Mendota, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

STAMOULES PRODUCE CO.,	)	
	)	
	)	
Employer,	)	Case No. 86-CE-73-D(F)
	)	86-CE-101-D(F)
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	16 ALRB No. 13
	)	
	)	
Petitioner .	)	
	)	

DECISION AND ORDER

On April 28, 1989, Chief Administrative Law Judge (ALJ) James Wolpman issued the attached Decision and recommended Order in this proceeding.[1/] Thereafter, Respondent timely filed exceptions to the ALJ's Decision, with a supporting brief.

The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the ALJ's Decision in light of the exceptions and Respondent's brief and has decided to affirm the rulings, findings, and conclusions of the ALJ and to adopt his recommended Order, as modified.[2/]

[1/] The ALJ's Decision at page 6, paragraph 3, states, "There is doubt that this retrenchment was due to real economic problems." From the context of that statement, it is apparent that the ALJ meant to say that "There is no doubt . . . ". [Emphasis added.] We therefore affirm the ALJ's Decision in accordance with its presumed intent.

[2/] The ALJ found that although there was no formal seniority system, Respondent had followed certain seniority practices over the years involving a preference or accommodation for experienced crews which had performed well in past harvests. (Decision p. 8.) The ALJ's order at paragraph 2a refers to "seniority" rights and privileges. The Board has modified this language in the Order to conform to the evidence.

ORDER

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

1. Cease and desist from:

(a) Refusing to hire, or otherwise discriminating against agricultural employees in regard to hire or tenure of their employment or with respect to any term or condition of employment because they have engaged in concerted activity protected by the Act.

(b) Discouraging membership of any of its employees in the United Farm Workers of America or in any other labor organization by unlawfully refusing to hire, or in any other manner discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment, except as authorized by section 1153(c) of the Act.

(c) Threatening to refuse to hire agricultural employees because of their sympathy or support for any labor organization.

(d) 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 Act.

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

(a) Offer Jesus Ortiz, Guillermo Barraza, Manuel Ruano, Manuel Mendez, Antonio Buenrostro, Daniel Buenrostro, Ruben

Garcia, Simon Aispuro, Mario Aispuro, Carlos Meza, Ignacio Rios, Valente Cruz, Florencio Gonzales, Jose Valenzuela, Dario Maldonado, Demecio Corona, Abelardo Rodriquez, Abel Santoyo, Juan Bernal, Esteban Covarrubias, Jesus Mendoza, Pedro Ramirez, Nicholas Calderon, Ramiro Torres, Joses Cruz, Rafael Martinez, Santos Aguilar, and Tobias Lopez full reinstatement consistent with those preferential hiring practices that existed prior to 1986 and make said individuals whole for all losses of pay and other economic losses they have suffered as a result of their being refused employment, the amounts to be computed in accordance with established Board precedents, plus interest computed in accordance with the Board's decision in E. W. Merritt Farms (1988) 14 ALRB No. 5.

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

(c) Sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, make sufficient copies in each language for the purpose set forth in this Order.

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this order to all agricultural employees in its employ from July 1, 1986, to December 31, 1986.

(e) Post copies of the attached Notice in all appropriate languages, for 60 days, in conspicuous places on its property, the exact 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 or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at 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 Notice or their rights under the Act. The Regional Director shall determine the reasonable rate of compensation to be paid by Respondent to all piece-rate employees in order to compensate them for time lost at the reading and question-and-answer period.

(g) Notify the Regional Director in writing, within 30 days of the issuance of this Order, of the steps it has taken

to comply with its terms, and make further reports at the request of the Regional Director, until full compliance is achieved.

Dated: October 4, 1990

BRUCE J. JANIGIAN, Chairman[3/]

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

JOSEPH C. SHELL, Member

[3/] 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.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Fresno Regional Office of the Agricultural Labor Relations Board (ALRB or Board) by Jose Valenzuela and the United Farm Workers of America, AFL-CIO (Union), the General Counsel of the ALRB issued a complaint which alleged that we, Stamoules Produce Company, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we violated the law by refusing to hire Santos Aquilar, Tobias Lopez, the crew of Jesus Ortiz, and the crew of Jose Valenzuela and that this was due to the fact that they had participated in Union activities, and because the Valenzuela crew had been involved in protesting certain terms of their employment. The Board also found that we violated the law by threatening to refuse to hire workers sympathetic to the United Farm Workers. 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 you to know 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, and 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 you have these rights, we promise that:

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

WE WILL NOT refuse to hire any employees or crews because they participated in union activities or because they acted together to complain to us regarding the terms of their employment.

WE WILL NOT refuse to hire workers because they are sympathetic to the United Farm Workers or to any other union, nor will we threaten to do so.

WE WILL offer employment to Jesus Ortiz, Guillermo Barraza, Manuel Ruano, Manuel Mendez, Antonio Buenrostro, Daniel Buenrostro, Ruben Garcia, Simon Aispuro, Mario Aispuro, Carlos Meza, Ignacio Rios, Valente Cruz, Florencio Gonzales, Jose Valenzuela, Dario Maldonado, Demecio Corona, Abelardo Rodriquez, Abel Santoyo, Juan Bernal, Esteban Covarrubias, Jesus Mendoza, Pedro Ramirez,

Nicholas Calderon, Ramiro Torres, Joses Cruz, Rafael Martinez, Santos Aguilar, and Tobias Lopez as melon harvest employees and we will reimburse them, with interest, for any loss in pay or other economic losses they have suffered because we refused to rehire them.

Dated: STAMOULES PRODUCE CO.

By: _____
(Representative) (Title)

If you have questions about your rights as a farm worker 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 MUTILIATE.

CASE SUMMARY

Stamoules Produce Co.
(UFW)

16 ALRB No. 13
Case Nos. 86-CE-73-D(F)
86-CE-101-D(F)

Background

The United Farm Workers of America filed unfair labor practice charges alleging that Respondent had engaged in unfair labor practices by refusing to rehire melon harvesting crews. The UFW claimed that the refusal to rehire was in retaliation for the crews' concerted activities in a 1985 union organizing campaign. The complaint was amended to add charges of threatening remarks arising from the same organizing effort. Respondent denied the charge and raised affirmative defenses directed at the delay in bringing the complaint.

ALJ Decision

As a threshold matter, the ALJ denied the Respondent's Motion to Dismiss based on delay and regulatory non compliance by complainants and Board agents. The ALJ found that Respondent's interpretation of Title 8, California Code of Regulations section 20213, requiring submission of all supporting declarations on filing of the charge, was inconsistent with the investigatory duties imposed on the General Counsel. Additionally, the ALJ held that administrative delay of approximately two years was not a sufficient reason to deprive employees of their statutory rights. Finally, the ALJ found that the Respondent failed to submit specific facts demonstrating actual prejudice and to cite precedent requiring dismissal.

Having disposed of the procedural issues, the ALJ determined that Respondent discriminatorily refused to rehire two melon harvesting crews and certain other employees in retaliation for (1) their participation in a 1985 union organizing effort, or (2) association with workers who participated in such protected concerted activity. This conclusion was based on credibility determinations and the Respondent's business records. The latter showed that crews were being hired at a time when the Respondent denied work was available.

Finally, the ALJ concluded that Respondent's melon harvest foreman violated the Act by making threatening remarks on one occasion. This conclusion was based on credibility determinations. There were a number of incidents involving anti-union remarks by those in positions of authority with Respondent. The ALJ singled out an incident that occurred during the harvest in the subject year, was witnessed by a worker whose conduct might be affected, i.e., he would avoid further union activities because of the potential adverse economic consequences, and involved a statement made by one who clearly was in authority.

Board Decision on Review

On review, the Board affirmed the ALJ's findings and conclusions of law. Agreeing with the ALJ's statement that no formal system of seniority was in place, the Board noted the evidence of a preferential hiring system in years past. The Board therefore adopted the ALJ's proposed order after modifying it to reflect the absence of any formal seniority system.

* * *

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

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STATE OF CALIFORNIA AGRICULTURAL

LABOR RELATIONS BOARD

In the Matter of:	)	
STAMOULES PRODUCE CO.,	)	Case Nos. 86-CE-73-D(F) 86-CE-101-D(F)
Respondent,	)	
and	)	
JOSEVALENZUELAANDUNITED FARMWORKERSOFAMERICA, AFL-CIO,	)	
Charging Parties.	)	

Appearances:

Juan Ramirez,
Visalia, California
for the General Counsel

Neal Costanzo and Ronald Barsamian
Finkle, Davenport & Barsamian
Fresno, California
for the Respondent

Before:

James Wolpman
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JAMES WOLPMAN, Administrative Law Judge: This case was heard by me in Mendota, California on November 8, 9, 10, 14 & 15, 1988. It arose out of charges filed by Jose Valenzuela on July 25, 1986 and by the United Farm Workers of America, AFL-CIO ("UFW") on November 25, 1986, asserting that the Respondent had refused to rehire a number of employees because of their union activities. (G.C.Exs. 1 & 2.)

A complaint issued on May 8, 1986, alleging that the Respondent failed to rehire two crews for its 1986 melon harvest because of their participation in union and other protected concerted activities. (G.C.Ex.3.) Additional allegations were discussed at the prehearing conference, and on October 25, 1988 an Amended Complaint was filed identifying the members of the two crews and naming as discriminatees several other workers who had been refused rehire. (G.C.Ex.5.) The Amended Complaint also alleged three incidents in which threatening remarks were made to employees concerning the refusals to rehire.

At the outset of the hearing I granted General Counsel's Motion to further amend the complaint by eliminating Ruben Romero as an alleged discriminatee. (I:23.)

Respondent answered the original and the amended complaints, denying that it had violated the Act and setting forth number of affirmative defenses. (G.C.Exs. 4 & 6.)

Several of those affirmative defenses, as well as a subsequent Motion to Dismiss the Complaint, were based on the

alleged failure of the Charging Parties to provide timely declarations in support of their charges and on the two year hiatus between the filing of the charges and the issuance of the complaint. Respondent asserted that those failings gave rise to the equitable defenses of waiver, estoppel, and laches and violated its constitutional right to due process. Additionally, it alleged that the failure to obtain, timely declarations constituted a violation of the requirement that an administrative agency follow its own rules and regulations.

I denied the motion to dismiss based primarily on the holding of the United States Supreme Court that administrative delay is not a sufficient reason to deprive employees of their statutory rights. (NLRB v. J. H. Rutter-Rex Mfg. Co. (1969) 396 U.S. 258; adopted by the ALRB in Mission Packing Company (1982) 8 ALRB No. 47.)[1] A written statement of my ruling and the reasons therefor is attached as Appendix I to this decision.

There is, however, one aspect of Respondent's argument which deserves further comment: It asserts that the Charging Parties were themselves guilty of laches when they failed promptly to provide the General Counsel with the information and

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[1]/NLRB reiterated this view more recently in Merrell M. Williams (1982) 265 NLRB 506, 508; and California courts have long held the doctrine of laches inapplicable to cases involving the vindication of a public interest. (In re Marriage of Lugo (1985) 170 Cal.App.3d 427, 435.)

declarations needed to determine whether to issue a complaint. In other words, unlike Rutter-Rex, here it was the employees, and not the General Counsel, who were responsible for the delay; they should not be permitted to benefit from a delay for which they themselves caused.

This same argument was made many years ago to the National Labor Relations Board. (Taylor Mailing Corporation (1940) 26 NLRB 424, 434, overruled on another point in Federal Engineering Company, Inc. (1945) 60 NLRB 592, 593.) At the time, there was no time limit on the filing of charges, and the Respondent sought to invoke the doctrine of laches based on the Charging Party's failure promptly to present his charge of discrimination. The Board declined to apply the doctrine to the Charging Party's delay, quoting its earlier decision in Colorado Milling and Elevator Company (1939) 11 NLRB 66, 68:

> ...The Board acts in the public interest to effectuate an important national policy designed to eliminate the causes of certain obstructions to the free flow of commerce by the mitigation and elimination of unfair labor practices which tend to cause industrial strife and unrest. Such benefits as the Board's remedial orders confer upon individual employees are only incidental to the exercise of its power to effectuate the policies of the Act by remedying conditions created by unfair labor practices. It is well settled that the equitable principle of laches is not applicable to the government acting in the public interest. See United States v. Nashville, Chattanooga & St. Louis Railway Company, 118 U.S. 120, 125; United States v. Beebe, 127 U.S. 338, 344; United States v. Insley, 130 U.S. 263, 266; Federal Trade Commission v. Algoma Lumber Co., et al. 291 U.S. 67.

Even if no consideration were given to the public interest at stake, there is another, serious difficulty with

Respondent's invocation of laches. Respondent does not contend the Charging Parties were dilatory in filing their charges, but that they delayed the General Counsel's investigation. Laches is a doctrine available in civil litigation when a party with the power to proceed delays unreasonably in exercising that power. The power involved at the investigatory stage is the General Counsel's power to proceed to complaint, a power not possessed by the Charging Parties. Respondent's attempt to apply the doctrine of laches to them is therefore misdirected and beyond its scope.[2]

Having disposed of Respondent's procedural defenses, I now turn to the substance of the complaint, and, based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments and briefs submitted, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is an agricultural employer; the UFW is a labor organization; the named discriminatees are all agricultural employees; and the instant charges were filed and served in a timely fashion. (Prehearing Conference Order, paragraph 2.)

[2/] General Counsel, of course, has the prosecutorial discretion to refuse to proceed to complaint where he determines that the Charging Party has unduly hampered or delayed the investigation, but that is a prosecutorial prerogative, beyond the Board's power to review.

II. BACKGROUND

Stamoules Produce Company harvests, packs and markets a variety of crops, including melons, broccoli, corn and cotton, in the San Joaquin Valley, west of Fresno. Preharvest work is performed by another, related corporation--S & S Ranch.

Following the 1985 melon harvest, Stamoules operations underwent a substantial change. Poor melon sales led to serious cash flow problems. Under pressure from its lender, the company decided to cut back on its melon production and increase its production of corn and broccoli because both could be harvested earlier and would therefore provide quicker and more efficient cash flows. It therefore decreased its melon acreage from 3300 acres in 1985 to 2200 in 1986. The number of harvest crews likewise diminished; 20 or 21 crews were employed in 1985, but half as many were needed in 1986.

There is doubt that this retrenchment was due to real economic problems. The question presented by these charges is whether the Respondent used the necessity of cutbacks to rid itself of those harvest crews who had been partial to the UFW during the union organizational drive which had taken place during the 1985 harvest.

To answer that question, it is first necessary to understand the workings of the crew system. Each crew has 13 members, one for each row in the melon field. Melons are picked, placed in sacks, and loaded into bins atop trucks out in the

field. Each crew has a captain who acts as a spokesman, relays instructions from the foreman, sees to it that the work is being done, and takes the lead in organizing the crew and arranging for its presence at the beginning of the harvest. Each crew also has an assigned "reina" who is stationed atop the bins where he oversees the quality of the melons picked and records the bin counts which determine the piece rate received by the crew and its captain. Unlike them, he is paid a flat daily rate. Melon harvesting is hard work, but a good crew can earn considerably more from it than from other agricultural work. For that reason crews are selective about whom they admit to membership, and, once admitted, members tend to stay with their crew from year to year. Often an entire crew will come from the same geographical area.

The procedure followed in hiring crews for the harvest is informal but well established. Toward the end of the season, the captain will let the company supervisor know that the crew is available for the next year's harvest. The harvest usually begins in early July. As the time approaches, the captain contacts the supervisor to determine exactly when work will be available. The supervisor gives him a date, and the captain contacts the rest of the crew to tell them when they are expected and to make necessary arrangements for anyone who plans to arrive later. Often crew members travel together to the harvest. Once there, the captain collects the crew, contacts the supervisor, and makes final arrangements to begin work. If there is a vacancy, another worker

will be found or assigned, and, if accepted by the rest of the crew, may become a regular member.

During the hearing, there was considerable dispute as to whether Stamoules has a seniority system, and, if so, what rights accrue under it. I find that, while there is no formal system, certain seniority practices have become established over the years. For one thing, crews who have worked for the company in the past are more likely to be rehired, and not only because of their experience. According to George Papangellin, the controller at the time in question, "We value our employees as employees." Those who have done a good job are entitled to preference in rehire.

Then, too, while senior crews have no right to "bump" into positions held by those with less seniority, the company does have a loose policy of work sharing: When an experienced crew arrives a few days before there is enough work to justify the addition of another full-time crew, the new arrivals are nonetheless hired on the permitted to share the available work with those who are already working. (V:50; see also II:12-15.)

Supervision of the melon harvest crews is handled by "first" and "second" foremen. The first foreman hires the crews, determines when and where they are to work, and checks with the reinas to see to it that quality is maintained. The second foreman fills in when the first is absent or otherwise occupied. For the most part, the second foreman simply transmits orders from

the first foreman and sees that they are carried out. Occasionally, he takes action on his own.[3]

The crew system, under which each member's pay depends on the performance of the entire crew, encourages workers to police themselves. Consequently, discipline is infrequent, but when necessary, it is the responsibility of the first foreman.

III. THE 1985 UNION CAMPAIGN AND ELECTION

Early in the 1985 harvest, many of the workers at Stamoules became dissatisfied. They were unhappy with conditions at the labor camp: mattresses were missing, bathrooms were dirty, coolers were no good, and there was no air conditioning. Then, too, company buses frequently broke down, making it impossible for them to get to the fields to work. They also believed they were entitled to some payment for the length of time--up to four hours a day--they spent travelling by bus to and from the fields.

When the company failed to resolve these problems to their satisfaction, the workers turned to the UFW, and in late July 1985, the union began an organizational campaign. An organizing committee was established, authorization cards were circulated, and, on July 31st, the union petitioned for an

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[3]Supervision also varies from crop to crop and from year to year. A foreman in one crop may be a non-supervisory employee in another. The second foreman in one crop may be the first foreman in another, and a second foreman one season may be a first foreman the next.

election. The campaign culminated in a one day stoppage, two days before the election, in which 80 to 100 workers participated in a protest in the parking lot at the labor camp. They stood in front of buses, waived union flags, and wore union buttons. A number of supervisors were present, and Tom Stefanopoulos, one of the owners, spent a half an hour talking to employees, trying to convince them to return to work. Television crews from the local TV stations filmed the protest.

On August 10th the election was held and the union lost. At the end of the season, Stefanopoulos again spoke to the crews telling them that the company would do better by them next year. He may also have mentioned specific crews who would work the following year.[4]

IV. THE ORTIZ CREW

This crew, named for its captain, Jesus Ortiz, and nicknamed "the chicarrones" ("the cracklings") had been in existence since 1976. Each year its members traveled from their homes in the Imperial Valley to Mendota where they stayed in Stamoules' labor camp and worked the melon harvest.

The crew was active in the 1985 election campaign. Ortiz and most, if not all, of the crew members signed union

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[4]Stefanopoulos does not recall making those comments; Jose Valenzuela and a member of his crew do. I accept their recollection; those are just the sort of remarks which management would make after having gone through a union organizational drive,

authorization cards. The entire crew participated in the work stoppage and protest, each wearing a union button and most carrying and waiving union flags. Crew members also wore their buttons on the day of the election, and two of them, Manuel Mendez and Guillermo Barraza, served as election observers for the union; Barraza was also a member of the organizing committee.

The crew made no secret of its activities, and employer representatives including Stefanopoulos and Uvaldo Vega, the second foreman in 1985 and the first foreman in 1986, were present at the protest when buttons were worn and flags were waived. Vega also had occasion to check on the crew shortly after the election when most members were still wearing their buttons. I therefore find that the Respondent was aware of the crew's union sympathies and activities.

At the close of the 1985 harvest, Ortiz--following his usual practice--contacted Vega and asked, "Is there going to be a chance for [work the] coming seasons, if God wills it?" Vega said yes, there would be. (II:33-34.)

The following July, shortly before the 1986 harvest was to start, Ortiz telephoned Vega from the Imperial Valley to find out when the crew would be needed. When Vega told him work would begin July 9th, Ortiz said that the crew was ready to leave, and Vega replied, "OK". (II:36.)

Ortiz then made final arrangements with the crew.[5] Because one member, Guillermo Barraza, had family problems to attend to, it was agreed that he would join the group a few days later. (II:39.) The rest left the Imperial Valley and arrived in Mendota the afternoon of July 8th. (II:41.) When they were unable to contact Vega, they went to the Office and, late in the afternoon, spoke with Stefanopoulos, who then contacted the foreman. Vega arrived, spoke privately with Stefanopoulos, and then came out of the office and told Ortiz and his crew that, "There was not going to be any chance of [work] because he...was full up with people." (II:45.) He went on to say that, "He had 75 acres [which would] open up the following day [but] that he already had three crews destined to do that job." (II:45.) When Ortiz asked if there was a chance of waiting two or three days, Vega said, "There are another 75 acres but those won't be opened up for 10 or 15 days, but I do not guarantee that I'm going to give you a chance because I've already got people." (II:46.) The people he was referring to were the "120 men working in the corn [who] as soon as the corn ended then he was going to put...over here [in melons]." (II:100-101; II:47.) Vega then excused himself and left.

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[5] The crew as constituted for the 1986 harvest included: Ortiz, Guillermo Barraza, Manuel Ruano, Manuel Mendez, Antonio Buenrostro, Daniel Buenrostro, Ruben Garcia, Simon Aispuro, Mario Aispuro, Carlos Meza, Ignacio Rios, Valente Cruz, and Florencio Gonzales.

Vega has no recollection of this or of his earlier contacts with Ortiz; but Ortiz and crew member Angel Carrillo do, and I have no reason to doubt them. That Ortiz would call before leaving is both reasonable and consistent with his prior practice; that he was told to come was consistent with what he actually did. Both he and Carrillo impressed me as sensible and sincere witnesses, and their descriptions of what Vega said on July 8th are consistent. Moreover, their accounts are consonant with their subsequent abandonment of efforts to obtain work at Stamoules and with their decision to return to the Imperial Valley. Surely, had Vega held out hope of well paid employment in the melon harvest, they would not have left.

After his conversation with Vega and again the following day, Ortiz attempted to contact Stefanopoulos, but each time he was prevented from doing so by the woman who worked in the office. (II:48-49.) He did see Vega outside the office, but the foreman refused to discuss the matter and left. (II:49.) As a result, Ortiz gave up hope of obtaining work for his crew. He and four others returned to the Imperial Valley where he contacted Barraza and told him what had happened.

Stamoules' Daily Labor Reports disclose that three crews (Crews Nos. 1, 2, and 3) began the day after Ortiz was denied work (July 9th). The following day another three crews (Nos. 4, 5, and 6) were added. A seventh crew was hired two days later on July 12th. (G.C.Ex. 9; See TABLE I.)

TABLE I: COMPOSITION AMD STARTING DATES OF 1986 MELON HARVEST CREWS

Crew Number	Date Began Harvest Work	No. of Workers Previously Employed
Crew No. 1	July 9	5 out of 13 wkrs.
Crew No. 2	July 9	3 out of 13 wkrs.
Crew No. 3	July 9	11 out of 13 wkrs.
Crew No. 4	July 10	3 out of 13 wkrs.
Crew No. 5	July 10	4 out of 13 wkrs.
Crew No. 6	July 10	4 out of 13 wkrs.
Crew No. 7	July 12	2 out of 13 wkrs.
Crew No. 8	July 15	0 out of 13 wkrs.
Crew No. 9	July 16	1 out of 13 wkrs.
Crew No. 10	August 13	0 out of 13 wkrs.

Note: Starting Dates obtained from General Counsel's Exhibit No. 9. Number of workers with recent work experience obtained from comparing that Exhibit with Respondent's Exhibit H.

Presumably, the three crews who began working on the 9th were the ones Vega had already hired to take care of the "75 acres [which would] open up the following day". But that leaves unexplained the hiring three more crews on the 10th and another on the 12th. Even if one were to stretch the interpretation of Vega's comment about "three crews and 75 acres" and apply it--not to the first three crews--but to the next three, there still remains no good explanation for Vega's failure to tell Ortiz and his crew that work would be available on or about the 12th when, in fact, Crew No. 7 was hired.

Vega's later testimony that two crews were unexpectedly added when the weather became hot is no explanation; for, according to him, that did not occur until a few days after the Valenzuela Crew was turned away on July 11th (IV:87); so he must have been referring to Crew No. 8 which began on the 15th and Crew No. 9 which began on the 16th. Still left unexplained is his hiring of Crew No. 7 on the 12th--something Vega never claimed to have been unexpected.

Neither do company records bear out the foreman's assertion that he was obligated to "the 120 men working on the corn." Only 14 of the 91 workers who made up the seven crews hired after July 9th had recent work experience at Stamoules. (See TABLE I.) Indeed, that Vega made such an unsupported claim not only undermines his veracity, but also calls into question his motivation.

V. THE VALENZUELA CREW

Jose Valenzuela had been the captain of this crew since its inception in 1974. Most of its members resided in San Luis, in the State of Sonora, just across the Mexican border from Arizona. Each year they traveled to Mendota where they lived at the Labor Camp while working in the melon harvest.

On three or four occasions in 1985, the crew complained about the condition of the camp and the buses to Foreman Juan Carrillo, and on one occasion Valenzuela and the crew went directly to Stefanopoulos to complain that they had been unable to work because their bus and broken down. The crew was also unhappy about the long, unpaid bus trips to and from the fields.

When the workers turned to the Union and established an organizing committee, it consisted of Valenzuela and three members of his crew, along with one member of the Ortiz crew. They signed authorization cards and obtained signatures from fellow crew members and from other workers. The entire crew participated in the work stoppage and protest, wearing union buttons and waving UFW flags.

The crew likewise made no secret of its sympathies. If anything, it was more active and outspoken than the Ortiz crew. I therefore find, and for the same reasons, that the Respondent was well aware of its support for the union.

Valenzuela testified that, at the end of the season, Stefanopoulos assured the crew that it would be rehired in 1986.

While Stefanopoulos does not recall those comments, I believe they were made and that, in one way or another, he indicated that there would indeed be work for experienced crews like Valenzuela's. I do not believe, however, that his remarks can be taken as a firm and final commitment to rehire. Much can--and in this case did--happen from one season to the next, and the crew knew enough of the vagaries of agriculture to appreciate that. Rather, Stefanopoulos was stating an intention which, though not conclusive, does, when later abandoned, call for a careful and coherent explanation.

Valenzuela testified that he telephoned the company office at the beginning of July and learned that work would begin between the 8th and 10th. A few days later, on July 5th, he called Vega himself who verified the starting dates and told him, "We'll see each other here, see what takes place." (I:102, 61.)

While Vega does not recall hearing from Valenzuela and doubts the call was made, I am convinced that it was and that he led Valenzuela to believe that there would likely be work for his crew in the harvest. The call was in keeping with Valenzuela' past practice; that he was encouraged to come is consistent with his and his crew's subsequent actions.

One crew member, Dario Maldonado, was visiting his family

in the State of Guerrero and had arranged to join the crew later.[6] The rest left San Luis and arrived in Mendota the afternoon of July 10th. (II:61.)[7] When they went to the office the next morning, Stefanopoulos told them to speak with Vega. He was not at home, so, according to Valenzuela, they returned to the camp and drove back to see him at about 3:30 in the afternoon.

While the rest of the crew waited in there cars, Valenzuela and another crew member knocked and asked to speak with him. When he came to the door, Valenzuela apologized for bothering him and asked when his crew could begin work. (I:112.) Vega replied that "he was full up in people for working. That it was the people who had helped him in the wintertime" (I:114), and "that he was going to give them the preference of working in the melons..." (1:69.) Valenzuela objected to such a preference and explained that "Tomas [Stefanopoulos] told me to come over and talk to you." (I:71.) To which Vega "answered me, saying if that's the way it was, that Tomas was in charge of me, for me to go over there and ask him for work." (I:71.)

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[6]The remainder of the crew consisted of Valenzuela, Demecio Corona, Abelardo Rodriguez, Abel Santoyo, Juan Bernal, Esteban Covarrubias, Jesus Mendoza, Pedro Ramirez, Nicholas Calderon, Ramiro Torres, Joses Cruz, and Rafael Martinez. The complaint names two more workers--Ruben Romero and Jose Villaneuva. At the hearing the General Counsel struck Romero's name, and there is no evidence to establish Villanueva's status as a member of any of the crews involved in this proceeding.

[7]In cross examination, Valenzuela gave the date as July 8th, but qualified it as the day work began. (II:100.) It appears to me that July 10th is the correct date..

Valenzuela and the crew then went back to the office and told Stefanopoulos what had happened. Vega was summoned and arrived five minutes later. Valenzuela said that he "wanted an answer, I wanted Stefanopoulos and him to say whether I was going to have any work or not." (I:73.) Stefanopoulos demurred, saying "that he had given the order [to obtain workers] to Uvaldo [Vega] and that he [was the one who] knew whether he was full up with people or not." (I:74.) At which point, Vega reiterated "that he didn't need any more people, that he was full up." (I:74.) Having gotten his answer, Valenzuela and the crew left.

Two days later, on July 13th, Maldonado joined them at the local park where they were staying. At his urging, Valenzuela telephoned Vega in the evening and again asked for work. Vega replied that "he had already told me that there was none, that was it." (I:75.) The following day, Valenzuela says he sent some crew members to the office to check once more with Vega (I:77) and, on the 18th, he and the rest of the crew went to see Stefanopoulos, but were told that he was away and that they would have to wait outside. (I:78.) After waiting an hour and a half, the crew gave up. (I:78.) A few days later, Valenzuela contacted the ALRB Office in Fresno and filed his Charge. (G.C.Ex. 1} I:139.)

Vega's account differs in significant respects: First, he makes no mention of any initial encounter at his home. Second, he says that while he did tell Valenzuela that he had a full

complement of workers, he did not ascribe it to any obligation to hire those who had worked during the Winter; rather, he said it was due to the much smaller 1986 melon crop. (IV:41.) Third, he says that he did not discourage the crew, but instead told them to wait "a few days". (IV:42.) And finally, he says that after the one contact on July 11th, the crew failed to check back, leaving him with no alternative but to look elsewhere when a sudden increase in temperature made in imperative for him quickly to add two more crews. (IV:42.)

If I were to accept Vega's version of what occurred, his treatment of the crew might well be justified. But I cannot; there are too many problems with it.

First of all, there is his failure to mention the earlier encounter which Valenzuela described as occurring at his home. That it, or something like it, took place is born out by Stefanopoulos testimony that Valenzuela was already upset about not receiving work when he came to the office on the 11th. (V:44.) That being so, there must, contrary to what Vega says, have been an encounter prior to his being summoned to the office. Besides, it makes sense that Valenzuela would first seek out the person whom he knew to be directly responsible for hiring.

Secondly, there is Vega's justification for not hiring more crews. He says he told Valenzuela that it was because of the small melon crop, not--as Valenzuela claims--because of a commitment to employees who had worked for Stamoules during the

Winter. But this testimony is at odds with the accounts given of his comments to the Ortiz crew a few days before, accounts which I have already described, considered and accepted as reliable. (Supra, pp. 12-13.) Moreover, the size of the crop had been known for some time; certainly Vega was aware of it when they spoke by telephone and he told Valenzuela, "We'll see you here." (I:102, 61.)

Third, Vega's claim that he told the crew that there would be work "in a few days" does not ring true. It would have been inconsistent with the pessimism he had expressed to Ortiz. (Supra, p. 12.) Nor does it fit with Stefanopoulos' description of Valenzuela's frustration in explaining what had occurred in his initial contact with Vega. (V:45.) Neither does it agree with Stefanopoulos' testimony that he told Valenzuela that it would be "quite a few days" before work would be available. (V:45.) Finally, had Vega in fact said that it would only be a few days, then the situation would have fallen squarely within Stefanopoulos' policy of allowing crews to share available work until there was full time employment for everyone. (V:50.)

Fourth, there is Vega's claim that the crew was not hired because it failed to check back. The crew had come a long way to earn the considerable wages paid melon harvesters. Had Vega, as he claims, held out hope of early employment, there would have been every reason for the crew to have made itself accessible. His claim that it failed to do is thus at odds with his earlier

testimony. Furthermore, his subsequent testimony that he sent someone to find Santos Aguilar raises the question of why he did not explain what attempt, if any, he made to do the same for Valenzuela. After all, Mendota is a small town, and the crew did good work, had ten years of experience, and had journeyed all the way from the Imperial Valley expecting employment.

Then, too, Vega was a poor witness. He was nervous and hesitant in his testimony, and at times had difficulty in describing clearly what had occurred. His answers were vague, diffuse, and hard to pin down. That, together with the lapses, inconsistencies, and incongruities just described, seriously undermines his credibility.

It is further undermined by his failure to explain why it was that on July 12th, the day after he told Valenzuela that there was no work, he added another crew (No. 7). (See TABLE I.) At the hearing, he omitted any mention of it and, instead, sought to justify his actions by describing the sudden heat wave which caused him hastily to add one crew on the 15th (No. 8) and another on the 16th (No. 9). There is nothing to indicate that the addition of a crew on July 12th was sudden or unexpected.[8] Nor was it the result of any commitment to those who had worked during the Winter; only

[8]It is possible that Vega had already committed to Crew No. 7 when Valenzuela contacted him on the 11th. But why wasn't that explained to Valenzuela? Or, at the very least, why didn't Vega say so when he testified.

two of its 13 members had recent work experience with Stamoules (See TABLE I.)[9]

Thomas Stefanopoulos' testimony resolves none of these gaps and inconsistencies. His testimony that Valenzuela did not show up until 10 days after the harvest began is at odds with everyone--Vega included--who testified about it. The same is true of his assertion that he asked the crew to return later that afternoon, planning to offer it work at that time. No one else so testified, and it makes little sense in the light of his testimony that he told the crew it would be "quite a few days" before they were needed. Besides, if it was his intention to hire them, why didn't he do it then and there? Finally, I am convinced that the crew wanted work. Had he held out any such immediate hope, it is difficult to believe that they would have ignored it.

In the absence, therefore, of a coherent account from Respondent of why the crew was not hired, I accept, in its essential elements, the version testified to by Valenzuela and other crew members.[10] Their accounts are consistent with each other and with Respondent's treatment of the Ortiz crew. And

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[9]It is also worth noting that only one of the 26 members of Crews No. 8 and No. had worked at Stamoules in the recent past.

[10]Those few instances where there are difficulties with the testimony of crew members--for example, Maldonado's claim to have heard Vega's voice when Valenzuela telephoned him on July 13th (III: 134-135.)--are not serious enough to cause me to doubt them.

there was nothing in their demeanor which would lead me to doubt their veracity. I therefore find that Valenzuela contacted Vega before the harvest began; that he was led to believe that work would be available beginning July 10th; that when he and his crew arrived on time they were told there was no work because preference was to be given to those who had worked during the Winter; that that representation was substantially untrue; and that three additional crews were hired without any serious effort being made to advise or alert the crew, even though it did contact the Respondent several times after the 11th.

VI. SANTOS AGUILAR

Aguilar had been a crew captain in the 1983 and 1984 melon harvests. In 1985, he began as a captain but, shortly before the election, was reassigned to work as reina. Unlike Valenzuela and Ortiz, he apparently lived in the area and worked on and off in Stamoules' other operations--weeding cotton, thinning melons, harvesting broccoli, loading onions, and so on.

It does not appear that he or his crew were involved in the complaints about the bus transportation or the conditions at the labor camp. Nor did he participate in the union organizing campaign or in the work stoppage and protest just prior to the election.[11] He did, however, vote for the UFW.

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[11]One crew member, Tobias Lopez, testified that he wore a UFW button during the election and while supervisors were present. (III:92.)

The General Counsel asserts that the Respondent became aware of his vote through a conversation he had with a fellow worker at the conclusion of the 1985 harvest. He testified that Santos Comacho asked him whether he had voted for the union. When he said he had, Comacho told him that had been unwise "because the company didn't want anything to do with the union." (III:9.) Comacho is Vega's brother-in-law and, the following June, became the foreman in charge of the corn harvest. At the time, however, he had no special status, and so his knowledge cannot be imputed to the Respondent (Steel-Tex Manufacturing Corp. (1973) 206 NLRB 461); it must be proven as a fact.[12]

The General Counsel sought to do so and to show that Aguilar was improperly denied employment in the harvest by introducing evidence of his unsuccessful attempts to obtain work and of a later conversation in which Vega revealed Respondent's awareness of his union sympathies.

After the 1985 melon harvest, Aguilar worked for a short time in broccoli, was laid off, and then returned to work in February 1986, planting onions. After that, he worked weeding cotton and melons; then, in June, he began loading onions. It was

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[12]That Vega and Comacho are related is a fact which helps establish such knowledge. However, standing alone, I do not believe it to be sufficient. (See U.S. Soil Conditioning Company (1978) 235 NLRB 762, 764, aff'd (10th Cir. 1979) 606 F.2d 940.) Nor can his statement that the "company didn't want the union" to be used to establish unlawful motivation on Respondent's part.

at this point that he asked Vega, "Whether there was going to be a chance for me and my crew [to work] in the melon [harvest]." (III:15.) Vega was encouraging. Just as the harvest was to begin and while he was still loading onions, he asked again and was told, "As soon as you're through there, I'll send you and your crew over to the melons." (III:17.) Within a day or so, onion work was completed and Aguilar was laid off. A few days later he was rehired, not to harvest melons, but to weed them, and he continued to doing so, sporadically, until August 14th when he left Stamoules for good.

Between mid-June and mid-July, Aguilar estimated that he asked Vega for harvest work for himself and his crew on five occasions and each time Vega promised work "as soon as there was...a chance" (III:19), but it never materialized.

After some initial skirmishing with General Counsel (IV:93-97), Vega admitted that Aguilar had requested work on a number of occasions and, each time, was told to "wait a few more days." (IV:97-99.) He went on to testify that, when work became available, he sent Jesus Rivas to fetch Aguilar, but Rivas returned saying that he no longer wanted to work for Stamoules. (IV:62-63.) However, when Rivas was called to corroborate Aguilar's refusal, he testified that he believed the offer was for work in broccoli, not in melons. (IV:110-111.)

Based upon Vega's demeanor as a witness and on the other problems, already described, with his testimony, I accept Rivas'

belief and Aguilar's testimony that no offer of melon work was forthcoming. Since somewhere between four and seven crews were hired during this period (See TABLE I), Respondent is once again without a coherent explanation for the failure to hire Aguilar and his crew.

The General Counsel maintains that Respondent's true motive was revealed in late August when Aguilar and a member of his crew, Tobias Lopez, went to the fields to find out, once and for all, whether they would be hired. According to their testimony, Vega said, "I'm going to tell you the real truth. It's going to be very difficult for you to find work again at the company because the company has become aware that you voted for the union and the company wants nothing to do with the union. So for you and your crew there is no more work because you...are chavistas." (III:53, 96.)

I accept Aguilar's and Lopez' testimony on this point. Aguilar was a serious, straightforward witness, expressive without being argumentative. He experienced some difficulty in describing the exact timing of his contacts with Vegas, but that is understandable and does not reflect adversely on his overall credibility. Lopez was also a convincing witness. His account is consistent with Aguilar's and includes details which give it the ring of truth. When their credibility is weighed against Vega's--a witness whose failings have already been described at length--there is little question of whom to believe.

I therefore find that the Respondent was aware that Aguilar had voted for the union, that he repeatedly and unsuccessfully sought melon harvest work for himself and his crew at times when it was available, that the Respondent provided no coherent explanation for its failure to hire the crew, and that Vega admitted that it was not hired because the Respondent believed its members to be Chavistas.

VI. STATEMENTS BY FOREMEN INDICATING COMPANY HOSTILITY TOWARD UNION SYMPATHIZERS

In addition to the conversation, just described, in which Vega admitted to Aguilar and Lopez that there would be "no more work because you...are chavistas" (Supra, p. 26), the General Counsel introduced evidence of four other incidents in which foremen made anti-union remarks: (1) A statement by Juan Carrillo, just before the election in 1985, that the Ortiz crew were "cry-babies and chavistas"; (2) a number of anti-union comments made by Carrillo on the day of the work stoppage in 1985; (3) a conversation in June 1986, in which Vega told Aguilar and Santos Comacho that Valenzuela and his crew "will never again work at Stamoules because they are chavistas"; and (4) a conversation in July 1987, in which Comacho told Ruben Romero, who had been a member of the Valenzuela crew, that neither he nor the others who had participated in the work stoppage would ever be rehired.

If proven, those statements would furnish strong evidence of unlawful motivation directed not only against the particular workers and crews to whom they were addressed but, more generally,

against all of the workers who were denied re-employment. Furthermore, the statements which are not time barred might well, as the General Counsel alleges, constitute independent violations of section 1153(a).

A. Statements and Conduct of Foreman Juan Carrillo

Carrillo was the principal foreman for the melon harvest crews during the 1985 union campaign and election. Manuel Mendez, a member of the Ortiz crew, testified that a few days before the election Carrillo arrived at the field where the crew was working and began throwing out melons which it had picked. Mendez retrieved two of them and said, "Look, these cantaloupes are good; you have no reason to throw them away." To which Carrillo said that "I was nobody to tell him what he was doing." When Mendez replied, "I'm nobody, but you have no reason to throw away these melons", the foreman said, "You (plural) are cry-babies and chavistas. And, on the first chance that I get, I'm going to stop you." (II:117-118.)

Ortiz was there, and his testimony corroborates that of Mendez. (II:24-25.) Carrillo did not testify, and the Respondent offered no evidence to contradict that of the two workers. I therefore find that the incident did occur as they described it.

On the day of the work stoppage Dario Maldonado stood in the path of one of the buses. He testified that he saw Carrillo get on the bus and tell the driver: "Go forward, it doesn't matter if you kill this damned chavista." (III:118.) The bus

started toward him and he jumped aside. A fellow crew member, Juan Bernal, was there, an his testimony corroborates that of Maldonado. (II:140.) Bernal went on to testify that, after the buses left, Carrillo went around the labor camp yelling: "Let's go to work; don't pay attention to these people, they are chavistas....we know who they are and we're going to remember them." (II:141.) Manuel Mendez was present, and his testimony corroborates that of Bernal. (II:121.)

Again, no evidence was offered to rebut the testimony of the workers. I therefore find that Carrillo did engage in the described conduct on the day of the protest and that his behavior on that occasion and earlier when he called Mendez and the rest of the crew "cry-babies and chavistas" is evidence of Respondent's hostility toward workers sympathetic to the UFW.[13] However, because the conduct occurred almost one year prior to the filing of the instant charges, it may properly be considered only as background evidence, useful in interpreting and understanding the events which form the basis for the allegations contained in the complaint and which occurred within the statutory six-month limitation period. (Holtville Farms (1981) 7 ALRB No. 15; Julius Goldman's Egg City (1980) 6 ALRB No. 61.)

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[13]At one point, Respondent argued that the term "Chavista" in not prejorative; that union activists often refer to themselves that way. General Counsel is correct in saying that the context in which the term occurs is determinative. Here it was used by supervisors, spoken in a hostile manner, and accompanied by threatening words and behavior. As such, it is a pejorative.

B. Statements by Foreman Uvaldo Vega

I have already found that Vega told Santos Aguilar that the real reason he and his crew were not hired for the melon harvest was their support for the UFW. (Supra, p. 26.)

A month before, in early July 1986, Aguilar was picking corn and his foreman, Santos Comacho (Vega's brother-in-law) was nearby. According to Aguilar, Vega arrived and said: "You know what? Valenzuela called last night...to see when the melon season was going to begin and I told him." He then went on to say, "Valenzuela and his people...will never again work at Stamoules because they are chavistas...." (III:28.)

Vega denied making the statement (IV:65), just as he had denied telling Aguilar and Lopez "the real reason" they were not hired. (Supra, p.26.) Once again--and for the same reasons-- credit Aguilar's testimony and discredit Vega's denial.

C. Statement by Santos Comacho

In July 1987, a year after the events in question, Ruben Romero, who had at one time been a member of the Valenzuela crew, met Comacho in the Guaymas Cafe in Mendota. Romero testified that, when he asked about work, Comacho told him "there was no work for me because I was...close to the striking people, to the chavistas....that he was aware of other people who would not be given work because they were strikers, chavistas." (III:66-67.) Comacho went on to say that people in the office, including "Thomas" [presumably Thomas Stefanopoulos], also knew who the

Chavistas were and would see to it that they were not hired. (III:67.)[14]

Comacho was not called to testify, so there is no evidence to rebut Romero's testimony that the statement was made. Respondent argues, however, that it should not be considered because, at the time, Comacho was not working as a true supervisor.

Respondent may well be correct in this. In July 1987, Comacho was working under his brother-in-law as second foreman in the melon harvest. On this record, it is difficult to say that second foremen are supervisors as the term is defined in the Act. (Supra, pp. 8-9.) However, both before and after his encounter with Romero, he worked as a supervisor in the corn harvests of November 1986 and October 1987. He was, therefore, close to management and likely privy to its unspoken policies. Because of that, I shall take his statement into account in determining employer motivation for the refusals to rehire.[15]

ANALYSIS, FURTHER FINDINGS, AND
CONCLUSIONS OF LAW

In order to establish unlawful interference with protected concerted activity in violation of Labor Code, section

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[14]He later said no names were mentioned (III:68), so it is not possible to say that Stefanopoulos was specifically implicated.

[15]The National Labor Relations Board did much the same in Fimco, Inc. (1987) 282 NLRB No. 93. There a leadman whom the Board found not to be a true supervisor, admitted to the discriminatee that he was being reassigned because management did not want him available to discuss the union with his fellow employees. In spite of his

1153(a) or of unlawful discrimination for union support or activity in violation of section 1153(c), the General Counsel must ordinarily prove: (1) that workers supported the union and/or engaged in union or protected concerted activity, (2) that the employer knew it, and (3) that a causal relationship or connection exists between their support and/or activity and adverse treatment which they later suffered. (Lawrence Scarone (1981) 7 ALRB No. 13; Jackson and Perkins Rose Co. (1979) 5 ALRB No. 20.) In refusal to hire cases, the General Counsel must also prove that he workers made proper application for employment at a time when work was available. (Verde Produce Company (1981) 7 ALRB No. 27.)

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non-supervisory status, the Board relied on his admission in finding a violation:

> "In addition, we rely on Miller's [the discriminatee] testimony regarding Ingalls' [the leadman] statement. We need not, however, adopt the [administrative law] judge's rationale for admitting the statement, i.e., that Ingalls occupied a 'semisupervisory' position, and, therefore, his statement was admissible as an admission by an agent of a party-opponent under Rule 801(d)(2) of the Federal Rules of Evidence (though Ingalls' statement was made in apparent accordance with the authority delegated to him by the Respondent). We note that the Board is not required to follow the strict rules of evidence applicable to the Federal courts, except to the extent practicable (citing cases)." (Id., slip opinion, p. 4.)

Our Act likewise includes a "so far as practicable" qualification to the requirement that the California Evidence Code be adhered to. (Labor Code, section 1160.2.) Here, Comacho was in a position to possess reliable "inside" information relevant to a significant matter at issue.

A. The Ortiz Crew

The General Counsel has established that the crew supported the UFW and engaged in a variety of activities on its behalf and that the Respondent was aware of those activities and that support. (Supra, pp. 10-11.)

There is also abundant evidence of a causal connection between the crew's union support and activity and its failure to be rehired for the 1986 melon harvest. To begin with, there is Respondent's sudden and unexplained deviation from its practice of hiring experienced crews who had worked in previous harvests and who, in this case, had been led to believe they would be hired for this one as well. (Supra, pp. 7, 11; Paul W. Bertuccio (1984) 10 ALRB No. 10.) The asserted reasons for the failure to rehire them--that the Respondent already had a full complement and that it was carrying out its obligation to those who had worked for it during the Winter--were false and pretextual (Supra, pp. 12-14), and thus give rise to the inference of an undisclosed, forbidden motive. (The Gar in Company (1986) 12 ALRB No. 14, pp. 4-5; Baker Brothers (1986) 12 ALRB No. 17, ALJD pp. 24-25; Dyer v. MacDougall (2nd Cir. 1952) 201 F.2d 265, 269; A & Z Portion Meats, Inc. (1978) 238 NLRB 643; First National Bank of Pueblo (1979) 240 NLRB 184.) That inference receives additional support from the background evidence of hostility toward union sympathizers revealed in foreman Carrillo's behavior during the 1985 election campaign (Supra, pp. 28-29), and it is manifest in Uvaldo Vega's

comments to Santos Aguilar in July and August 1986 which, though directed at other crews and workers, reveal a discriminatory motivation equally applicable to Ortiz and his crew. (Supra, pp. 26, 30.) Even without the added admission by Santos Comacho in 1987 (supra, pp. 30-31), there is more than enough evidence to convince me that there is a casual link between the crew's union sympathies and activities and its failure to obtain employment in the 1986 harvest. Ron Nunn Farms (1978) 4 ALRB No. 34, involved a similar situation, and there a violation was found without the benefit of incriminating admissions by supervisory personnel.

The only business justification offered by the Respondent, was the retrenchment in operations which occurred in 1986. (Supra, p. 6.) There is no question that the decrease in melon acreage was a valid response to real economic problems, but that does not explain why, among the crews for whom work was available, those sympathetic to the UFW were refused consideration. There being no non-pretextural justification for that refusal, the General Counsel has satisfied its burden of proof, and there is no need to engage in a "dual motive" analysis. (Baird Neece Packing Corporation (1988) 14 ALRB No. 16, fn. 1; The Garin Company (1985) 11 ALRB No. 18, pp. 11-12.)[16]

Finally, the additional requirement in refusal to hire cases that there be proper application and available work was met

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[16] Respondent makes a general argument, applicable not only to the refusal to hire the Ortiz crew, but to that of Valenzuela and Aguilar as well, that other workers who participated in the work stoppage and signed a petition (which was never presented to

not only by those crew members who journeyed to Mendota (Supra, pp. 13-14; TABLE 1), but also by Guillermo Barraza, who had arranged to join the crew later but decided not to do so when he learned it would be futile. (Abatti Farms, Inc. (1979) 5 ALRB No. 34, pp. 18-19, citing International Brotherhood of Teamsters v. U.S. (1977) 431 U.S. 324, 366.)

B. The Valenzuela Crew

The General Counsel has established that the crew engaged in protected concerted activity by protesting a variety of working conditions and that it actively supported the UFW during the 1985 protest and campaign. (Supra, p. 15). All of which was known to the Respondent. (Supra, p. 15.)

Likewise, the General Counsel has provided ample evidence of a causal connection between the crew's union and concerted activity and Respondent's failure to employ it for the 1986 harvest. As with the Ortiz crew, there is Respondent's sudden and unexplained deviation from past hiring practice. (Supra, pp. 16-17.) There are also Respondent's inconsistent, contradictory and shifting explanations and its false justifications (Supra, pp.

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management) were hired to pick melons in 1986. However, "It is not necessary to show that other union supporters were discriminated against to establish a case of unlawful discrimination." (Foster Poultry Farms (1980) 6 ALRB No. 15, citing Desert Automated Farming (1978) 4 ALRB No. 99; and see Primadonna Club, Inc. (1967) 165 NLRB 111.) Here, there is ample evidence to sustain findings of discriminatibn' against the three crews who were the subject of the complaint.

18-21.), which—like those made to Ortiz--give rise to an inference of a concealed and improper motive. (Ranch No. 1, Inc. (1986) 12 ALRB No. 21, p. 6, S. Kuramura, Inc. (1977) 3 ALRB No. 49, pp. 12-13; Illini Steel Fabricators, Inc. (1972) 197 NLRB 297; J. P. Stevens Co. (1968) 171 NLRB 1202, 1220.) Next, there is the background evidence provided by Carrillo's behavior during the 1985 protest, and there is Vega's July 1986 admission to Comacho and Aguilar that the crew would never be hired because it was made up of Chavistas (Supra, p. 30) and his "anti-Chavista" comment to Lopez and Aguilar in August 1986. (Supra, p. 26.) Finally, there is Comacho's admission to former crew member Romero in July 1987. (Supra, pp. 30-31.)

Again, even without these admissions, there is ample evidence from which to conclude that General Counsel has satisfied its burden of proof. (See Ron Nunn Farms, supra.) Since the retrenchment of operations in 1986 does not explain why pro-union crews were not used to perform available work and since the other justifications offered were all pretextual, there is no need for further consideration of Respondent's motives. (Baird Neece Packing Corporation, supra.)

The requirement of proper application and available work has also been met. There were openings both when the crew presented itself and shortly thereafter, and Dario Maldonado, who had arranged to join the crew later, would have been employed but for Respondent's unlawful discrimination. (See Sumner Peck Ranch, Inc. (1984) 10 ALRB No. 24.)

C. Santos Aquilar

While Aguilar's involvement in union activities was substantially less than that of the other crew captains, it did not escape Respondent's notice; indeed, Vega admitted it was the reason why he and Lopez were not hired. (Supra, p. 26.) Given that clear admission, given the failure of the Respondent to provide any other coherent explanation for its actions (Supra, pp. 25-26), and given Vega's false claim that he had attempted to offer Aguilar work in the melon harvest (Supra, p. 25), I find that Respondent's justification for its failure to hire his crew to have been pretextural. The General Counsel has therefore sustained its burden of proof and no "dual motive" analysis is necessary. (Baird Neece Packing Corporation, supra.)[17]

Because Tobias Lopez was the only other worker identified as a prospective member of the crew, the violation is, however, confined to him and Aguilar.

D. Threatening Remarks by Supervisors

The General Counsel has alleged and proven that on three occasions remarks which could be considered threatening were made by supervisory personnel: (1) Vega's June 1986 comment to

[17]Respondent argues that no charge covers Aguilar's treatment. G.C.Ex. 2 is, in my opinion, broad enough to include his situtation; but, in any event, Respondent's failure to hire his crew was closely related to the violations which were charged, was disclosed prior to hearing, and was fully litigated. (Baird Neece Packing Corporation, supra.)

Aguilar and Comacho that Valenzuela and his crew would never again work for Stamoules (Supra, p. 30), (2) Vega's August 1986 admission to Aguilar and Lopez that they would receive no more work because they were Chavistas (Supra, p. 26), and (3) Comacho's July 1987 remark to Romero that neither he nor others who participated in the work stoppage would ever be rehired (Supra, pp. 30-31).

None of those remarks were the subject of specific unfair labor practice charges. All, however, are related to the refusals to rehire which were charged; all were disclosed to Respondent prior to hearing; and all were fully litigated during the hearing. They are, therefore, appropriately before me for consideration as possible violations. (Baird Neece Packing Corporation, supra.)

A threat is a statement which tends to interfere with or restrain employees in the exercise of the rights guaranteed them by the Act. (Jack Brothers and McBurney, Inc. (1978) 4 ALRB No. 18.)

Applying that definition to the statements at hand, it would, at first blush, appear that all three constitute actionable violations; after all, they do clearly indicate that "Chavistas" will not be tolerated at Stamoules. The problem is that two of the three are more in the nature of confessions or admissions of guilt than warnings of retaliation. It is difficult to see how or why a confession can be a violation, even when it is made to a victim who may reasonably be intimidated by it. Because of that and because the conduct to which those statements relate is in

itself violative of the Act and will be the subject of a remedial order, I decline to find violations either in Vega's August 1986 confession of the "real reason" for not hiring Aguilar or in Comacho's July 1987 admission to Romero.

Vega's statement to Aguilar in July 1986 is another matter. It has a threatening and admonitory quality which sets if apart from the others and justifies the conclusion that it constitutes a separate and independent violation of section 1153(a).

E. Conclusions

I conclude that Respondent violated section 1153(c) and, derivatively, section 1153(a) of the Act by refusing to hire the Ortiz crew, including Guillermo Barraza, and by refusing to hire Santos Aguilar and Tobias Lopez for the 1986 melon harvest. I further conclude that Respondent violated both section 1153(a) and (c) by refusing to hire the Valenzuela crew, including Dario Maldonado, for the same harvest. Finally, I conclude that foreman Uvaldo' Vega's statement to Santos Aguilar in July 1986, indicating that Respondent would never hire "Chavistas" violates section 1153(a) of the Act.

REMEDY

Having found that Respondent violated section 1153(a), and (c) of the Act by the above described conduct, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act. In

fashioning the affirmative relief delineated in the following order, I have taken into account the entire record of these proceedings, the character of the violations found, the nature of Respondent's operations, and the conditions among farm workers and in the agricultural industry at large, as set forth in Tex-Cal Land Management, Inc. (1977) 3 ALRB No. 14.

Upon the basis of the entire record, the findings of fact and the conclusions of law, and pursuant to section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

Pursuant to Labor Code section 1160.3, Respondent D & D Farms, Inc., its officers, agents, labor contractors, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to hire, or otherwise discriminating against agricultural employee in regard to hire or tenure of their employment or with respect to any term or condition of employment because they have engaged in concerted activity protected by the Act.

(b) Discouraging membership of any of its employees in the United Farm Workers of America or in any other labor organization by unlawfully refusing to hire, or in any other manner discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment, except as authorized by section 1153(c) of the Act.

(c) Threatening to refuse to hire agricultural employees because of their sympathy or support for any labor organization.

(d) 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 Act.

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

(a) Offer Jesus Ortiz, Guillermo Barraza, Manuel Ruano, Manuel Mendez, Antonio Buenrostro, Daniel Buenrostro, Ruben Garcia, Simon Aispuro, Mario Aispuro, Carlos Meza, Ignacio Rios, Valehte Cruz, Florencio Gonzales, Jose Valenzuela, Dario Maldonado, Demecio Corona, Abelardo Rodriquez, Abel Santoyo, Juan Bernal, Esteban Covarrubias, Jesus Mendoza, Pedro Ramirez, Nicholas Calderon, Ramiro Torres, Joses Cruz, Rafael Martinez, Santos Aguilar, and Tobias Lopez full reinstatement to their their seniority or other employment rights and privileges, and make them whole for all losses of pay and other economic losses they have suffered as a result of their being refused employment, the amounts to be computed in accordance with established Board precedents, plus interest computed in accordance with the Board's decision in Lu-Ette Farms, Inc. (1982) 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 and social security payment records, time

cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amounts of back pay and interest due under the terms of this order.

(c) Sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, make sufficient copies in each language for the purpose set forth in this Order.

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this order to all agricultural employees in its employ from July 1, 1986 to December 31, 1986.

(e) Post copies of the attached Notice in all appropriate languages, for 60 days, in conspicuous places on its property, the exact period(s) and places(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 or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at time(s) and places(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 the reasonable rate of compensation to be paid by Respondent to all piece-rate employees in order to compensate them for time lost at the reading and question-and-answer period.

(g) Notify the Regional Director in writing, with 30 days of the issuance of this Order, of the steps it has taken to comply with its terms, and make further reports at the request of the Regional Director,

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Fresno Regional Office of the Agricultural Labor Relations Board [ALRB or Board] by Jose Valenzuela and the United Farm Workers of America, the General Counsel of the ALRB issued a complaint which alleged that we, Stamoules Produce Company, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we violated the law by refusing to hire Santos Aguilar, Tobias Lopez, the crew of Jesus Ortiz, and the crew of Jose Valenzuela and that this was due to the fact that they had participated in Union activities, and because the Valenzuela crew had been involved in protesting certain terms of their employment. The Board also found that we violated the law by threatening to refuse to hire workers sympathetic to the United Farm Workers. 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 you to know 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, and 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 you have these rights, we promise that:

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

WE WILL NOT refuse to hire any employees or crews because they participated in union activities or because they acted together to complain to us regarding the terms of their employment.

WE WILL NOT refuse to hire workers because they are sympathetic to the United Farm Workers or to any other union, nor will be threaten to do so.

WE WILL offer employment to Jesus Ortiz, Guillermo Barraza, Manuel Ruano, Manuel Mendez, Antonio Buenrostro, Daniel Buenrostro, Ruben Garcia, Simon Aispuro, Mario Aispuro, Carlos Meza, Ignacio Rios, Valente Cruz, Florencio Gonzales, Jose Valenzuela, Dario Maldonado, Demecio Corona, Abelardo Rodriquez, Abel Santoyo, Juan Bernal, Esteban Covarrubias, Jesus Mendoza, Pedro Ramirez, Nicholas Calderon, Ramiro Torres, Joses Cruz, Rafael Martinez, Santos Aguilar, and Tobias Lopez to their positions as melon

harvest employees and we will reimburse them with interest for any loss in pay or other economic losses they suffered because we discharged and refused to rehire them.

DATED: STAMOULES PRODUCE COMPANY

By: _____
Representative Title

If you have questions about your rights as a farm worker or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 711 N. Court Street, Suite A, Visalia, California 93215. The telephone number is (209)627-0995.

DO NOT REMOVE OR MUTILATE

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: STAMOULES PRODUCE CO., Respondent, and JOSE VALENZUELA AND UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 86-CE-73-D(F) 86-CE-101-D(F) STATEMENT OF BASIS FOR ORDER DENYING MOTION TO DISMISS AND ORDER GRANTING PETITION TO REVOKE SUBPOENA DUCES TECUM (Section 20242(b), ALRB Regs.)

At the opening of the hearing on November 8, 1988, Respondent's Motion to Dismiss was heard and denied. At the same time General Counsel's Petition to Revoke a Subpoena related to the Motion to Dismiss was granted. Respondent's counsel thereupon advised me that he intended to file an interim appeal of the two rulings. In accordance with section 20242 (b) of the Regulations, I have therefore reduced my rulings and reasoning to writing.

I

The Respondent moved to dismiss the Complaint because of the alleged failure of the Charging Parties to abide by Section 20213 of the Regulations by providing declarations at the time their Charges were filed, and because two years were allowed to pass between the filing of the Charges and the issuance of the Complaint.

The General Counsel represented that a Declaration had been filed concurrently with each of the Charges, and the

Respondent accepted that representation. Furthermore, during the course of the hearing, the Declaration of one of the Charging Parties [Jose Valenzuela] was produced and admitted into evidence. (Resp. Ex. A.) It bears the same date as his charge--July 25, 1986.

Respondent then argued that that was not enough--all supporting declarations must be filed concurrently with charges, and they were not.

While Section 20213 does require that declaration (s) be filed along with charges, it does not require that every declaration be filed at that time. Such a requirement would be at odds with the General Counsel's obligation under Section 20216 to investigate each charge. Additional declarations are part and parcel of any thorough investigation.

I therefore ruled that the requirements of Section 20213 had been satisfied and that Respondent's first argument was without merit.

Respondent's second argument--that almost two years passed between the charge and the complaint--is also without merit. In Mission Packing Company (1982) 8 ALRB No. 47, the ALRB adopted as applicable NLRB precedent the holding of the United States Supreme Court in NLRB v. J.H. Ruttar-Rex Manufacturing Co., Inc. (1969) 396 U.S. 258, that administrative delay is not a sufficient reason to deprive employees of their statutory rights, (See also: NLRB v. Katz (1962) 369 U.S. 736; Redway Carriers

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(1985) 274 N'LRB 1353, 1371; Standard Gil Company of California (1945) 61 NLRB 1251.)[1/]

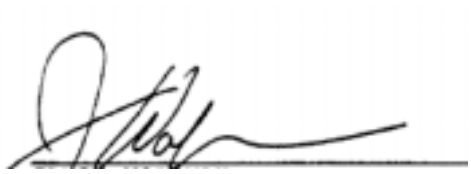
In addition, Respondent's Offer of Proof is deficient in that it contains no statement of the specific facts on which its claim of prejudice is based. Finally, the offer was not timely filed. The Prehearing Conference Order [paragraph 11] required that it be received in Sacramento no later than November 4, 1988 [in order to allow me time to study the offer and do the necessary research]. Instead, it was mailed in Fresno on November 3rd by regular mail and did not arrive in Sacramento until the following Monday, November 7th, after I had left for hearing.

II

Closely related to the Motion to Dismiss was a Subpoena Duces Tecum served on the Board Agent who investigated the case seeking all records of his investigation and his testimony regarding that investigation.

Because administrative delay is no defense (Mission Packing Company, supra), the testimony and documents sought were irrelevant. I therefore granted the General Counsel's Petition to Revoke the Subpoena.

DATED: November 16, 1988



JAMES WOLPMAN
Chief Administrative Law Judge

[1/]Respondent was advised of its right to pursue the Board's External Complaint Procedure under which any irregularity in the investigation could more appropriately be addressed.