standing in his name that permitted him to act with respect to them – a possibility hinted at, but never proved – that sort of personal influence does not satisfy any of the single-employer criteria as they are ordinarily applied. Accordingly, I reject General Counsel's contention that by virtue of being landowners, the individual Respondents constitute a single employer with Tex-Cal Land Management; their status as landowners does not endow them with the capacity to influence the decision-making of either Tex-Cal Land Management or each other.[143/]

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143. Our Board has already held that merely standing in the relation of a landowner to a grower/harvester is not sufficient to constitute one a single-employer with the one who actually farms the land. Coastal Growers Association, S & F Growers (1981) 7 ALRB No. 9, reconsideration denied 8 ALRB No. 93; Saticoy Lemon Association (1982) 8 ALRB No. 94. It is clear from these cases that the fact that the landowners possessed the potential to cancel their leases is not a sufficient showing of "integration" to constitute them a single employer with Tex-Cal Land Management or with each other.

So far as they appear in this case solely in their capacity as landowners, whatever liability any of them has must arise by virtue of their individual decisions to participate in the modular farming scheme, and none can be held liable for the decisions of any other.

Modular farming , as described by various witnesses, was an instrument of evasion of Respondent's Tex-Cal Land Management's labor law responsibilities. The landowners who cancelled their leases only to have Michael Steele (Vice-President of Tex-Cal Land Management) arrange for the cultural practices to be performed on their land and to be paid for either by "rollover" money from the sale of the proceeds of Tex-Cal Land Management's previous crops or out of protective advances given by FMHA to Tex-Cal Land Management must be held to have become "disguised continuances" of Tex-Cal Land Management. For each of these landowners thus became an agent of the primary agricultural employer, Tex-Cal Land Management, for the purpose of permitting the latter to evade its labor relations responsibilities and, as agents for such a purpose, the landowners became agricultural employers in their own right.

> The term "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 . . . and shall include any person who owns or leases or manages land used for agricultural purposes. . . .
>
> Labor Code section 11404.(c)

Although the criteria for determining the existence of an alter ego are as fluid as those for determining the existence of a

single-integrated enterprise,[144/] there is no question that it applies to someone acting merely as the medium for another agricultural employer to carry on its business while evading its labor law responsibilities. As I have previously noted, the classic definition of alter ego is that it is "a disguised continuance of an old employer" and one of the earliest cases to apply the concept analogized the relationship between an "old employer" and its "alter ego" just as I have here, namely, as that obtaining between a principal and an agent:

> Where unfair labor practices have been committed, the creation of another structure by owners of the business, for the purpose of continuing its operations but of frustrating the remedial responsibility for the wrongs committed, will generally amount to a disguised continuance of the old employer.
>
> But the phrase can have a wider scope than this. In National Labor Relations Act perspective, it is also possible for a business to have the significance and effect of a disguished continuance of the old employer, without ownership identity necessarily existing, where such business allows itself to become a substitute in carrying on the operations, or some of them, of the old employer, under a relationship serving to benefit the latter's owners and intended as one of cooperation with them in evading the consequences of the unfair labor practices committed.

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144. There is no bright line for distinguishing between single-employer and alter ego status; in fact, the same criteria are applied to make either finding with the exception that many authorities consider anti-union motivation to be a sine qua non for finding alter ego. Compare Fugazy Continental Corp. v. N.L.R.B. (B.C. Cir. 1984) ___ F.2d , 115 LRRM 2571 (anti-union intent relevant, but not essential) with Slicker, A Reconsideration of the Doctrine of Employer Successorship — A Step Toward a Rational Approach (1973) 57 Minnesota Law Review 1051, 1064 (anti-union intent crucial). In view of this debate, the Fourth Circuit has recently proposed a "benefit to the employer" test according to which an alter ego will be found only if the transfer of business operations benefits the old employer by eliminating his labor law obligations. Dengil S. Alkire v. N.L.R.B. (4th Cir. 1984) __ F.2d __, 114 LRRM 2180, 2184. Where, as here, the change in the form of the business is the gravamen of the alleged unfair labor practice, it seems to me alter ego doctrine should apply.

> In different terminology, such a situation may be capable of being regarded as one of agency, within the broad concept entitled to be applied to the definition in 29 U.S.C.A. §152(2), that "The term 'employer' includes any person acting as an agent of an employer, directly or indirectly***", or, in more conventional equitable phrase, it may be denominated, from participation against the operation of the decree, as constituting a direct instrument of evasion.
>
> Cf. N.L.R.B. v. Ozark Hardwood Co. (1960) 282 F.2d 1, 5-6.

Accordingly, I conclude that Robert MacDonald, Jean MacDonald, Michael Steele, Gayle Steele, Dovie Horton, Wanda Guerber, Betty Kruger, Robert Kruger, Carl Steele, Grace Steele, Earl Winebrenner, Imogene Winebrenner, D.M. Steele, Tex-Cal Land Inc. and Diamond-S Leasing Co. must be held to have violated Labor Code Sections 1153(c) and (e) by their participation in the creation of alter egos for Tex-Cal Land Management. [145/] Although no letters appear from C.A. Hansen, Weltha Hansen and Steve Hansen cancelling their leases, none of these Respondents appeared to contest the actions taken in their name and I believe they must at least be held

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145. Lease cancellations by Robert and Jean MacDonald, and by MacDonald acting on behalf of Dovie Horton, Michael and Gayle Steele and Wanda Guerber are in evidence as RX 9(A); cancellations by Betty Kruger and Robert Kruger are in evidence as RX 9(C); cancellations by Earl Winebrenner (as a principal and presumably as agent for Imogene Winebrenner) are in evidence as RX 9(D); cancellations by Carl Steele (as a principal and presumably as an agent for Grace Steele) are in evidence as RX 9(E); cancellations by Bud Steele and Diamond S Leasing are in evidence as RX 9(F); finally, lease cancellations by Marshall Platt on behalf of Tex-Cal Land Inc. and in evidence as GCX 113.

to have ratified them.[146/] I shall recommend the complaint be dismissed against only those landowners who did not cancel their leases, namely Mary Jane Steele, and Robert and Theda Bartholemew. Randy Steele as (at least) a partner in Diamond S Leasing must be held liable for the lease cancellation on property held by Diamond S.

2.

The Status of the Landowners as Corporate Officers

Next, we must consider whether, in the case of any of the landowners who are also corporate officers, there is any single employer liability for the acts of the corporations they either

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146. Restatement Agency 2d §94 provides:

> An affirmance of an unauthorized transaction can be inferred from a failure to repudiate it.

The comment explains:

> a. Silence under such circumstances that, according to the ordinary experience and habits of men, one would naturally be expected to speak if he did not consent, is evidence from which assent can be inferred. Such inference may be made although the purported principal had no knowledge that the other party would rely upon the supposed authority of the agent; his knowledge of such fact, however, coupled with his silence, would ordinarily justify an inference of assent by him. Whether or not such an inference is to be drawn is a question for the jury, unless the case is so clear that reasonable men could come to but one conclusion.
>
> c. If a third person, who has had dealings with a purported agent, reports these to the purported principal under circumstances which reasonably justify an inference of consent unless the principal discloses his dissent, the failure of the principal to dissent within a reasonable time, is, unless explained, sufficient evidence of affirmance.

serve or control.[147/] Absent special circumstances, it is clear that these additional capacities are not sufficient to create a personal liability in the individuals for the acts of the corporations they serve. Thus, in Chef Nathan Sez Eat Here (1973) 201 NLRB 343 the national Board reversed the conclusion of its Administrative Law Judge that the President and sole owner of a Respondent corporation, who was in complete control of the assets, business operations and labor relations of the corporation – and who, moreover, participated in the commission of the unfair labor practices at issue – was individually liable for the commission of unfair labor practices by the corporation. The Board held that in the absence of evidence that an individual committed some separate act justifying piercing the veil of a corporate respondent, the national Board does not hold corporate officers liable for the unfair labor practices of the business entities they control.

Although the holding of Chef Nathan Sez was in the context of a backpay proceeding in which, for the first time, liability was attempted to be imposed on the corporate owner, it is clear that the same consideration obtains in liability cases. In the recent case of Contris Packing Company (1983) 268 NLRB No. 7, 1983 CCH, para. 11,582 the Board reversed a finding that *a* corporate president was

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147. Bud Steele as proxy holder for Randy, and as either a corporate officer or owner of Tex-Cal Land Inc.; Michael Steele, Betty Kruger, Randy Steele, Mary Jane Steele, and Marshall Platt belong in this class. This is no question that the interlocking relationships revealed by the evidence are an element in considering whether any of the business entities are parts of a single employer, but that is not the same question as whether the officers are to be considered constituent parts as well. Of course, the business entities/landowners are already being held liable with Tex-Cal Land Management for diversion of unit work on the ranches owned by them by my treatment of them as alter egos.

liable *as* an alter ego when *(as* General Counsel claims of Bud Steele in this case, and as the Administrative Law Judge concluded in that case) the corporate president did what he wanted to do, "completely indifferent to the form of the company". The Board said:

> The relevant law was summarized by the Board in Riley Aeronautics Corporation, [1969 CCH NLRB para. 21,207] 178 NLRB 495, 501 (1969):
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> "[E]asily the most distinctive attribute of the corporation is its existence in the eye of the law as a legal entity and artificial personality distinct and separate from the stockholders and officers who compose it." Wormser, Disregard of the Corporation Fiction and Allied Corporation Problems (Baker, Voohis and Company 1927), *p*~.11."The insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." N.L.R.B. v. Deena Artware, Inc., [39 LC para. 66,238] 361 U.S. 398, 402-403. Nevertheless, the corporate veil will be pierced whenever it is employed to perpetrate fraud, evade existing obligations, or circumvent a statute. Isaac Shieber, et al., individually, and Alien Hat Co., 26 NLRB 937, 964, enf'd. 116 F.2d (C.A. 8). Thus, in the field of labor relations, the courts and Board have looked beyond organizational form where an individual or corporate employer was no more than an alter ego or a "disguised continuance of the old employer"fsouthport Petroleum Co. v N.L.R.B. [5 LC para. 51,126] 315 U.S. 100, 106); or was in active concert or participation in a scheme or plan of evasion (N.L.R.B. v. Hopwood Retinning. Co., [1 LC para. 18,370] 104 F.2d 302, 304 (C.A. 2)); or siphoned off assets for the purpose of rendering insolvent and frustrating a monetary obligation such as backpay (N.L.R.B. v. Deena Artware, Inc., supra, 361 U.S. 398); or so integrated or intermingled his assets and affairs that "no distinct corporate lines are maintained." Id. at 403). 148 /

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148. I should also point out here that contrary to General Counsel's contentions, Robert MacDonald's additional role as attorney for various Respondents, does not make him an "employer" under the Act. As an attorney, MacDonald is merely an agent for various principals and while utilization of common agents is often a hallmark of single-employer status of the principals, it does not suffice to make the attorney-agent an employer in his own right. (See e.g., Key Coal Co. (1979) 240 NLRB 1013, 1018; N.L.R.B. v. Scott Printing Co. (3d Cir. 1979) 612 F.2d 783.

Accordingly, being a corporate officer of the business entities alleged to constitute parts of the single employer in this case is not sufficient to make the landowners who are also corporate officers/owners liable for the acts of any of the corporations in the conduct of modular farming. [149/]

Accordingly, I shall require each of the landowners to make whole only those employees who would have worked on their respective ranches but for the hiring of labor contractors/custom harvesters to perform such work during the existence of the modular farming scheme. Liability of diversion of unit work pursuant to the modular system shall run from the date any landowner cancelled his/her or its lease and shall end on June 28, 1983, when the seniority crews

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149. An example of intermingling assets or affairs that has been held sufficient to find a corporate officer an alter ego of a respondent corporation appears in Michigan Drywall Corp. (1977) 232 NLRB 120 enf'd (6th Cir. 1980) 616 P.2d 977. In that case, the unfair labor practice involved failure to supply financial information and to make payments required under the contract, and there was proof that the corporate president had used a personal account to pay his employees and had mixed his "personal" affairs with those of his corporation. There is no such proof here.

It follows, therefore, that the requests for information concerning the personal finances of Bud and Randy Steele were appropriately disregarded.

resumed work. (Stip. XIV:3.)[150] Of course, Tex-Cal Land Management and any of the other entities which, according to my discussion below, are held to be a single employer with it, will be jointly liable for any make-whole award.

3.

The Business Entities as Part of a Single Employer

The question remains, then, whether the business entities are parts of a single-employer with Tex-Cal Land Management.

Under labor law precedent, single-employer analysis is used in a variety of circumstances, from determination of jurisdictional standards to determination of liability of unfair labor practices. In the unfair labor practice class of cases, the search for the true employer ordinarily takes place within the context of some corporate change having taken place which itself is said to have affected the bargaining obligation:[151]

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150. Since the make-up of the crews, which would have worked on particular ranches is obviously going to be difficult to determine, perhaps a system of proportional liability between the landowners would be appropriate; under such a system a landowner's liability would be determined in accordance with the amount of labor contractor labor actually utilized.

151. This is not always obvious from a quick reading of the cases. Since the national Board often considers the identity of the employer well after the change has taken place, it appears that the Board is simply reconsidering the identity of the employer, not in the context of a change, but merely because an unfair labor practice has been committed. The unfair labor practice, then, appears to become an occasion for the Board to re-think the entire employer-employee relationship for collective bargaining purposes.

> The obligation of an employer to bargain collectively with his employees' exclusive representation is a hard-won prize of unionization. Economic conditions, hostility toward union, or a combination of both may cause a business with a current collective bargaining obligation to undergo a transformation that has an uncertain impact on this bargaining obligation. Such a transformation may occur by selling an entire business, closing down a portion of a far-flung operation, or reorganizing a corporate enterprise. In determining the "new" employer's duty to bargain collectively with its employees within the framework of the National Labor Relations Act's goal of "industrial peace," the National Labor Relations Board must reconcile the tension between the collective bargaining rights of the employees and the employer's right to make use of his property as he sees fit. As a consequence, the NLRB and the courts have developed three doctrines — the single employer, alter ego, and successorship tests — to bargain after a corporate transformation. These three doctrines are applied in a number of factual contexts, including merger, sale, transfer of assets, and corporate reorganization, with the aim of holding one business entity to the labor obligations of another.
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> Note, Bargaining Obligations After Corporate Transformation (1979) 54 New York University Law Review, 624, 624-25.

Our Board cases, too, illustrate this principle. For example, in Mount Arbor Nurseries, Inc. and Mid Western Nurseries (1983) 7 ALRB No. 49, and Rivcom Corp. and Riverbend Farms (1979) 5 ALRB No. 55, enf'd 34 Cal.3d 729, the Board examined the relevant indicia relating to single integrated enterprise within the context of the change in the employing entity which affected the employment relationship.

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In this case – except for the system of modular farming – we have no change in the nominal employer's structure or identity which requires consideration of the relationship between Tex-Cal Land Management and the various other business entities named as Respondents. Indeed, the union and Respondent Tex-Cal Land Management had negotiated a number of contracts before the union thought to bring any of the other Respondents into the bargaining. When it did turn to the other entities, it did so only because Miller distrusted Tex-Cal Land Management's representation that it had no money to begin farming and alleged the existence of a single-employer relationship only for the purpose of attacking the claims of financial difficulties. Moreover, at the point when Miller first claimed that the business functioned as an integrated enterprise, there is no evidence that unit work had been transferred to any other entity and that some "new" agricultural employer had come into existence.[152/]

Accordingly, I reject General Counsel's contention that at least prior to the advent of modular farming, a single-integrated enterprise, consisting of all the named Respondents existed which is therefore responsible for the unfair labor practices in this case. Rather, it seems to me that the search for the "new employer" in this case must commence when Tex-Cal Land Management claimed it was no longer responsible for farming the land of the landowners who

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152. Our Board has had occasion to treat transfers of unit work similar to that which took place in this case prior to the advent of modular farming and it has never found it necessary to re-think the entire employer-employee relationship. See e.g., Tex-Cal Land Management (1982) 8 ALRB No. 85.

cancelled their leases: it is only then that the employer of Tex-Cal Land Management's employees emerged in a different guise. And the "alter egos" – those who purported to succeed to the employment obligation in this case – were the landowners. With the exception of Tex-Cal Sales and Tex-Cal Land Inc., as the source of funds for modular farming, the other entities had nothing to do with it. It seems inappropriate, therefore, to treat the other entities as employers when they had no employees. Accordingly, the complaint is dismissed as to Tex-Cal Supply Co., the various Tex-Cal Cold Storages, and Cal Agri-Sprayers.[153/] (See e.g., Laramee Transit Inc. (1976) 224 NLRB 56, enf'd (1st Cir. 1977) 559 F.2d 1200 in which the Board examined the relationship between a number of trucking entities and held only one of them who actually succeeded to the business of the original employer, as the alter ego; the Board specifically excluded a truck rental company as part of a single employer.) Different considerations, however, obtain with respect to Tex-Cal Land Inc. and Tex-Cal Sales. As I have previously noted, Michael Steele testified he borrowed money from both Tex-Cal Land Inc. and Tex-Cal Sales in order to fuel, so to speak, the modular system. It seems to me, then, that both of these entities must be held jointly liable with Tex-Cal Land Management and the respective landowners for the creation of the alter ego relationships previously discussed. [154/]

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153. It follows, then, that Caravantes had no obligation to supply financial information relating to these entities.

154. The relationship between these two entities and Tex-Cal Land Management exemplify a number of the indicia of single-employer status. By virtue of his holding the proxy for

(Footnote continued——)

B.

The Alleged Failures to Provide Information

Introduction

Throughout the text of this decision, I have dealt with General Counsel's allegations concerning the failure to provide information. Nevertheless, a number of questions still remain. In view of my conclusion that Tex-Cal Sales and Tex-Cal Land Inc. must be included as part of the alter ego of Tex-Cal Land Management in the modular farming system, it remains to be considered whether the refusal to turn over financial information concerning it was an unfair labor practice. General Counsel additionally contends that the failure to turn over information relating to the lack of funding for pruning, the lease cancellations, and the identity of Tex-Cal Land Management's current officers and directors also constitute violations of the Act.

1.

Information Concerning the Lack of Funding for Pruning

As I have noted, Caravantes refused to turn over any information concerning Tex-Cal Land Management's funding difficulties because he said he was not really claiming an inability

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(Footnote 154 continued——)

Randy, Bud actively controlled Tex-Cal Land Management; as President of Tex-Cal Land Inc. or a proxy holder for Earl Winebrenner and Tex-Cal Sales he controlled those companies, too. By virtue of his participation in developing the modular farming scheme, the labor relations policies of Tex-Cal Land Inc. and Tex-Cal Land Management was identical. Finally, the three entities are an integrated operation: Sales and Land Inc. supplied money; Land Inc. held the land; Tex-Cal Land Management performed the cultural practices and Sales sells the product.

to pay a certain wage, but only that, he had no money to pay anything at all.

In general, an employer has a duty to disclose only information that is relevant and reasonably necessary to the intelligent performance *of* the union's function as bargaining agent, N.L.R.B. v. Truitt Mfg. Co. (1956) 351 U.S. 149. Although information concerning wages and fringe benefits is presumed relevant, N.L.R.B. v. Rockwell-Standard Corp. (6th Cir. 1969) 410 F.2d 953, 957, information relating to a company's general financial condition and profitability is "not ordinarily pertinent to [a union's] performance as bargaining representative." Soule Glass and Glazing Co. v. N.L.R.B. (1st Cir. 1981) 652 F.2d 1055, 1082, rather, it must be shown "by reference to the circumstances of the case" the precise relevance to the bargaining obligation of the data requested. Curtiss-Wright Corp. v. N.L.R.B. (3d Cir. 1965) 347 F.2d 61, 69.

> However, where [as here] the employer, during bargaining, puts in issue information not presumptively relevant, the employer must produce data to substantiate its claims. As the Court stated in Truitt Manufacturing, supra, "[g]ood-faith bargaining necessarily requires that claims made by either bargainer should be honest claims . . . . If such an argument [inability to afford wage increases] is important enough to present, in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy." 351 U.S. at 152-53. In Teleprompter Corp. v. NLRB, 570 F.2d 4, 9, 97 LRRM 2455 (1st Cir. 1977), this court held, "[w]hen the employer itself puts profitability in contention – as by asserting an inability to pay an increase in wages – information to substantiate the employer's position has to be disclosed."
>
> (Soule Glass and Glazing Co. v. N.L.R.B. 652 F.2d, at 1082.)

Thus, the question becomes whether Caravantes' assertion of inability to commence pruning touched upon a bargainable issue in

the way that the company's assertion in the Teleprompter case of lack of profitability of its operations touched upon the bargainable issue of the wages it could afford to pay its employees. (Seafarers Local 777 v. N.L.R.B. (D.C. Cir 1978) 603 F.2d 682, 697, n. 69.[155/]

In First National Maintenance Corp. v. N.L.R.B. (1980) 452 U.S. 666, the Supreme Court classified management decisions in three broad categories: (1) those having only an indirect and remote impact on the employment relation; (2) those having an impact on the employment relation and which are exclusively an aspect of the relationship between employer and employee, such as layoffs, work rules, production quotas, and (3) those having a direct impact on the employment relations but which are not directly "about . . . conditions of employment through the effect of the decision may be . . . ." The court stated that with respect to the third class of decisions, which a decision about when to prune appears to be, it would require bargaining, " . . . only if the benefit, for labor-management relations and the collective bargaining process,

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155. In Seafarer's Local, supra, the court observed:

> The basic reason for our conclusion that Yellow and Checker were not required to provide the data requested by the Union is that this data related to the Companies' decision to institute leasing and this decision was, as we have explained above, not a mandatory subject of bargaining. In addition, as the Union represented only the commission drivers, the information it requested would not "ordinarily [be] relevant to its performance as bargaining representative: and in such cases the courts have required "a special showing of pertinence before obliging the employer to disclose." * * * In order to prevail the Union would at least have been required to demonstrate, as to the information requested concerned individuals outside the bargaining unit, that it was relevant to some bargainable issue. * * * The Union made no such showing.

outweighs the burden placed on the conduct of the business." (456 U.S. 672.) It must be noted that the court still requires a showing of an effect on the employment relationship in order to trigger its benefit/burden analysis; since, in the abstract, a decision about when to prune does not necessarily impact on the amount of work available, and since I have found no relationship between the delay in pruning and the decision to subcontract – the former not being discriminatorily motivated and the latter being so motivated – I must conclude there was no duty to bargain over when pruning would begin.[156/] Accordingly, I conclude Respondent had no duty to turn over the information concerning the lack of funding for pruning.

2.

The Duty to Turn Over Information Concerning the Lease Cancellations

As detailed above, the lease cancellations in this case occurred within the context of extensive subcontracting of unit work. It has long been held that information relating to the subcontracting of unit work must be turned over. See, e.g., Ohio Medical Products (1971) 194 NLRB 1, Grand Machining Company (1973)

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156. The question is a close one: Had I found the pruning to be deliberately delayed, it is clear that Respondent would have had a duty to turn over the requested information for then there would have been a link between the delay in pruning and the eventual use of subcontractors and information relevant to subcontracting must be provided. In the absence of such a finding, however, the question as noted above becomes whether Respondent had a duty to bargain over when it began to prune and that ultimately turns on whether there was any impact on employees inherent in the decision. I am mindful that Respondent delayed the pruning last year only to subcontract a portion of it, but I can only assess its motives this year in light of the full record. For the reasons stated previously, I cannot conclude the delay in pruning was discriminatorily motived.

201 NLRB 815. Accordingly, I conclude Respondents had a duty to disclose such information and violated Labor Code section 1153(e) in failing to do so.[157/]

3.

The Duty to Disclose Information Concerning the Identity The Current Officers/Directors of Tex-Cal Land Management

As stated above, the standard for disclosure of information is relevance to the union's performance of its bargaining obligation. The national Board has held that requests for information as to the specific relationship between different companies in the context of complaints about transfer of unit work between them is relevant:

> Next we turn to whether the particular items of information requested in the letter are relevant. Items 1—9, 12, and 13 of the Union's request are directed, in general, towards obtaining information as to the specific relationship between Respondent and Maintenance Development and/or General Building. Items 10 and 11 of the Union's request seek information tending to establish whethen Respondent has assigned or contracted work to Maintenance Development and/or General Building.
>
> Evidence establishing commonality of officers/ directors, supervisors, and the like would make tenable an assertion by the Union that Respondent had the power to transfer employees and work to these other companies in order to circumvent the provisions of the Maintenance Contractors

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157. German states the general principle this way:

> Thus, in a dispute arising from a subcontracting provision of the labor contract, the union can secure information from the employer about its dealings with subcontractors, such as names of and correspondence with subcontractors, contract terms, and products produced. Fawcett Printing Corp. (1973). And the employer will be required to produce information about the pay and classification of employees within the company but outside the bargaining unit, when the union is asserting that the employer has improperly excluded those employees from the bargaining unit. (German, Basic Text on Labor Law (1976), p. 412.)

> Agreement, including payments to the health and welfare plan and paying the agreed-upon wage rate. Evidence establishing that General Building or Maintenance Development was using Respondent's equipment or supplies or that General Building or Maintenance Development was performing work previously performed by Respondent would lend some credence to a union contention that Respondent had violated the subcontracting provision of the agreement. Thus all the information requested concerns the relationship between Maintenance Development/General Building and Respondent and could make tenable the Union's contentions as to violations of the contract by the Respondent. Therefore the Union has adequately stated what information it seeks and the purpose for which it is to be used. Accordingly, the Union, having made a showing of relevance for the information sought, is entitled to receive that information.
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> (Realty Maintenance Inc. d/b/a/ National Cleaning Company (December 16, 1982) 265 NLRB No. 173.)

Accordingly, I conclude Respondent had a duty to provide this information and violated Labor Code section 1153(e) in failing to do so.

4.

The Duty to Disclose Information Concerning the Financial Condition of Tex-Cal Sales/Tex-Cal Land Inc.

As I have noted, the request for information concerning Tex-Cal Sales and Tex-Cal Land Inc. came in the context of an omnibus request for information which I have concluded was largely irrelevant because unrelated to what was happening to the unit. When the form of the request is so defective, I do not believe Respondent can be held to a duty to have responded to those parts which might have been appropriately requested. Accordingly, I find no violation of the Act in this respect.

C.

The Allegedly Discriminatory Refusal to Hire the Employees Referred by the Union on March 8, 1983

As discussed earlier, Respondent sought leave of court to

hire additional employees on March 7, 1983. The court granted the request and issued an order permitting Respondent to make up to eight additional crews providing that the union be given the opportunity to refer workers to fill the crews. In fact, the union did produce enough workers by the time of hiring on March 8, 1983, to make up the additional crews, but Respondent hired only four crews, contending that it no longer needed 8 crews because it lost the leases on additional ranches the very morning it sought the injunction. General Counsel alleges that Respondent's refusal to hire the four additional crews was discriminatorily motivated.

In advance of considering this contention, I must make two preliminary observations. First, the mere failure to comply with the court's order does not establish a violation of our Act, although it may be contempt of court. Second, it must be recognized that the employees present at the "Jailhouse" by dint of the union's effort that morning had no right to be hired superior to that possessed by any other agricultural employee. The statute does not provide them any preference in obtaining employment; it merely prohibits the Respondents from refusing to hire them because of their union activity.[158/] In view of the fact that Johnston was on notice that Miller would be supplying the additional employees requested by Tex-Cal Land Management and that the only reason proffered for refusing to hire them was the sham one that additional leases were cancelled I believe General Counsel has made out a

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158. The additional employees referred by the union were obviously not seniority employees, and though some of them may have been relatives of unit members, that is not the grounds General Counsel relies on to show discrimination against them.

violation of the Labor Code section 1153(c).[159/] However, it also seems to me that any remedy owing to the employees turned away on March 8, 1983 must be limited by the fact that, when the seniority employees were laid off on March 10, 1983, they had a preferential right pursuant to the contract to be hired to the jobs then filled by labor contractor crews doing the pruning.

D.

The Alleged Unilateral Change in the Failure to Maintain Benefits

General Counsel and the UFW[160/] contend that Respondent made a unilateral change by failing to pay the rate required by the trustees to properly fund the RFK health plan. Neither General Counsel nor Intervenor cites any cases which hold that, in the absence of a provision in the contract requiring maintenance of benefits, the failure to maintain them is a unilateral change. Moreover, although the evidence is that it was the trustees of the RFK plan who cut off benefits, the union argues that Respondent is responsible for it:

> Here, Respondent has, in effect, unilaterally changed the status quo by failing to maintain the level of benefits the employees were entitled to under the expired collective bargaining agreement. By refusing to pay the updated employee contribution rate the Respondent has cut off all of its employees' medical benefits.

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159. Thus, all employees turned away March 8, 1983, whether by reason of not having a social security card or the additional lease cancellations are entitled to backpay.

160. This is the only issue briefed by the union. See Intervenor's Post Hearing Brief.

> It is the Union's belief that an agricultural employer has the responsibility of maintaining the same level of benefits it provided its employees under an expired collective bargaining agreement during the course of negotiations for the new collective bargaining agreement. This does not mean that the Union believes an employer is trapped into providing the same level of benefits regardless of circumstances/ but rather that the employer has a duty to bargain over any change in the existing level of benefits.
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> (Post Hearing Brief, pp. 5 - 6 .)

In this case, Respondent did maintain its contribution level and did bargain over maintenance of benefits. I believe that requiring an employer to pay a higher contribution rate in order to maintain benefits in the absence of a bargained-for maintenance of benefits provision, is tantamount to imposing a specific contract term. Labor Code section 1155.2. Absent a finding of failure to bargain in good faith which might justify my imposing a particular level of benefits as a remedy, there is simply no authority for requiring it as a matter of law.

E.

RESPONDENT'S BAD FAITH

There seems little question that Respondents engaged in a variety of conduct which, ordinarily, would add up to a conclusion of bad faith: its refusal to bargain over acreage it was actually farming, the refusal to bargain over the tree pruning rate; its refusals to provide information; its discrimination against union members — to list only a few of the unfair labor practices here found — all of these amount to a subversion of the bargaining process. As always, though, the process of negotiations requires analysis of the conduct of the other party and in this case the union's conduct raises difficulties of its own.

There are only two subjects really discussed at the table, namely, subcontracting and RFK and the union's interest in maintaining RFK benefits was so paramount that Miller always returns to discuss it amidst the most bitter discussions between her and Caravantes. Another indication of how crucial maintenance of benefits is to the union is, as I have noted, that it is the only issue briefed by it. There is no question that Caravantes rejected maintenance of benefits; but he didn't refuse to bargain over it. Indeed, his initial reason for rejecting the open-ended version of it is reasonable. Even when Miller offered a ceiling on the cost of maintaining benefits for the contract year, Caravantes was not required to agree to it. Although in the context of Caravantes[1] other actions, it cannot be said that he was bargaining in good faith on this single item, it is necessary to detail his responses in order to guage the appropriateness of Miller's ultimate position on RFK.

When it was clear Caravantes rejected maintenance of benefit and retoractivity, Miller's tactics shifted: she moved from attempting to achieve these goals at the table to demanding them as a right. The union filed an unfair labor practice charge alleging that the failure to maintain benefits was a unilateral change and demanded payment of the cost of the plan at $.35/hour retroactive to September 1982. The demand was made in reliance on Winterrowd's refusal to accept anything less. In making her demand, Miller tries to steer clear of appearing to represent the trustees of the plan; nevertheless, I believe she has overstepped her role as collective bargaining representative in demanding on May 17, 1983, that Tex-Cal

Land Management pay the amount past due in order for its employees to be covered by the RFK medical plan.

As a general matter, the trustees of the RFK medical plan are fiduciaries and represent the interests of the beneficiaries of the plan. Sheet Metal Workers' International Association (1978) 234 NLKB 1238. As such, they neither do, nor can they, engage in collective bargaining:

> The trustees of [a union trust fund] simply do not, as such, engage in collective bargaining. The terms "collective bargaining" . . . is defined by §8(d):
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> "[T]he performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . ." 29 U.S.C. §158(d).
>
> Under this definition, the collective bargaining representatives of an employer and a union attempt to reach an agreement by negotiation, and failing agreement, are free to settle their differences by resort to such economic weapons as strikes and lockouts, with out any compulsion to reach agreement. See Carbon Fuel Co. v. Mine Workers, 444 U.S. 212, 219, 102 LRRM 3017; NLRB v. Insurance Agents' International Union, 361 U.S. 477, 495, 45 LRRM 2704.
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> N.L.R.B. v. Amax Corp. (1981) ___ U.S. __, 107 LRRM 2769, 2774.

The trustees are required to perform their obligations totally outside the system of negotiation and economic pressure that lie at the heart of our collective bargaining system:

> . . . they can neither require employer contributions not required by the original collectively-bargained contract, nor compromise the claims of the union or the employer with regard to the latters contributions. Rather, the trustees operate under a detailed written agreement, 29 U.S.C. §186(c)(5)(B), which it itself the product of bargaining between the representatives of the employees and those of

> the employer. Indeed, the trustees have an obligation to enforce the terms of the collective bargaining agreement regarding employee fund contributions against the employer "for the sole benefit of the beneficiaries of the fund."[161/]
>
> N.L.R.B. v. Amax Corp., Ibid.

Accordingly, the trustees had a duty to continue paying medical benefits to whomever qualified under the terms of the plan and the collective bargaining agreement and any dispute they had with Tex-Cal Land Management had to be resolved between them and Tex-Cal Land Management. Obviously, the union as representative of Tex-Cal Land Management's employees, has an interest in the actuarial soundness of the plan, but that interest can only be asserted within the bounds of good faith bargaining: the union can insist on higher benefits and it can bring whatever economic pressure it can to bear on Respondent to get it to pay the higher benefits. It cannot, however, without stepping beyond its role as collective bargaining representative do what the trustees themselves cannot do, namely, insist upon a higher contribution rate as a debt, past due and owing to the trustees, in order to improve the soundness of the plan. Since this illegal approach to RFK appears in the context of the only real substantive bargaining done by the parties, it must be concluded that it tainted the union's entire approach to bargaining. Accordingly, I find the union to be in bad faith and will decline to order contractual make-whole for any diversion of unit work after

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161. The Court characterizes the trustees as fiduciaries by determining their obligations, among other statutes, under ERISA. Our Board has held that the UPW plans are governed by ERISA. Bruce Church (1983) 9 ALRB No. 74, Ruling on Motion to Strike Appendix to ALJ Decision.

May 17, 1983, Bruce Church (1983) 9 ALRB No. 74. Ordinary backpay will, of course, be due for that period of time.—[162]/

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162. In view of the pretextual nature of modular farming, I also grant General Counsel's motions for costs as against Respondents Tex-Cal Land Management/Tex-Cal Sales only. Only these two have the record of multiple violations of the Act deemed critical in Sam Andrews, Ibid. (Sam Andrews Sons (1983) 10 ALRB No. 1 .)

IV.
SUMMARY OF FINDINGS

1. That Respondent Tex-Cal Land Management violated Labor Code section 1153(e) by transferring ripping on ranches 34 and 75 to Lem Lefler Custom Harvesting on January 2, 1983;

2. That Respondent Tex-Cal Land Management violated Labor Code section 1153(e) by transferring harrowing, ripping, and discing to Lem Lefler Custom Harvesting on ranches 31, 59, 61, 62, 64, 70, 71, 85 and 88;

3. That Respondent Tex-Cal Land Management violated Labor Code section 1153(e) by transferring ripping or harrowing to Lem Lefler Custom Harvesting on ranches 58, 60, 65, 77, 85 and 88 on January 18, 1983;

4. That Respondent Tex-Cal Land Management violated Labor Code section 1153(e) by changing the prune tree pruning rate from hourly to piece rate without bargaining with the UFW;

5. That Respondent Tex-Cal Land Management violated Labor Code section 1153(e) by denying information requested by the UFW relating to the tree pruning rate;

6. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranch 34 violated Labor Code sections 1153(c) and (e) by hiring labor contractor Reuben Mendoza to prune ranch 34 on February 24-28, 1983;

7. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 33 and 38 violated Labor Code sections 1153(c) and (e) by hiring Isbot contractor Reuben Mendoza to prune and tie ranches 33 and 88 on March 2, 3, and 4, 1983;

8. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 34 and 37 violated Labor Code sections 1153(c) and (e) by hiring labor contractor Reuben Mendoza to prune and tie ranches 34 and 73 on March 4, 5, and 7, 1983;

9. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 32 and 37 violated Labor Code sections 1153(c) and (e) by hiring labor contractor Coy Vaught to prune ranches 36 and 72 on March 7, 1983;

10. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 35, 60, 79 and 73 violated Labor Code sections 1153(c) and (e) by hiring labor contractor Mario Martinez to prune and tie ranches 35, 60, 79 and 73 on March 4, 5, 7, 8 and 9, 1983;

11. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranch 51 violated Labor Code sections 1153(c) and (e) by by hiring labor contractor Reuben Mendoza to prune and tie ranch 51 on march 8, 9, 1983;

12. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 47 and 81 violated Labor Code sections 1153(c) and (e) by hiring labor contractor San Joaquin Farm labor to prune and tie ranches 47 and 81 on March 11, 1983;

13. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 56, 58, 77 and 66 violated Labor Code sections 1153(c) and (e) by by hiring labor contractor John Galindo to prune and tie ranches 56, 58, 77 and 66

on March 15-19;

14. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 33, 36, 59, 61, 64, 68, and 72 violated Labor Code sections 1153(c) and (e) by hiring labor contractor Coy Vaught to prune or tie ranches 33, 36, 59, 61, 64, 68 and 72;

15. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranch 51 violated Labor Code sections 1153(c) and (e) by hiring labor contractor John Galindo toprune and tie ranch 51 on March 21, 1983;

16. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 47 and 87 violated Labor Code sections 1153(c) and (e) by hiring labor contractor San Joaquin Farm Labor to prune and tie ranches 47 and 81 on March 25, 1981;

17. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranch 48 violated Labor Code sections 1153(c) and (e) by hiring labor contractor Edwin Galapon to prune ranch 48 on March 31, 1983;

18. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the owners of ranches 35, 57, 59, 67, 75 and 85 violated Labor Code sections 1153(c) and (e) by hiring Lem Lefler Custom Harvesting to disc, rip or float ranches 35, 57, 59, 67, 75 and 85 in February, 1983;

19. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the respective owners of the ranches on which work was performed violated Labor Code sections 1153(c) and (e) by

hiring labor contractor/custom harvester to perform the work shown in the invoices collected in GCX 145.[163/]

20. That Respondent Tex-Cal Land Management violated Labor Code section 1153(e) by hiring Lem Lefler to disc ranches 57 and 61 on August 1, 1983;_to disc and cut canes on ranch 76, to flat furrow ranch 37 and to cut canes on ranch 72 on August 15, 1983; to disc and rip ranch 51 on August 21, 1983 and to cut canes and disc on ranch 66 on August 22, 1983.[164/]

21. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the landowners violated Labor Code section 1153(e) by by refusing to comply with the contract provision requiring them to hire relatives;

22. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the landowners violated Labor Code section 1153(e) by denying the union post-certification access;

23. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the landowners violated Labor Code section 1153(e) by conditioning good faith bargaining on the withdrawal of charges;

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163. In view of the size of GCX 145 detailing all labor contractor/custom harvester services paid for by Tex-Cal Land Management in late spring, 1983 on the various ranches until the crews were reinstated on or about June 28, 1983 (XIV:3), I have not reviewed each invoice to ascertain that it relates to unit work as I have those contained in GCX 144. It is possible that some of the invoices refer to non-unit work and I invite Respondents to contest any particular invoice in exceptions to my decision.

164. Since the pretense of the modular system had been abandoned by this time, I am treating this as a simple 1153(e) violation committed by Respondent Tex-Cal Land Management.

24. That Respondent Tex-Cal Land Management violated Labor Code section 1153(e) by refusing to bargain over the delay in pruning;

25. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the landowners violated Labor Code section 1153(e) by refusing to turn over information relative to the cancellation of the leases;

26. That Respondents Tex-Cal Land Management/Tex-Cal Land Inc./Tex-Cal Sales and the landowners violated Labor Code section 1153(e) by refusing to turn over a list of the current officers and directors of Tex-Cal Land Management.

V.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that Respondents Tex-Cal Land Management Inc., Tex-Cal Land Inc. and Tex-Cal Sales, Inc., their officers, agents, successors and assigns shall:

1. Cease and desist from:

a. Unilaterally changing their hiring practices by contracting out bargaining unit work to labor contractors and/or subcontracting out any bargaining unit work to another agricultural employer, or otherwise making any change in their agricultural employees' wages, hours or working conditions;

b- Refusing to hire or otherwise discriminating against any agricultural employee(s) because of his/her (their) union activities;

c. Failing or refusing to make available to the United Farm Workers of America upon its request, information concerning (1) the tree pruning rate,* (2) lease cancellations and subcontracting, (3) information concerning the officers and directors of Tex-Cal Land Management, and (4) information relating to the delay in pruning;* and

d. Refusing to bargain collectively with the United Farm Workers of America over the tree pruning rate,* the delay in pruning,* the taking of access and hiring relatives of unit members.

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* These portions of the order apply to Tex-Cal Land Management, its officers, successors and assigns.

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

a. Offer their steady employees immediate and full reinstatement to their former or substantially equivalent positions as such positions become available without prejudice to their seniority or other employment rights or privileges and make such employees whole for all losses of pay and other economic losses, which as described in the decision, they have suffered as a result of each Respondent's contracting out work historically performed by them during the 1983 crop year; such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with the Board's decision and Order in Lu-Ette Farms, Inc., 8 ALRB No. 55.

b. Offer employees in their seniority crews immediate and full reinstatement to their former or substantially equivalent positions as work becomes available without prejudice to their seniority or other employment rights or privileges. Make such employees whole for all losses of pay and other economic losses which, as described in this decision, they have suffered as a result of each Respondent's contracting out vineyard pruning and cultivation work in the 1983 crop year, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with out Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

c. Make whole all their present and former agricultural employees for all losses of pay and other economic losses suffered by them as result of their refusal to bargain in

good faith with the UFW until May 17, 1983, when the United Farm Workers ceased to bargain in good faith, such amounts to be computed in accordance with Board precedents with interest thereon computed in accordance with the Board's decision and order in Lu-Ette Farms, 8 ALRB No. 55, the period of said obligation to begin November 8, 1982.

d. 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 or makewhole period and the amounts of backpay or makewhole and interest due under the terms of this Order.

e. 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.

f. Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time from August 1979, until the date on which the said Notice is mailed.

g. Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its premises, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

h. Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees on company time and property at time(s) and place(s) to be determiend 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 and/or employees' 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.

i. 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.

j. Reimburse the General Counsel for costs accrued in this matter.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that Respondents Dudley M. Steele Jr., Randy Steele, Carl Steele, Grace Steele, Michael Steele, Gayle Steele, Steve Hansen, C.A. Hansen, Weltha B. Hansen, Robert MacDonald, Jean MacDonald, Dovie J. Horton, Wanda L. Guerber, Earl Winebrenner, Imogene Winebrenner, Robert Kruger and Betty Kruger, Diamond S Leasing:

1. Cease and desist:

a. Unilaterally changing their hiring practices by contracting out bargaining unit work to labor contractors and/or subcontracting out any bargaining unit work to another agricultural employer on each of their respective ranches, or otherwise making any change in their agricultural employees' wages, hours or working conditions;

b. Refusing to hire or otherwise discriminating against any agricultural employee(s) on each of their respective ranches because of his/her (their) union activities; 2. Take the following affirmative action:

a. Offer their steady employees immediate and full reinstatement to their former or substantially equivalent positions as such positions become available without prejudice to their seniority or other employment rights or privileges and make such employees whole for all losses of pay and other economic losses, which as described in the decision, they have suffered as a result of each Respondent's contracting out work historically performed by them during the 1983 crop year through July 29, 1983; such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with the Board's decision and Order in Lu-Ette Farms, Inc., 8 ALRB No. 55.

b. Offer employees in their seniority crews immediate and full reinstatement to their former or substantially equivalent positions as work becomes available without prejudice to their seniority or other employment mights or privileges. Make such employees whole for all losses of pay and other economic losses

which, as described in this decision, they have suffered as a result of each Respondent's contracting out vineyard pruning and cultivation work in the 1983 crop year through July 29, 1983, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with out Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

c. Make whole all their present and former agricultural employees for all losses of pay and other economic losses suffered by them as a result of their refusal to bargain in good faith from the date each of the leases was purportedly cancelled on each of the ranches until May 17, 1983, when the United Farm Workers ceased to bargain in good fatih, such amounts to be computed in accordance with the Board's decision and order in Lu-Ette Farms, 8 ALRB No. 55.

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.

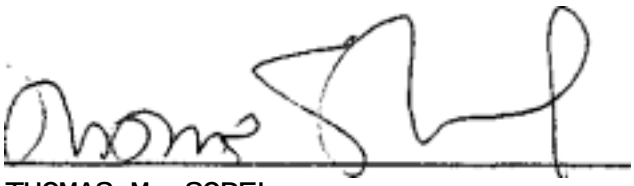
e. Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its premises, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed•

f. Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all

appropriate languages, to its 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 and/or employees' 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.

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

Dated: May 25, 1984



THOMAS M. SOBEL
Administrative Law Judge