

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SWINE PRODUCERS UNLIMITED, INC.,	)	
	)	
Respondent,	)	Case No. 85-CE-38-F
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA,	)	13 ALRB No. 12
AFL-CIO,	)	
	)	
Charging Party.	)	
	)	
	)	

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DECISION AND ORDER

On January 10, 1986, Administrative Law Judge (ALJ) Thomas M. Sobel issued the attached decision in this matter. Thereafter, Respondent timely filed exceptions to the ALJ's Decision along with a supporting brief and the General Counsel filed a response to Respondent's exceptions.<sup>1/</sup>

Pursuant to the provisions of Labor Code section 1146<sup>2/</sup> the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.<sup>3/</sup>

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<sup>1/</sup>Respondent's Motion to Disregard General Counsel's Reply Brief to Respondent's Exceptions for Non-compliance with ALRB Regulation 20282(c) is denied since no apparent prejudice to Respondent has been demonstrated. (George Arakelian Farms, Inc. (1979) 5 ALRB No. 10.)

<sup>2/</sup> All section references herein refer to the California Labor Code unless otherwise specified.

<sup>3/</sup>The signatures of Board Members in all Board Decisions appear with the signature of the Chairman first, if participating, followed by the signature of the participating Board Members in order of their seniority.

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm the ALJ's rulings, findings and conclusions, and to adopt his Recommended Order as modified herein.<sup>4/</sup>

ORDER

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

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any agricultural employee because of his or her union activities or concerted activities protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) In any like or related manner interfering with,

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<sup>4/</sup> Inasmuch as prospective employers must consider all applications for work in a nondiscriminatory manner, "... the question whether an application has been given such consideration does not depend on the availability of work at the time an application for employment is made." (Shawnee Industries, Inc. (1963) 140 NLRB 1451 [52 LRRM 1270], reversed on other grounds (10th Cir. 1964) 333 P.2d 221 [56 LRRM 2567].) Thus, an applicant who applies for work at a time when no openings are available is relieved of the duty to reapply when work subsequently becomes available if his or her knowledge of the employer's discriminatory hiring practice would lead him or her reasonably to believe that further efforts to seek work from that employer would be futile. (Abatti Farms, Inc. (1979) 5 ALRB No. 34; Apex Ventilating Co., Inc. (1970) 186 NLRB 534 [75 LRRM 1462]; Elsa Canning Co. (1965) 154 NLRB 1696 [60 LRRM 1202].) Backpay begins to accrue, not from the date of application, but from the date of the first available opening which the applicant was qualified to fill. We find that General Counsel, by a preponderance of the evidence, has established that such futility was reasonably apparent to Ismael Mora Diaz at the time he sought reinstatement. Accordingly, we will order backpay from the date of the first job availability, a matter yet to be determined in the compliance phase of this proceeding, and not from the date certain found by the ALJ.

restraining or coercing employees in the exercise of rights guaranteed them by section 1152 of the Act.

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

(a) Immediately offer to Filiberto Diaz, Javier Resales/ Juan Resales, Jose Cervantes, Alvaro Nunez, Gonzalo Lopez, Pedro Zapien, Vicente Mendoza and Ismael Mora Diaz full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights or privileges.

(b) Make whole Filiberto Diaz, Javier Rosales, Juan Resales, Jose Cervantes, Alvaro Nunez, Gonzalo Lopez, Pedro Zapien and Vicente Mendoza for all losses of pay and any other economic losses they have suffered as a result of their discharge on August 26, 1985. Ismael Mora Diaz shall be made whole from the date of the first available vacancy for which he was qualified, for all losses of pay and other economic losses he suffered as a result of the discriminatory treatment of his application for rehire on or about September 9, 1985. Such amounts are to be computed in accordance with established Board precedent plus interest thereon computed in accordance with the decision in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(c) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to determination, by the Regional

3.

Director, of the backpay period and the amount of backpay due under the terms of this Order.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent during the period August 26, 1985 to September 9, 1986.

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

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to 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 or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to

compensate them for time lost at this reading and during the question-and-answer period.

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

DATED: June 30, 1987

BEN DAVIDIAN, Chairman

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Fresno Field Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by firing eight employees and refusing to rehire another because of their union activities.

The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT discharge or refuse to rehire any employee because he or she has engaged in union activity or any other protected concerted activity.

WE WILL pay Filiberto Diaz, Javier Resales, Juan Resales, Jose Cervantes, Alvaro Nunez, Gonzalo Lopez, Pedro Zapien, Vicente Mendoza and Ismael Mora Diaz backpay for all economic losses they suffered as a result of our discharge or our refusal to rehire them and, in addition, offer them immediate and full reinstatement to their former or substantially equivalent positions.

Dated: SWINE PRODUCERS, UNLIMITED, INC.

By: \_\_\_\_\_  
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 711 North Court Street, Suite A, Visalia, California 93291. The telephone number is (209) 627-0995.

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

DO NOT REMOVE OR MUTILATE.

## CASE SUMMARY

Swine Producers Unlimited, Inc.  
(UFW)

13 ALRB No. 12  
Case No. 85-CE-38-F

### THE ALJ DECISION

The events resulting in the filing of a charge began sometime in June 1985 when Respondent attempted to fire Filiberto Diaz after he refused to work overtime. As a result, Filiberto Diaz and the seven other employees met with Respondent's manager and demanded a written statement explaining the reason for Diaz's termination. Respondent demurred and all employees returned to work. On the same day as the confrontation, Respondent hired Ismael Mora Diaz to replace Filiberto Diaz.

After the meeting, the relationship between Respondent and its crew deteriorated until August 26, 1985, when Respondent fired eight of its nine employees.

After the mass termination, the only remaining ranch hand was Ismael Mora Diaz who worked the rest of the day until he was either fired or he voluntarily quit.

The ALJ chose to credit the employees' testimony that they were conscientious, obedient workers and discredited Respondent's business justification that the crew was eliminated en masse because they were unproductive and insubordinate. Also, the ALJ credited the fact that the employees wore union buttons. Based on his analysis, the ALJ found that the General Counsel proved his prima facie case that the eight employees (excluding Ismael Mora Diaz) were discharged because of their protected concerted and union activity and that Respondent's business justification was a pretext.

The ALJ analyzed Ismael Mora Diaz' termination/quitting separately from that of the other discriminatees. Rather than treating Ismael Mora Diaz' departure as a constructive discharge, the ALJ analyzed this issue in accordance with Signal Produce (1984) 10 ALRB No. 23 as a refusal to rehire Ismael Mora Diaz after he voluntarily quit.

The holding in Signal requires a discriminatee to make timely application when work is available. The ALJ reasoned that Ismael Mora Diaz was relieved from making a further application for reemployment when Respondent made an unequivocal refusal to rehire the entire crew. (Kawano, Inc. v. Agricultural Labor Relations Board (1980) 106 Cal.App.3d 937, 952.) Therefore, the ALJ concluded that Respondent violated section 1153(a) and (c) when it refused to rehire Ismael Mora Diaz.

BOARD DECISION

The Board decided to adopt the ALJ's findings and conclusions except that the Board modified the ALJ's Order and awarded Ismael Mora Diaz backpay from the date of the first available opening which he was qualified to occupy.

\* \* \*

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

\* \* \*



STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of: )  
)  
SWINE PRODUCERS UNLIMITED, INC. , )  
)  
Respondent , )  
)  
and )  
)  
UNITED FARM WORKERS OF )  
AMERICA, AFL-CIO, )  
)  
Charging Party. )  
)

Case No. 85-CE-38-F

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Appearances:

Scott Jordan  
Germino, Layne, Brodie, Runte,  
Maguire & MacKay Los  
Banos, California  
for the Respondent

Henry Avila  
Keene, California  
for the United Farm Workers

William Lenkeit  
Fresno, California  
for the General Counsel

Before: THOMAS M. SOBEL  
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

THOMAS SOBEL, Administrative Law Judge:

BACKGROUND

This case was heard by me in Los Banos, California, on October 29, 30 and November 4, 1985. Respondent has admitted the jurisdictional allegations of the complaint, Tr. Pre. Conf. pp. 1-2, which alleges that it discharged all of its employees because of their union and concerted activities. By way of defense, Respondent denies any knowledge of the alleged discriminatees' union activities and generally justifies the discharge of most of the discriminatees -- Filiberto Diaz, Javier Rosales, Juan Resales, Jose Cervantes, Alvaro Nunez, Gonzalo Lopez, Pedro Zapien, and Vicente Mendoza, -- as necessitated by business reasons; the remaining alleged discriminatee, Ismael Mora Diaz, is said to have quit.

Respondent is engaged in the breeding and care of swine destined for slaughter. The animals are bred and raised in its facility in Los Banos, which consists of a variety of specialized enclosures devoted to different phases of swine rearing. Respondent employs eight full time employees whose regular workday is 10 hours a day, six days a week. The employees are paid monthly with no premium pay for overtime. They have never been represented by a union. During the period in question, Gary Souza, son of Respondent's Vice-President, Manuel Souza, was the manager in charge of daily operations; the president of the

company was Warren Wolf son.<sup>1</sup>

As is not unusual in discriminatory discharges cases, General Counsel's witnesses and Respondent's witnesses presented quite different accounts of the problems which gave rise to the events of case. The alleged discriminatees paint a picture of already long ten-hour days which were frequently extended one or two hours at the insistence of Gary Souza, while Respondent's witnesses paint the contrasting picture of a group of employees so lax in performing their duties that production was actually hampered. Within the context of a conventional "discrimination" analysis, I shall consider the credibility of the parties' conflicting versions.<sup>2</sup>

A.

#### FACTS

The employees testified they were frequently required to work overtime: for example, Filiberto Diaz testified he had to work overtime once or twice a week until eight or nine o'clock (I:37-39); Alvaro Nunez testified similarly (I:67), as did Gonzalo Lopez (I:90) and Juan Cervantes (I:108). Gary Souza

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<sup>1</sup>Wolfson is variously referred to in the transcript as Wolfson, Wolson and Wilson. See 1:6, 7; 111:60. I am spelling his name as I understood it during the hearing.

<sup>2</sup>Under applicable standards, General Counsel has the burden of making a showing "sufficient to support an inference that protected conduct was a 'motivating factor' in the employer's action. Once this is established the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." Wright Line, 251 NLRB 1083, 1088, see also N.L.R.B. v. Transportation Management Corp. 462 U.S. 393.

denied the employees frequently worked overtime (I:28).<sup>3</sup>

The genesis of this case was Filiberto Diaz's refusal to work overtime in late June, 1985. Filiberto Diaz performed a variety of duties for Respondent, including medicating and castrating the animals, cleaning the rooms, and repairing machines. On the day in question, he was filling in for another employee, performing both his regular duties and those of the other man, when he noticed that two machines used to power feeding devices were broken. When Diaz told Souza about the machines, Souza told him to medicate the pigs before fixing the device which fed the smaller pigs. Diaz finished giving the animals their morning medication and repaired the one machine before lunch. Because he spent most of the afternoon giving more medicine to the animals, he was unable to fix the second machine before quitting time; as a result he decided to fill the feed trough of the larger pigs by shovel. He was just completing this task when Souza appeared and asked him if he had fixed the second machine. When Diaz told Souza he had not gotten around to it because he had so much else to do, Souza essentially told him he had to do it. Diaz told him it was after quitting time, he was

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<sup>3</sup>Although Alvaro Nunez testified the men punched a time clock (I:73), Gary Souza testified the time cards weren't kept (I:28). Time cards, of course, would provide the most reliable evidence of the employees' actual hours. While I am suspicious of Souza's testimony, I make no finding about whether the time cards existed and, therefore, do not draw any adverse inference from Respondent's failure to produce them.

tired and he didn't "have to" do it.<sup>4</sup> Souza then told him that he could finish out the month, but there would be no more work for him after that.

At month's end, Souza had another employee take Diaz's final check to the trailer where the men lived, but Diaz refused to accept it, telling Souza's messenger to return it to Souza. The following day, when Diaz went to work as usual, Souza asked him why he was still there. When Diaz said he wanted an explanation in writing for his firing, Souza told him to meet him at the office where he would give it to him. The previous evening, the employees had agreed among themselves to resist Diaz's firing by telling Souza that if he fired Diaz he would have to fire them all. As a result, all the employees accompanied Diaz to the office and, as agreed, told Souza that if Diaz went, all would have to go. In the face of this showing of solidarity, Souza told everyone to return to work; he would speak to the company.

Either shortly before or after the morning's encounter with Souza, the employees called Pablo Segoviano of the UFW. The men uniformly testified they began to wear UFW buttons at work after their meeting with Segoviano. Although Souza denied seeing

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<sup>4</sup>As related by Diaz, Souza told him "[Y]ou're going to have to fix it by force" to which Diaz replied, "[B]y force, I'm not going to be able to fix it." 1:43, 11:17,27. I take it that what Diaz means is that Souza told him he was "compelled" to fix the motor before leaving work. On cross-examination, it is clear that Diaz resented Souza's telling him "he had to fix" the motor that evening since he testified that, had Souza politely requested him to work overtime, he would have done so. I:57-60.

any union buttons, he also testified that, had the employees worn buttons, he would have seen them. Several weeks later, on August 26, the men were having breakfast before going to work when Manuel Souza came to the trailer. He asked if any of the men spoke English. When Alvaro Nunez came forward, Souza told him to tell the men they were fired.

The only employee not fired that day was Ismael Mora Diaz who had recently started at Swine Producers as Diaz's replacement. When the others were fired, Diaz was told to go to work in order to show the other replacements (who were then on the premises) how to do the job. According to Diaz, at 7:00 that evening, there was still a great deal of work to do and he told Souza he couldn't do anymore because he was tired. Souza told him he was fired. Diaz finished some of the work and left. Some time afterwards, about 15 days after he was fired (III:17) Diaz called Souza to ask for his job back and Souza told him "he couldn't give us the job back, because we didn't want to work well, and the company was losing a lot. And before employing us again, he would shut the company down."

Souza, however, testified that Ismael Diaz simply failed to show up at work the day after the men were fired. According to Souza, when Diaz failed to show up at work the following morning, he became concerned. He went to where Diaz lived, but couldn't find him. When he saw that Diaz's car was still there, but Diaz was not, he was so concerned that something happened to him that he called the sheriff. According to him,

some deputies came out and spoke to Diaz's wife who explained that he went with some friends. According to Souza, sometime later (less than a week), Ismael called him not only to get his job back, but on behalf of all the employees. Souza only said that he would see.

Besides the specific points I have noted upon which the parties' testimony diverges (whether the employees frequently worked overtime, whether they wore union buttons and the circumstances of Ismael Diaz's "termination"), Respondent generally characterizes the employees as poor and lazy workers and justifies the August 26 discharge as required by business reasons. To this end, it presented the testimony of Souza, Warren Wolfson and Bill Harper, a swine breeder who frequently visits Respondent's ranch to deliver boars for breeding purposes, that the employees failed to observe minimal standards of diligence and cleanliness. Souza, for example, testified that the employees frequently failed to keep the rooms clean and the disinfectant baths filled; according to him, hogs died as a result of employee laxity and the birth rate plummeted. (I:12-13.) Souza could not produce any records to corroborate this fall-off in production, and his explanation for the "absence" of records strikes me as disingenuous at best:

Q: (By General Counsel) Do you keep records of the numbers of births and deaths among the pigs?

A: (By Souza) I have kept some in the past, but I don't have them here, present, with me.

Q: In the past. How far past?

A: We had -- I have records up to June 1.<sup>5</sup>

Q: Of this year?

A: Yes, Sir.

Q: You stopped keeping them after that?

A: No. Well, I did -- I didn't stop keeping them. We just ran into so much problem there with the -- I had so much problem with the labor, and stuff, and communications, that they were nonvalid. So, we're just in the process -- in the starting them up again in the first of the month.

Q: Okay. By declining production then, do you mean either a decrease in the birth, or an increase in the death rate among the pigs?

A: Increase -- well, would you repeat that, so I --

Q: By declining in production, do you mean that there was both an increase in the death rate, and a decrease in the birth rate among the pigs?

A: Yes. Yes. Increase in the death, but also the -- the sows, if they're not bred, they're not going to produce a litter. So there --there's how we have a decrease in -- in the population, the number born. I'm not saying the number born live per sow. I'm saying the number born for a given period of time.

Q: All right. But no records were kept of that after June 1st?

A: No.

I:11-12.

Thus, Souza speaks of records up to June 1, records after June 1 which are "nonvalid", and of "starting"

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<sup>5</sup>Although the testimony is not entirely clear at this point, Souza is speaking only of birth records here. See p. I:16.



recordkeeping again which implies having stopped it at one point. Harper also testified that he observed a steep decline in the condition of the ranch in the seven to nine months preceding the discharge of the men; indeed, in support of Respondent's attempted discharge of Filiberto Diaz, Harper testified he had personally observed Diaz "leaning against walls", shirking work. (III:75-77.)

#### LEGAL ANALYSIS

Although the record contains no evidence that the employees complained about unpaid overtime work among themselves, and only two instances in which any of them complained to Souza about it, II:15-16, III:32-33, excepting Ismael Diaz, to a man they sprang to the defense of Filiberto Diaz when Souza tried to fire him for refusing to work overtime. Since angry men appear most likely to risk their livelihood in this way, the employees' solidarity over the refusal to work overtime is consistent with their being genuinely concerned over unpaid overtime.

Although Respondent, argues that the men were lazy and even incompetent, the claim does not ring true. It is undisputed that the men worked at least 60 hours/week. In an era in which the 40 hour-week is considered standard, absent a record which strongly demonstrates that they needed overtime to accomplish what ought to have been done during regular work time, I cannot take at face value a claim that men who worked such long hours were lazy. So far as their competence goes, I also find it difficult to believe that the men could be as bad as Respondent

has pictured them, the more so in view of Harper's testimony that their work was obviously unsatisfactory for at least six to eight months preceding their discharge. The very length of the period during which it is claimed Respondent tolerated such supposedly poor work diminishes the plausibility of the underlying contention that the work was, in fact, poor. Other considerations cause me to reject Respondent's contention that the men were lazy and their work inadequate. For one thing, I find Harper an incredible witness: he radiated a smugness which can only be described as a challenge to the fact finder, as a stranger to events, to disbelieve him. Since I regard him as unbelievable, I must regard a considerable part of Respondent's case as manufactured. To such doubts about Respondent's case are added others occasioned by Souza's strange testimony about whether the birth records existed.<sup>6</sup>

Putting aside for the moment the question of Respondent's knowledge of the employees' union activity, the fact that the discharge followed the employees' display of "mutual aid

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<sup>6</sup>I should add a word here about the credibility of the employees' testimony. Almost all of them appeared personally confused by the proceeding and some of their testimony is itself confusing. I even discount a good portion of it to the effect that, after the men rallied to protect Diaz, Respondent generally let the operation run down. Despite these observations, I found the employees believable. In general, the men seemed so reticent and passive that even when they appeared to exaggerate, it seemed the sort of thing that men not used to complaining but suddenly required to become self-conscious, would do.

and support" for Diaz (which is itself protected activity<sup>7</sup>) provides further evidence that the decisive factor was the employee's militancy and not their work performance. Moreover, I credit the employees that they did wear union buttons. Respondent does not contend that the men didn't seek help from the union, but only that it was not aware of their union activity. These men obviously discovered by themselves that in their union lay strength; I find it hard to believe that they didn't continue to publicly assert that solidarity after they spoke to a union organizer who must be assumed to be familiar with labor law. For all these reasons, I find that General Counsel made a prima facie case that the eight discharged employees (excluding Ismael Mora Diaz) were discharged for their union and concerted activities and I further find that Respondent's business justification is a pretense.

Ismael Mora Diaz's termination must be separately analyzed since, even viewing General Counsel's evidence in its most favorable light, Diaz must be said to have quit in circumstances which don't amount to a constructive discharge. Because Diaz asked for his job back, the case can only be treated as a refusal to rehire case. In such cases, General Counsel generally has the burden of proving that proper applications for work were made when work was available, Signal Produce Co. 10 ALRB No. 23, unless such application would be futile. "[When an]

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<sup>7</sup>Whatever may have been the case if Souza had taken the men's threat to quit as a resignation, the fact is he did not: he sent all of them back to work.

employer unequivocally and publicly promulgates his unconditioned refusal to rehire a certain category of employees, proof of such promulgation excuses the need to prove individuals in the category made applications for rehire which would under the circumstances have been futile." Kawano, Inc. v. Agricultural Labor Relations Board (1980) 106 Cal.App.3d 937, 952. Because I credit Diaz that Souza told him he would not rehire any of the men, whatever the circumstances of Diaz's quitting, when Souza told him that he would shut the company down before he would rehire anybody, Diaz was excused from making timely application for rehire. The backpay period for Ismael Diaz shall commence two weeks after the August 26th discharge of the other men.

ORDER

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

1. Cease and desist from:

(a) Discharging, refusing to rehire, or otherwise discriminating against any agricultural employee because of his or her union activities or concerted activities protected 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) Make whole Filiberto Diaz, Javier Resales, Juan Resales, Jose Cervantes, Alvaro Nunez, Gonzalo Lopez, Pedro Zapien and Vicente Mendoza for all losses of pay and other

economic losses they have suffered as a result of their discharge on August 26, 1985 and Ismael Mora Diaz as a result of the refusal to rehire him on or about September 9, 1985, such amounts to be computed in accordance with established Board precedent plus interest thereon computed in accordance with the decision in Lu-Ette Farms, Inc. (1980) 8 ALRB No. 55.

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

(c) 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.

(d) 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 during the period August 26, 1985 to September 26, 1985.

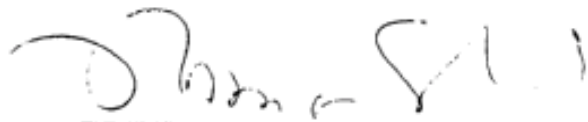
(e) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for sixty (60) days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to

replace any Notice which has been altered, defaced, covered or removed.

(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 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.

(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: January 10, 1986



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THOMAS M. SOBEL  
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by firing eight employees, refusing to rehire another because of their union activities

The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT discharge or refuse to rehire any employee because he or she has engaged in union activity or any other protected concerted activity.

WE WILL pay Filiberto Diaz, Javier Rosales, Juan Resales, Jose Cervantes, Alvaro Nunez, Gonzalo Lopez, Pedro Zapien, Vicente Mendoza and Ismael Mora Diaz backpay for all economic losses they suffered as a result of our discharge or our refusal to rehire them.

SWINE PRODUCERS UNLIMITED

By: \_\_\_\_\_  
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3161.

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

DO NOT REMOVE OR MUTILATE.