Rutherford, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SKALLI CORPORATION, dba ST. SUPERY VINEYARDS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos . 90-CE-52-SAL 90-CE-53-SAL 90-CE-57-SAL 90-CE-58-SAL 90-CE-59-SAL 90-CE-60-SAL 90-CE-62-SAL 90-CE-63-SAL 90-CE-65-SAL 17 ALRB No. 14 (November 22, 1991)

DECISION AND ORDER

On June 5, 1991, Administrative Law Judge (ALJ) James Wolpman issued the attached Decision in the above-captioned cases. Thereafter, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board), United Farm Workers of America, AFL-CIO (herein UFW or Union) and Skalli Corporation dba St. Supery Vineyards (herein Respondent) timely filed exceptions and supporting briefs, and Respondent and Charging Party filed answering briefs.

Pursuant to the provisions of Labor Code section 1146,[1/] the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to overrule the ALJ's rulings, findings and conclusions, except to

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

the extent consistent herewith, and to issue the attached Order.[2/]

The only issues before the Board arise from Respondent's discharge of 19 of its vineyard employees between April 11 and May 2, 1990,[3/] for their failure to meet productivity standards promulgated by Respondent's new vineyard manager, Reynaldo Robledo. The UFW was certified as the representative of Respondent's agricultural employees on March 12, 1986. It is undisputed that Respondent promulgated and enforced the standards without notifying the UFW. After employees began to be warned and discharged in the implementation of the standards, the UFW appropriately requested Respondent to provide information concerning the new standards. Respondent, however, refused to provide this information and would not include the subject of productivity standards in ongoing negotiations toward a new collective bargaining agreement.

These undisputed facts establish all the elements of an unlawful unilateral change. (See NLRB v. Katz (1962) 369 U.S. 736 [82 S.Ct. 1107; 50 LRRM 2177].) Production standards like those Respondent implemented from April 7 to May 2, requiring an increased hourly rate of production to remain employed, are unquestionably conditions of employment and therefore constitute a mandatory subject of bargaining. (Crystal Springs Shirt Corporation (1979) 245 NLRB 882 [102 LRRM 1404] enf'd. (5th Cir.

[2/] As Respondent has not excepted to the ALJ's finding that it unlawfully contracted out fence spraying work, we adopt that finding pro forma.

[3/] All dates herein are in 1990, unless otherwise indicated.

1981) 637 F.2d 399.) Respondent was subject to an obligation to bargain with the UFW by virtue of the UFW's certification as the representative of Respondent's agricultural employees.[4/]

Respondent, however, not only did not give notice of the changed standards to the UFW, but also excluded production standards from discussion when the UFW made specific inquiry about them. Respondent thus had the opportunity to cure its earlier failure to give notice, but failed to do so. Moreover, Respondent refused to include this subject as part of ongoing meetings seeking to renew its recently expired collective bargaining agreement with the Union.

Respondent presented evidence that its production standards were motivated by a desire to reduce its per acre operating cost. While reducing costs and obtaining higher productivity are certainly appropriate goals within the prerogative of the employer to achieve, where they result in imposition of a new condition of employment upon employees represented by a certified labor organization, the Agricultural Labor Relations Act (Act or ALRA) requires that the organization have notice and the opportunity to bargain about the changes before they are implemented.[5/] If an employer gives notice of a

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[4/] As the ALJ correctly found, the management rights provision of the parties' expired collective bargaining agreement does not show the clear and unmistakable intent to waive the right to bargain over changes in work standards, a mandatory subject of bargaining. (See Alfred M. Lewis v. NLRB (1979) 587 F.2d 403 [99 LRRM 2841],)

[5/] While the new production standards may have been reasonable, that does not obviate the obligation to bargain prior to their implementation.

specific change, the union must then request bargaining. (Citizens National Bank of Willmar (1979) 245 NLRB 389 [102 LRRM 1467].) Absent such a request by the union after reasonable notice, the employer may implement without bargaining.[6/]

While the ALJ found all the elements of an unlawful unilateral change present in Respondent's promulgation of production standards from April 7 to May 2, he found only the first of the production standards, that issued on April 7 for hose tying, to be unlawful. In deciding the subsequent impositions were lawful, the ALJ concluded that Respondent had established as an affirmative defense that Respondent's employees were engaged in a slowdown. The ALJ concluded that a work slowdown began on April 9, and that all the production standards announced from that date to May 2 were directed primarily at responding to the slowdown. Relying on Celotex Corporation (1964) 146 NLRB 48 [55 LRRM 1238], the ALJ concluded that production standards issued from April 9 were therefore lawful. Under Celotex an employer faced with a slowdown may, without notice to or bargaining with the union recognized to represent its employees, unilaterally

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[6/] In Citizens National Bank, supra, for example, one week's notice before implementation was found sufficient where the union did not request bargaining. In a situation where the employer is seeking parity with its competitors, as Respondent was here, and vigorously pursues bargaining, and where the union does not come forward with significant proposals, the National Labor Relations Board (NLRB or national board) has held that the employer may treat the bargaining as being at impasse and implement its proposals. (Lou Stecher's Supermarkets (1985) 279 NLRB 475 [119 LRRM 1129].) An impasse on an issue affecting productivity and competitiveness has been found in as few as three meetings during a thirty-day period, even when the parties are simultaneously negotiating towards a new collective bargaining agreement. (Lou Stecher's Supermarkets, supra.)

change conditions of employment to deal with the unprotected slowdown. Accordingly, the ALJ found that Respondent's discipline and discharge of employees for failing to satisfy these production standards were permissible.

The NLRB, however, has most recently defined a slowdown as occurring when employees work slower than their normal rate of work. (See Philips Industries, Inc. (1990) 295 NLRB No. 75 [133 LRRM 1122].) In Phelps Dodge Copper Products Corp. (1952) 101 NLRB 360 [31 LRRM 1072], the national board also stated that "[T]he vice of a slowdown is that employees are not giving the employer the regular return for the work done while continuing to accept employment." (Id. at p. 368, emphasis added.) Thus, a slowdown typically is initiated in support of some bargaining demand the employees have made of their employer. It is unacceptable as an economic weapon because the employer is deprived of the normal level of services for the wages paid; the employer is unable to bring in replacements who will work at the normal level of productivity because the existing work force remains in place during the slowdown instead of leaving their places as strikers.

In the case before us, we have searched the record, but are unable to find any evidence that would establish an actual slowdown. Rather, the ALJ found repeatedly that Respondent's employees continued to work at their pre-existing rate of production or even exceeded the established pace. (See ALJD at

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pp. 7, 26, 37.)[7/] The national board, however, has not found slowdowns based on subjective assessments of productivity, but on production figures. The NLRB's reluctance to find a slowdown based on subjective or anecdotal evidence of employee behavior without a numerical showing of a loss of production is understandable, given the consequences of such a finding, which may include suspension of the bargaining process and possible summary discharge of employees engaged in the "slowdown".

Although the ALJ relied on Elk Lumber Company (1950) 91 NLRB 333 [26 LRRM 1493] to support his conclusion that Respondent's evidence showed a slowdown, neither Elk Lumber nor any case citing Elk Lumber has found a slowdown to have occurred when employees failed to meet a unilaterally increased production standard. Moreover, Respondent has not shown that the crew's work in January was any slower than the historical experience in other pruning seasons. Even assuming that Respondent established that a slowdown did take place in January, Respondent would still only be free of its bargaining obligations at those times when it could demonstrate that a slowdown was actively in progress.

Rather than demonstrating any slowdown, the record does

[7/] We note that vineyard manager Clark testified that Respondent had in its possession records that would have shown what Respondent's crew's productivity had been in prior years, but did not produce them in the hearing. Clark did tell the Union when it asked for information concerning Respondent's production standards that the April 7 to May 2 standards were as different from old levels of production as apples from oranges, suggesting that the established production levels were much lower than the April 7 to May 2 quotas. Finally, Respondent established that its levels of productivity were consistently lower up to the end of 1989 than what it requested in January and demanded in April.

present evidence of a concerted employee refusal to speed up to meet the new production standards. Since we find these standards to be unlawfully issued, however, such a refusal to speed up sufficiently to comply with them cannot legitimize the unilateral imposition of the standards or make acceptable discipline and discharges for failing to satisfy them.

We therefore find that the ALJ erred in determining that Respondent's employees were engaged in a slowdown at any time during the period April 7 to May 2 when Respondent unilaterally imposed increased production standards. Respondent was not, therefore, privileged to omit bargaining in response to unprotected concerted conduct. [8/] Respondent violated sections 1153(e) and (a) of the Act with every unilateral imposition of production standards that occurred.[9/] We will, therefore, order

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[8/] Moreover, in our view the record reflects only that the implementation of production standards after April 7 was motivated simply by a continuing interest in increasing productivity, rather than by a perceived need to respond to a slowdown. In other words, the production standards were phased in as different tasks arose, but were all part and parcel of the original decision to increase overall productivity in the vineyard.

[9/] Respondent moved that the UFW's exceptions and supporting brief be stricken in their entirety, contending that the UFW waived any theory of violation based on unilateral changes in responding to a question from the ALJ. (See 9 R.T. pp. 130-131.) Our examination of the exchange discloses that the ALJ merely inquired whether any term of the expired collective bargaining agreement prohibited Respondent from promulgating production standards. The exchange thus concerned only whether the promulgation of production standards violated the collective bargaining agreement, not whether the standards were in violation of Respondent's statutory bargaining obligation toward the UFW.

In view of our disposition of the unilateral change allegations, we find it unnecessary to address the alternative allegations of section 1153(c) discrimination violations since the remedy would not differ from that we now find appropriate.

Respondent to rescind the unilaterally imposed production standards and bargain, upon request, with the Union to agreement or good faith impasse, to cancel and expunge from their employees' records any discipline taken in reliance on the impermissibly imposed standards, and to make their employees whole for any losses sustained including where necessary reinstatement and backpay.[10/] (See Murphy Diesel Co. (1970) 184 NLRB 757 [76 LRRM 1469] enf'd. (7th Cir. 1971) 454 F.2d 303; Boland Marine and Manufacturing (1976) 225 NLRB 824 [93 LRRM 1346].)

ORDER

Pursuant to Labor Code section 1160.3, Respondent Skalli Corporation, doing business as St. Supery Vineyards, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Unilaterally instituting or implementing work standards without notifying and affording the UFW a reasonable opportunity to bargain over their adoption and implementation.

(b) Unilaterally contracting out fence spraying work, or otherwise changing the terms and conditions of employment of its agricultural employees, without first notifying and affording the UFW a reasonable opportunity to bargain over the decision and effect of doing so.

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

[10/] To the extent that the discharge of Romelio Corro resulted in part at least from the promulgation and enforcement of the April 7 through May 2 work standards, he is entitled to the same remedies as the other employees discharged solely as the result of the enforcement of those standards. (Great Western Produce Corporation (1990) 299 NLRB No. 154 [135 LRRM 1213].)

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) Upon request, meet and bargain collectively in good faith with the UFW, as the certified exclusive collective bargaining representative of its agricultural employees, with respect to the adoption and implementation of work standards and to the contracting out of fence spraying work and the effects of such actions.

(b) Cancel, withdraw, and rescind the work standards issued from April 7 to May 2 in effect as to employees represented by the UFW.

(c) Remove all disciplinary warnings issued from April 10 to May 2 from the personnel files of employees represented by the UFW.

(d) To the extent Respondent has not already done so, offer all employees discharged, suspended or otherwise denied work opportunities as a result of the unilateral promulgation of said work standards immediate and full reinstatement to their former positions or, if those positions are not available, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(e) Make whole the present and former members of the bargaining unit for all losses of pay and other economic losses they have suffered as a result of their discharge following the unilateral promulgation of the April 7 to May 2 work standards and

Respondent's failure and refusal to bargain in good faith with the UFW by contracting out fence spraying work, such makewhole 'amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with the Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5.

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

(g) 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 purposes set forth in this Order.

(h) 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 April 1, 1990 to the date of mailing.

(i) Provide copies of the signed Notice to each employee hired by it during the twelve (12) months following the remedial order.

(j) 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.

(k) 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 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.

(l) Notify the Regional Director in writing, within thirty (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: November 22, 1991

BRUCE J. JANIGIAN, Chairman

JIM ELLIS, Member

JIM NIELSEN, Member

17 ALRB No. 14

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board by the United Farm Workers of America, AFL-CIO, the General Counsel of the ALRB issued a complaint which alleged that we, the Skalli Corporation, dba St. Supery Vineyards, 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 adopting and implementing production standards and by contracting out unit work without notifying the UFW and affording it a reasonable opportunity to bargain over those matters. 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 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 adopt or implement work standards, contract out fence spraying work, or otherwise change the terms and conditions of employment of our agricultural employees without notifying the UFW and affording it a reasonable opportunity to bargain with us over such matters.

WE WILL meet and bargain in good faith with the UFW with respect to the imposition of work standards and the contracting out of fence spraying work.

WE WILL expunge all our employees' records of disciplinary warnings issued for failure to meet our production standards promulgated from April 7, 1990 to May 2, 1990, and to the extent we have not already done so, reinstate any employees discharged wholly or partly as the result of our promulgation and enforcement of production standards from April 7, 1990 to May 2, 1990, and we will make whole our present and former employees for all losses of pay and other economic losses they suffered as the result of the promulgation and enforcement of production standards from April 7, 1990 to May 2, 1990, and as a result of the contracting out of fence spraying work.

DATED:

SKALLI CORPORATION dba
ST. SUPERY VINEYARDS

By: _____
Representative Title

CASE SUMMARY

Skalli Corporation dba
St. Supery Vineyards
(UFW)

17 ALRB NO. 14
Case Nos. 90-CE-52-SAL
90-CE-53-SAL
90-CE-57-SAL
90-CE-58-SAL
90-CE-59-SAL
90-CE-60-SAL
90-CE-62-SAL
90-CE-63-SAL
90-CE-65-SAL

Background

The United Farm Workers of America, AFL-CIO was certified as representative of respondent's agricultural employees in 1986. The parties' initial collective bargaining agreement expired on January 31, 1990, and on February 9, 1990, Respondent and the UFW began bargaining toward a new contract. In early March, 1990, many bargaining unit employees began picketing Respondent's Rutherford winery during off work time.

ALJ Decision

The ALJ dismissed the 1153(a), (c) and (e) allegations of the complaint arising from from Respondent's promulgation and enforcement of production standards from April 7 to May 2, 1990, that resulted in the discharge of 19 bargaining unit employees, except that he found the first such standard, promulgated on April 7, to be a unilateral change. During negotiation sessions in April, Respondent refused to discuss the standards. The ALJ found that Respondent promulgated the six subsequent work standards without notice to or bargaining with the certified union. The ALJ found that the the employees engaged in a slowdown from April 9 to May 2. Changes made unilaterally in a mandatory subject of bargaining such as work standards that would otherwise constitute a violation of of section 1153(e) are permissible if made as a response to a slowdown. The ALJ therefore concluded the promulgation and enforcement of each standard from April 10 to May 2 to be lawful. The ALJ also found Respondent unilaterally subcontracted fence spraying work without notice to or bargaining with the Union.

Board Decision

The Board found that Respondent failed to establish that the employees engaged in a slowdown. Rather, as the ALJ found, the employees continued to work at their established pace or somewhat faster. Respondent presented no evidence that would contradict the ALJ's findings that the crew continued at or above its old

pace. A slowdown occurs when employees work slower than their established pace. The employees therefore did not engage in a slowdown, but failed to comply with a speed up the Respondent had imposed without bargaining with the UFW. The management rights clause in the parties' expired collective bargaining agreement did not refer to production standards so as to constitute a clear and unmistakable waiver of the Union's right to bargain before such changes were made.

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
SKALLI CORPORATION, dba ST. SUPERY VINEYARDS,	)	Case Nos. 90-CE-52-SAL
	)	90-CE-53-SAL
Respondent,	)	90-CE-57-SAL
	)	90-CE-58-SAL
and	)	90-CE-59-SAL
	)	90-CE-60-SAL
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	90-CE-62-SAL
	)	90-CE-63-SAL
Charging Party.	)	90-CE-65-SAL

Appearances:

Maureen McClain
Charlotte Addington
Kauf,McClain & McGuire
San Francisco, California
for the Respondent

Dianna Lyons
Sacramento, California
for the Charging Party

William Lenkeit
Salinas Regional Office
Salinas, California
for the General Counsel

June 5, 1991

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JAMES WOLPMAN: This case was heard by me in the Napa Valley over a period of ten hearing days, between August 20, 1990 and September 14, 1990.

It is based on a complaint, issued May 15, 1990, which alleged that the Respondent violated the Act by: (1) hiring a labor contractor to do bargaining unit work, (2) adopting and implementing work performance standards, (3) unilaterally assigning unit work to supervisors, and (4) changing the hours of its employees, all without notifying or bargaining with the Charging Party as their collective bargaining representative. It further alleged that the work performance standards were adopted and the employees who failed to meet them were disciplined and eventually discharged in order to punish them for engaging in legitimate union activities.

The Respondent answered denying that it had violated the law because (1) the fence spraying work it contracted out had never been performed by members of the bargaining unit and required specialized spraying equipment, (2) the adoption and implementation work of standards were within its management prerogatives, (3) as was the use of supervisors to perform bargaining unit work. The Respondent furthered denied that the work standards, either in their adoption or their implementation, had been used to discriminate against workers engaged in union activity. According to the Respondent, the standards were reasonable, and employees were disciplined and eventually

discharged because they failed to meet those standards, and for no other reason. Respondent went on to argue that the failure to meet those standards was due, not to their unreasonablness, but to a deliberate and concerted slowdown on the part of employees for which it was justified in taking the action it did.

Thereafter, the General Counsel dismissed the allegation that employees had had their hours changed (Complaint, paragraph 10) and chose not to proceed on the allegation that supervisors improperly performed bargaining unit work (Complaint, paragraph 8; see G.C. Post Hearing Brief, fn. 1, p. 1).

The Charging Party formally intervened and fully participated in the hearing through counsel. All parties filed post hearing briefs.

Upon the entire record[1], including my observation of the witnesses, and after careful consideration of the arguments and briefs submitted, I make the following findings of fact and conclusions of law.

I. JURISDICTION

Skalli Corporation, doing business as St. Supery Vineyards, is an agricultural employer within the meaning of section 1140.4(c) of the Act, and its non-supervisory farming employees are agricultural employees within the meaning of section

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[1]Because the Union failed to submit its proposed stipulation relating to the timing of proceedings in the Napa Superior Court to opposing counsel within the time limits established at the close of hearing, I decline to take judicial or administrative notice of those dates, and restrict my consideration of those proceedings to such evidence as was presented at hearing.

1140.4(b). The United Farm Workers of America is a labor organization within the meaning of section 1140.4(f), and was certified by the Board as the exclusive collective bargaining representative of those employees in 1986 in case number 85-RC-11-SAL.

II. BACKGROUND

Skalli Corporation produces premium wines in the Napa Valley area. It began operations in 1982 when Robert Skalli, a French businessman, purchased the 1500 acre Dollarhide Ranch in the nearby Pope Valley. The following year viticultural work began, and 400 acres are now under cultivation. (See UFW Ex. A.) In 1986, the Skalli Corporation purchased 56 acres in Rutherford where it built a winery and administration building, and installed a 35 acre vineyard. The winery opened in 1988, under the name "St. Supery Vineyards".

The United Farm Workers organized Skalli's agricultural employees in early 1985, an election was held, and the union was certified as their exclusive bargaining representative on March 12, 1986. Negotiations began at that time, but were not concluded until October 1989 when the parties signed their first collective bargaining agreement. (Jt. Ex. No. 2.) It expired January 30, 1990, and negotiations for a new contract began shortly thereafter. In early March, Respondent's agricultural employees began picketing in front of the winery during their off hours and on weekends to protest the failure to reach an agreement. Negotiations for a new contract continued on through Spring and

Summer without success, and the workers were still picketing in September when the hearing concluded.

III. WORK STANDARDS

The primary issue in this case is whether the Respondent was justified in discharging almost half of its workers because they failed to meet various production standards which were imposed beginning in April 1990.

To resolve that issue, it is necessary to look carefully at the context in which it arose. First of all, a wide-ranging reorganization was underway at Skalli. Secondly, the labor agreement had just expired, and workers were dissatisfied both with the progress of negotiations and with the changes bred by the reorganization. It was that dissatisfaction which led to the above described picketing.

A. Findings of Fact: Work Standards

1. The Reorganization.

In November 1988, Robert Skalli hired Michaela Rodeno to run the entire St. Supery operation. She was named Executive Vice President and Chief Executive Officer of the Skalli Corporation, and took charge of its vineyard, wine making, and marketing operations. Initially, she concentrated on formulating a marketing plan and on organizing the newly constructed winery, but in mid-1989 she turned her attention to the vineyard. There were serious problems. 40% of the Chardonnay and 30% of the Savignon Blanc 1989 harvests were of such poor quality that they

were unfit for Skalli's premium wines and had to be sold in bulk.[2] And the vineyard's average cost per acre of $2,800-$2,900 was far above $1,800-$2,000 per acre cost for vineyards elsewhere in the Napa Valley.[3] Clearly something had to be done. Ms. Rodeno hired an outside consultant--Wil Nord--and spent a good deal of time with her existing managers--Robert Browman who was in charge of wine production and Tom Clark who had run the vineyard for Skalli since its purchase in 1982--in an effort to determine how to go about cutting costs while at the same time improving the condition of the vineyard. By the end of the year she had come up with a plan: An experienced vineyard supervisor would be hired to handle day to day supervision, Tom Clark's responsibilities would shift from hands on supervision to planning and overall management[4], and there would be an increased emphasis on efficiency and productivity in carrying out vineyard functions. These changes, along with a number of lesser ones, would, she hoped, lead to higher quality yields and eventually trim the average cost per acre by $400.

2. The Imposition of Standards.

Pruning. The first operation to feel the impact of her plan

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[2]In a vineyard in good condition, one would expect no more that 10% of the harvest to be of poor quality.

[3]While costs in the Pope Valley tend to be higher than those in the Napa Valley itself, the St. Supery costs were high even for Pope Valley.

[4]Clark was never comfortable with the changes she wanted made and eventually resigned.

was pruning. In going over Tom Clark's cost calculations, it became clear to her that the actual cost of pruning was considerably higher than he had estimated it to be. The only way to realize his cost estimates would be to increase the number of vines pruned per hour. Ms. Rodeno instructed him to do just that. As a result, he and his assistants, Bob Grace and Rutilio Huijon[5], began to insist that workers realize the productivity standards which, in the past, had been primarily used in constructing budgets. These were not unreasonable standards; they appear to have been based on published data, on the personal experience of the supervisors, and on the experience of other growers in the Napa Valley. Moreover, the standards were necessarily flexible because the time it takes to prune a vine varies greatly with its health and strength.

But Skalli's pruning crews had grown accustomed to working at their own pace, and were unhappy with what they perceived as a "speed up". Despite their claims to the contrary, I am convinced the they chose to express their dissatisfaction not only by adhering to their former leisurely pace, but also by taking care that no one worked faster than his fellows. Wil Nord, the consultant, described it this way:

> Well, it just really hit me, when I went out there, because there was line of people, 25 or more, that were just straight down a line, as straight as you could be. And I could just tell right away that they were really dogging it....they were just lined up, you know, and it

[5]Mr. Huijon's untimely death shortly before the hearing deprived the Board of important testimony on this and other matters in which he was involved.

was a vineyard where there were weaker vines, stronger vines. And just an area that people really needed to be moving ahead on the weak vines so that they could help a person with the row that had stronger vines .... and when they would have a weak vine , they would just periodically do a cut there to wait till somebody else caught up to them. (IX: 12-13.)

Marcos Corro, a worker who refused to go along with the others, described his experience during pruning:

Q. Were you working at the same pace as the other persons?
A. No.

Q. Were you ahead or behind the other persons? A. Forward.

...

Q. What was said [to you by your co-workers]?
A. For me to slow down in my work, because I was going at a very fast rate or velocity.

Q. Did they say anything else?

A. That I was a barbarian, a kiss-ass. (VII: 6.)

When he continued on at his own pace, a dirt clod was thrown his way. (VII:7-8.) Later on, he was allowed to work apart from the crew so that he could avoid their antagonism and insults.

That the crew was engaged in a slow down is borne out by other credible testimony (see VI:9, 77-78, 81-82), and by the fact that the workers had adopted the same strategy during the 1988 harvest when they became dissatisfied with the piece rate they were receiving.[6]

After an initial period of frustration with this behavior,

[6]As a result of that slow down, the entire crew received warning tickets, and the Union appears to have been notified. (G.C.Ex. 4.)

Clark and Grace reacted, toward the end of January, by establishing a deadline by which the work was to be completed and telling the workers that they would be laid off if they failed to meet it. Production increased, the deadline was met, and there was no need for either warning tickets or lay offs. Nor were any grievances filed protesting the "speed up". When similar conduct occurred a few days later, the supervisors solved the problem, partially at least, by reassigning those they believed responsible to work elsewhere.

Tying Hoses. In March, Ms. Rodeno found the experienced vineyard supervisor for whom she had been looking--Renaldo Robledo--and he began work April 2nd. His mission was abundantly clear: Improve the productivity of the workforce and the quality of the grapes. After spending a few days inspecting the vineyard, observing the workforce, and conferring with the other supervisors, especially Rutilio Huijon, he began making changes.

The first task to occupy him is known as "tying hoses" and involves attaching the irrigation drip hoses to wires which run along the vines about two feet from the ground.[7] He felt that the attachment would be more permanent if actual ties were made with plastic tape rather than following the previous practice of using a plastic curl.

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[7]This and the other tasks for which standards were established are demonstrated in the videotapes which are in evidence as Resp. Exs. 0 & P. While those tapes are helpful in understanding what the tasks entail, they are not useful in evaluating the reasonableness of the standards because conditions differed and the actors often worked at unsustainable speeds.

Robledo was well aware that employees had grown accustomed to working at their own pace and would resist the changes he believed necessary. He had dealt with this problem elsewhere by instituting work standards and insisting that they be adhered to, and he took the same approach here. He and Rutilio spent a day or two tying hoses and found that, working at top speed, they could do 342 ties per hour, and 254 per hour when they proceeded at a steadier, more relaxed pace. Making allowances for the crew's inexperience with this sort of tying, they settled on 200 ties per hour as a reasonable requirement. Both Wil Nord and Tom Clark reviewed the proposed standard and felt it to be reasonable and consistent with their experience.

On the morning of April 7th, Mr. Huijon assembled the crew, explained the new procedure, and announced that each worker would be expected to average 200 ties per hour. He went on to say that his aim was to improve productivity and that he hoped he would not have to discipline anyone for falling short of the quota.

The workers were reluctant. They questioned the reasonableness of the standard, and, once again, they refused to be hurried. Mr. Robeldo creditably testified:

> "...all the persons were working abreast, and in my experience...there is [normally] a difference in that some are forward and some behind at all times.... (VII:75.)

He also felt they were deliberately slowing down:

> "When they were working and they were tying, they would stand up, look to the sides, walk, get to the plant, bend over, and they would do the same in every plant." (VII:76.)

That day workers averaged only 150 ties per hour.[8] Rather than issue disciplinary notices at once, Mr. Robledo gathered the crew together, expressed his disappointment with their production, and told them he would not back down from the standard he had set.

On the next work day, Monday, April 9th, the importance of meeting the established quota was reiterated, and workers were told that, should they fail to do so, they would receive written disciplinary warnings. Under the progressive discipline procedure in place at Skalli, a worker who receives three "tickets" is subject to discharge.[9]

That day the crew fell far short of the 200/hr. standard, averaging only 127/hr. As a result, all of the workers received disciplinary notices.[10] They were angry, and Robledo was cursed as he handed out the notices. At hearing, some testified

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[8]I cannot accept the General Counsel's argument that the slight variation in ties per hour in all but the last hour are significant enough to indicate there there was no concerted effort to slow the work to a more or less uniform pace.

[9]There was considerable testimony on the issue of whether workers were aware of the "three ticket" rule. While some denied knowing of it, others freely admitted that they were aware of it. On balance, I am convinced that the procedure was an established one known to most workers (see, for example, G.C. Ex. 4), and that those who, for one reason or another, had not heard of it before, learned of it from the terms of the initial disciplinary tickets they received (See G.C.Ex. 2) There was also some dispute as to whether the tickets had ever been issued for poor productivity. The evidence establishes that they were given out for that very reason during the slow down which occurred in the 1988 harvest and that the Union was informed. (Ex. No. 4.)

[10]That was the first ticket for Angel Arias, German Arias, Fermin Hernandez, Indalecio Gonzales, Maximiniano Hernandez, Silvino Martinez, and Jesus Navarette; it was Romelio Corro's second ticket (see pp. 41-42, infra).

to various difficulties which made it impossible to work any faster; Company witnesses countered that there was nothing unusual about the work environment that day. The uniformity of the averages throughout the day, the fact that the Company did not invoke the standard on the following day when it felt that the work was indeed different, and the crew's previous use of the same tactic, all lead me to conclude that no more was demanded of them on the 9th than was reasonable and that they were deliberately holding back by way of protest.[11]

The following day, April 10th, the crew was assigned to work in an area where many of the hoses had sagged and become covered with grass and dirt, thus making it necessary to pull them taut before making the tie.[12] Because of this and because Mr. Robledo felt that an additional tie was need at each stake, the 200/hr. standard was not enforced, and no disciplinary notices were given.

Uncovering Vines. Workers were next assigned to "uncover vines". This entails shoveling away just enough dirt around each young plant to expose the grafted bud, or head, so that the subsequent operations of cutting the head and covering it with a

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[11] Although he has the parcel number wrong, Kiki Gomes may well have been referring to this when he described the crew as working in a straight line while it was tying hoses on April 9th.

[12] I accept Robledo 's more precise testimony that sagging hoses covered with grass were only a problem in the parcel worked on April 10th [for which no tickets were issued]. The workers' contention that the problem was a continuing one does not explain why the company refrained from issuing tickets on the 10th.

carton can be performed.[13]

Mr. Robledo spent five hours doing the work himself and was able to uncover an average of 192 vines per hour. At Jaeger, where he had previously worked, the standard was 225/hr. According to Wil Nord, the accepted rate in the Napa Valley was 130 to 140/hr. On that basis, Robledo and dark—conscious not only of Ms. Rodeno's desire to improve productivity but also of the need to confront the resistance they were encountering from the workers--came up with a standard of 110 vines per hour. Based on the evidence before me, I find that standard to be fair and reasonable.[14]

On Wednesday, April llth, Mr. Huijon told the workers what would be expected of them. They felt the new standard to be unfair because, in the past, Skalli had been satisfied with 70 or 80 plants per hour. That morning their production averaged 91/hr. and dropped to 82/hr. in the afternoon.

Robledo testified that on a number of occasions during the course of the day he observed workers taking unusually long breaks to get water and to use the bathroom. They denied this and claimed they were working as fast as they could. But because they were able to offer no convincing explanation of why their

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[13]In previous years, uncovering, cutting and covering had been performed as one operation, rather than three.

[14]There is, of course, the important question of whether Skalli had the right to adopt any standards whatsoever--no matter how fair or reasonable they might be -- without first consulting and negotiating with the UFW. The answer to that question involves legal considerations which are better addressed after a full examination of the facts. (See pp. 29-32, infra.)

productivity fell so far short of the generally accepted norm, I find that they were not working as fast as they were able[15]; rather, they were deliberately expressing their resistance to what they believed to be an unfair demand that they work harder than they had in the past.

At the end of the day, each crew member received another disciplinary notice. For most, this was the second[16], but Romelio Corro had now received three and was therefore terminated. Again, the workers were angry about what they perceived as an unfair demand, and one of them cursed Robledo.

The next day, Thursday, April 12th, production improved slightly, but the crew still fell short of the required 110/hr. As a result, another series of notices was handed out, and most crew members were terminated for having received three tickets.[17]

When Tom Clark handed Jesus Navarrette his final check that afternoon, Navarrette casually and politely thanked him. Clark,

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[15]The imposition of a standard considerably lower that the Valley average and much lower than that achieved by Robledo was, it appears to me, sufficient to take into account the workers' assertion that compacted soil hindered their work.

[16]Angel Arias, German Arias, Fermin Hernandez, Indalecio Gonzales, Silvino Martinez, and Jesus Navarette had now all received two tickets, while Rafael Espinosa and Everardo Macias got their first that day. One worker who had received his first ticket on April 9th--Maximiniano Hernandez -- was not working in the crew that day.

[17]Those terminated were Angel Arias, German Arias, Fermin Hernandez, Indalecio Gonzales, Silvino Martinez, and Jesus Navarette. Rafael Espinosa and Everardo Macias had now received two notices.

startled and bothered by Navarrette's lack of emotion, asked him, "How can you do this on purpose for the fucking union and lose your job?"[18] To which Navarrette replied, "That's all we could do." (IX: 114-115.)

On Friday, April 13th, a reconstituted crew consisting of workers who had not yet received three tickets and some new members who had been brought in to replace those who had was able to meet the standard by averaging 112 plants per hour for the 1/2 day they worked. As a result, no tickets were given out that day.

Cutting Heads. After the young plant is uncovered, the next step is to cut the head. This entails cutting through the rubber band holding the grafted bud, or head, with a knife and then cutting off the head itself. (UFW Ex. G; G.C. Ex. 8.) On April 13th, supervisor Huijon and two employees, Jesus Corro and Marcos Corro, performed the task for a half day and averaged 201 per hour.[19] On that basis, Robledo and Clark --still conscious of the need to improve productivity and of the continued resistance they were encountering from the workers—came up with a standard

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[18]While there are differing versions of exactly what he said, all agree on the substance of Clark[1]s remarks (1:115; 11:25-26; IX:114-116.)

[19]The testimony elicited by the General Counsel that the standard was set in an area where there was an unusually large number of "skips" (missing or immature plants) is irrelevant since Huijon excluded them in arriving at his proposed standards. (VII:113.) Furthermore, since skips were counted in determining whether workers met the standard, the 200 heads per hour was, in reality, easier to meet than the 201 per hour done by Corro would suggest.

of 200 plants per hour. Clark felt this to be reasonable, and Wil Nord testified that it compared well with his experience elsewhere in the Valley. Based on the evidence before me, I find it to be a fair and reasonable standard.

On Monday, April 16th, the new standard was announced, but the crew averaged only 175 per hour. Robledo testified that he observed the workers keeping close together as they slowly worked their way through the field, but he refrained from giving out tickets that day and instead once again announced that he wanted to work together with them and would give them one more chance.

His stratagem did not work. The next day, April 17th, the crew continued to work slowly and averaged only 144/hr. As a result, the two remaining workers from the original crew received their third tickets and were terminated[20], and the two who had been hired on to fill the earlier vacancies received their first disciplinary notices.[21] Once again, the workers claimed they were working as fast as they could but were unable to offer a convincing explanation of why their work fell so far short of the generally accepted norm. Because of this and because I accept Robledo's description of the manner of their performance, I find that they were continuing to express their resistance to what they believed to be an unfair demand by deliberately working at a slower rate.

Putting on Cartons. After the young plant is uncovered and

[20]Rafael Espinosa and Everardo Macias.

[21]Antonio Camarillo and Heliodoro Perez.

its head is cut, a protective carton must be placed over the plant. This entails flipping open a flattened cardboard box, resembling a milk carton with no top or bottom, setting it down over the plant, and then shovelling enough dirt around its base to hold it in place. On April 17th, Marcos Corro spent two hours performing the task and averaged 225 per hour. Robledo explained that the standard at Jaeger had been 250/hr. On that basis, Robledo and Clark—again attempting to improve productivity and to challenge worker resistance—came up with a standard of 200 cartons per hour. Clark felt this to be reasonable, and Wil Nord testified that it compared well with experience elsewhere in the Valley. Based on the evidence before me, I find that it to be a fair and reasonable standard.

On Wednesday, April 18th, the new standard was announced, but the crew averaged only 90 cartons per hour, while Marcos Corro, working in the same parcel but apart from the crew, continued to do 225 per hour. [22] Robledo testified that he once again observed the crew working abreast as it slowly progressed through the field, but he refrained from giving issuing warning tickets that day and instead again stated that he wanted to work together with them and asked if they had any questions. No one responded.

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[22]The General Counsel, relying on Daniel Arias' testimony, asserts that Corro did not actually put on cartons on the 18th but only distributed them. (III:12.) This general testimony does not comport with the records kept by Robledo and Huijon; nor does it address Corro's production on April 17th when he did the work on which the standard was based. (See Resp. Exs. R & S.)

Once again, his efforts were to no avail. The following day, April 19th, the crew continued to work slowly and averaged only 108/hr. during the four hours they spent putting on cartons. As a result, the fifteen workers who had been recalled to fill the vacancies created by the terminations on April 12th and 17th received their first tickets.[23]

One of thr recalled workers, Indalecio Garay, credibly testified that he and his two companions, Jesus Galvan and Enrigue Tinajero, reluctantly yielded to pressure from the seniority workers who insisted that they hold back and work at the same rate as the rest of the crew. When he received his warning notice on the 19th, he told Robledo -- in the presence of the rest of the crew—that he would try to do better, and Robledo thanked him. A day or two later, fearing the loss of their jobs if they continued to follow the lead of their co-workers, Garay and Galvan asked to be transferred out of the crew. Huijon obliged and reassigned them, along with Tinajero to other work.

While crew members denied pressuring Garay or Galvan, I accept the testimony of the two workers. It was believable in its detail; it is consistent with Robledo's description of the crew's performance; it explains why they transferred out of the

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[23]Antonio Arias, Daniel Arias, Humberto Arias, Isais Duran, Silvinio A. Martinez, Francisco Perez, Javier Ramirez, Manuel Ramirez, Ernesto Perez, Juan Manuel Perez, Jose Jesus Garcia, Eduardo Gonzalez, Jesus Galvan, Indalecio Garay, and Enrique Tinajero. [Disciplinary notices are missing from G.C.Ex. 2 for Daniel Arias and for Galvan, Garay and Tinajero, but testimony and work records indicate that they too received their first tickets that day.]

crew; and it is consistent with the hostility shown them by the other workers during the meeting on April 20th. (Infra p. 19.) Moreover, the crew was able to offer no convincing explanation of why its production was so far below that of Marcus Corro's or the norm in the Napa Valley. I therefore find that the crew was continuing to express its resistance by deliberately working at a slower rate.

Putting on Cross-arms. Cross-arms are attached by U-bolts to the top of stakes to form a T shape, so as to provide support for the trellised vines. (G.C. Ex. 5.) They had not been previously used at Skalli. On the afternoon of April 19th and before any standard had been established, the crew was assigned the task and averaged 86 per hour. At the same time, Marcos Corro was able to complete 150 per hour. Based on their experience, Robledo and Clark felt that Corro's performance was a reasonable standard to impose upon the crew, and I agree.

On the following day, Friday, April 20th, the new standard was explained, and Robledo came up with a much faster method of making the attachment. As a result, the crew exceeded the standard by a significant margin, averaging 180 per hour. No tickets were issued.

That day after work, the Ranch Committee held an employee meeting just off the property in an attempt to deal with the apparent disaffection Marcos Corro, Indalecio Garay, Jesus Galvan, and Enrigue Tinajero. Tinajero and Corro avoided the meeting; Garay and Galvan, when confronted, said they supported

Skalli and not the union.

Altagracia Rincon credibly testified to a meeting -- it is impossible to tell from the record whether it was this or another one -- in which President of the Ranch Committee, Indalecio Gonzalez, encouraged workers to go slower and to stay together in a line. Apparently, he was successful because thereafter she observed the crew working slowly and staying abreast. Rincon, like Garay and Galvan, asked that she be allowed to work apart from the crew, and her request was granted. (V:153-154.)

Additional Hose Tying Work. The following Monday, April 23rd, the crew was again assigned to tie drip hoses to cross wires, but because many of the hoses were sagging and covered with dirt -- as they had been on April 10th (supra, p. 12) -- the 200/hr. standard was not enforced, and no tickets were issued.

Installing Drippers. Irrigation hoses run along each row of vines at a height of about 2 feet from the ground. Drippers are small plastic nozzels which regulate the flow of water from the hose to the plant. They are normally installed at intervals of 12 inches from each stake by punching a hole in the hose with a special tool so that the dripper can then be snapped into place.

On April 23rd, Marcos Corro spent the entire day and Robledo spent half a day installing drippers, averaging 310/hr. and 370/hr. respectively.[24] The standard at Jaeger was 225/hr. According to Nord and Clark, the accepted rate elsewhere in the

[24]The General Counsel claims those figures were either erroneous or fabricated, but was unable to produce concrete evidence of error or fabrication.

Napa Valley was between 250 and 300 per hour. On that basis, Robledo and Clark agreed that 250/hr. to be a reasonable standard, and I concur.

The following day, Tuesday, April 24th, the procedure was explained and the standard announced, but crew members installed only 150 drippers per hour. Again, Robledo observed them working slowly, in a single line. Rather than issue tickets that day, he once again spoke to the crew, telling them they were working too slowly and reminding them that they would be terminated after three tickets.

The next day, the crew averaged only 137/hr. No tickets were issued, but the crew was again warned. And Robledo invited any workers who were embarrassed to speak out in front of their co-workers to talk with him in private about the situation. On April 26th, production increased slightly but was still far below standard. Again, no tickets were issued. That same day, Marcos Corro and Jesus Galvan, working apart from the crew, exceeded the standard, averaging 260/hr.

On Friday, April 27th, the crew averaged only 158 drippers per hour in the morning and 149 per hour in the afternoon. All received disciplinary notices and were told that the next one would result in their termination.[25] Crew menbers again

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[25]The crew consisted of Antonio Arias, Daniel Arias, Humberto Arias, Isais Duran, Maximiniano Hernandez, Silvino A. Martinez, Francisco Perez, Javier Ramirez, Manuel Ramirez, Antonio Camarillo, Eduardo Gonzalez, Ernesto Perez, Heliodoro Perez, and Juan Manuel Perez. It was the second disciplinary notice for each of them.

testified they were working as fast as they could but had no convincing explanation of why their production was so far below normal. That same day, Enrigue Tinajero, Marcos Corro and Jesus Galvan worked apart from the crew and averaged 294 drippers per hour; the following day they averaged 276/hr. in the morning and 263/hr. in the afternoon; and on April 30th they averaged 286/hr. All of which leads me to conclude that the crew was continuing to express its resistance to the perceived "speed up" by deliberately working at a slower rate.

Suckering. Suckering entails removing extra growth, or suckers, from the vine, either by hand or with shears. Besides the additional growth on the vines themselves, some produce suckers -- or St. George vines, as they are called -- below ground level which are harder to remove. (G.C. Ex. 7.) Since the amount of growth to be removed from a vine varies considerably with its age and condition, no overall standard can be established. It is possible, however, to set standards, parcel by parcel, because vines in a common parcel tend to be in roughly the same condition.

Suckering began April 28th and continued on through May 2nd. At first, Robledo refrained from establishing standards because of the difficulties described above. However, by May 1st he had become concerned enough with the slow pace of one section of the crew that he felt that a standard was needed. Working in the same parcel as the crew, he completed 200 plants per hour, while the crew did only 63 per hour. He then spoke with Clark, and

they determined that 120 per hour was an appropriate standard for the parcel.[26] Based on the evidence before me, I find their determination reasonbable.

On May 2nd, the crew was assigned to sucker in the same parcel. Robledo informed them of what would be expected and demonstrated the way he wanted the work done. But to no avail. The crew averaged only 69 vines per hour, and Robledo once again observed them keeping abreast and working slowly.[27] At the end of the shift, Grace attempted to deliver the disciplinary notices, but the crew refused to accept them. When the crew returned the following morning, May 3rd, all but one were given their final notices and were terminated.[28] The workers again claimed they were working as fast as they could but were able to offer no convincing explanation of why their work was so far below standard.[29] Because of this and because I accept

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[26]Nord indicated that 200 to 300 vines per hour was normal in the Napa Valley; he acknowledged that this varies considerably with the age and condition of the vines.

[27]In corroboration, Jesus Corro observed several crew members resting on two occasions when they should have been suckering. (VI:176-179.)

[28]Those terminated were Antonio Arias, Daniel Arias, Humberto Arias, Isais Duran, Maximiniano Hernandez, Silvino A. Martinez, Francisco Perez, Javier Ramirez, and Manuel Ramirez. Juan Carlos Macias received his second ticket that day; he had received his first ticket for conduct which was not litigated in this proceeding.

[29]Daniel Arias testified that digging out the St. George vines with a shovel made it impossible for the crew to work up to standard. (X:74-76.) Tom Clark testifed that the workers were told to leave the St. George vines for later. (IX: 182-183.) Robledo testified that parcel 14, where the standard was esblished and enforced, had no St. George vines; shovels were

Robledo's description of the manner of their performance, I find that, once again, the crew deliberately worked at a slower rate as a way of expressing its dissatisfaction with management.

3. The Discontinuance of Standards.

No further disciplinary tickets were issued after May 2nd for failure to meet established work standards. In some instances, this was because the tasks were not susceptible to hourly quantification, e.g. the replanting done in August, or because conditions rendered them unusual or difficult, e.g. installing drippers in June where the hose was of a different type and uncovering in July and August when the ground was hard and dry. But the primary reason why Skalli ceased imposing standards and disciplining workers was its justified impression that they had finally begun working as best they could, without resentment and resistance. For instance, in May a considerable amount of suckering was done, and -- as one would expect of a task whose difficulty varies with the age and condition of vines -- there was a wide range in per hour production from parcel to parcel.[30] yet, unlike late April and early May, Robledo was satisfied that the crews were doing what they could. He therefore felt no need to

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{Footnote 29, Cont.) needed only for the simple act of knocking off the suckers growing at ground level. (X: 100-101.) Since his testimony focuses on the specific parcel in question, I find it more persuasive.

[30] At times the crews surpassed the standard established for Parcel 14; at other times, they did not. There is no indication that this was due to anything other than differences in the vines from parcel to parcel. (Supra, p. 22.)

impose work standards to counteract deliberately slowed pro- duction.

4. The Company's Motivation in Adopting Standards

The General Counsel and the Charging Party argue that Skalli used the standards as a means of ridding itself of union activists and supporters. They point out that the Company was well aware of their identities because they were actively engaged in picketing at the winery. They note that those workers who supported management were reassigned out of the crews thus avoiding the possibility of discipline. As for the few union sympathizers who escaped discharge, that was due to illness or absence, or to the fact that they were not hired on until late in the process -- late enough, so that the company had already succeeded in chilling, if not destroying, support for the union. The union also points to the correspondence between the difficulties experienced by the company in its attempt to obtain an injunction from the Napa Superior Court limiting picketing and the timing of the disciplinary notices and discharges. Finally, both the General Counsel and the Union point out that the work standards were no longer enforced once Skalli had succeeded in ridding itself of most of the union sympathizers.

There is no doubt that management was well aware of the identities of union supporters and activists. All picketed regularly at the winery, some served on the Ranch Committee, and some attended negotiations. Nor is there any doubt that discipline fell more heavily on those who supported the union than on those who did not. But the reason -- or at least a good of part

of the reason -- why it did so was because those same activists were the ones who refused to go along with the work standards and chose instead to maintain their former pace and to see to it that no one worked faster than anyone else. (Supra, pp. 7-23.) And, on the face of it, that was the conduct which led to their discipline and eventual discharges. (G.C. Ex. 2.) Likewise, with the employees who avoided discipline by seeking reassignment. (Supra. p. 18.) The "preferential" treatment they received can be explained by their refusal to participate in the slowdown, rather than their antagonism toward the union.

That Skalli ceased imposing and enforcing work standards once the resisters were gone is perfectly consistent with the view that the standards were adopted as a legitimate means of confronting and measuring the resistance the company was encountering from union supporters who were dissatisfied with the progress of negotiations and with Ms. Rodeno's push for increased productivity. Once Skalli had satisfied itself that its were workers doing their best, there was no need to continue on with standards which had been developed for the purpose of providing objective evidence that a slowdown was in progress.

The timing of events in the Napa Superior Court -- in so far as it is properly before me (see footnote l, supra) -- is insufficient, without more, to establish that Skalli was retaliating against picketers. A mere conjunction or sequence of events is not enough to prove that the one "caused" the other, else we would speak of day causing night and night causing day.

Therefore, while it cannot be said that the company was without animosity toward the Union (See, for example, Clark's comment to Navarrette on April 12th, supra. pp. 14-15), I must conclude that its predominate motive in issuing warning letters and in eventually discharging workers was to punish them for failing to abide by the reasonable work standards which it had established in order to counteract the deliberate slowdown in which they were engaged.[31]

5. Work Standards and Collective Bargaining

Throughout the period in which work standards were being imposed and employees disciplined and discharged, negotiations for a new agreement to replace the one which had expired January 30, 1990, continued but with little progress. The expired agreement[32] contained typical Management Rights language:

> The parties agree that it is the duty and the right of the Company to manage itself and direct its operations and its employees, and the company reserves all of its rights, power and authority in connection therewith

[31]At one point the General Counsel argues that if the Respondent truly believed a slowdown was in progress, it would have discharged the workers for that reason and not bothered with the imposition of work standards. Yet that was precisely how Skalli handled the slowdown in 1988 when it issued disciplinary notices for "Below standard harvesting rate per day based on averages from years past." (G.C. Ex. 4.) The use of standards in dealing with a possible slowdown, while perhaps not the only means of handling the situation (see Jt. Ex. 2, Articles V & VTII, which would probably permit immediate discharge for "just cause"), is certainly a legitimate alternative, especially when one considers the obvious difficulties in proving that workers were acting deliberately.

[32]Which, as a matter of law, controlled most of the terms and conditions under which they worked while a new agreement was being

except as specifically limited by the express provisions of this agreement. (Jt. Ex. 2, Article VI.)

The only specific contract provision touching on work standards is found in Article XXII which (1) allows certain named supervisors and part-time students to perform bargaining unit work so long as unit members are not displaced and (2) permits all supervisors to perform unit work "for instruction, training, maintaining their skills, experimental and developmental work, including the improvement of processes and testing of equipment and emergencies. Early in negotiations Skalli proposed that Article XXII be modified to provide "...supervisors may perform work regularly performed by employees in order to set productivity standards (as well as for training, experimental work, etc.)" (Resp. Ex. X.) And on March 1st, it furnished the union with specific language to that effect, and went on, as a part of its wage offer, to provide: "Until it can be shown that work productivity can be significantly improved the company cannot offer more than 4% increase over 1989 wages." (Resp. Ex. Y.)

Other than that, Skalli said nothing about the work standards which it was then in the process of creating and implementing. And the reason for its silence has to do with its contention that it already possessed that authority under the Management Rights Clause.

It was the Union which first raised the issue in early April when employees received their first round of disciplinary notices; and, at that point, it went on to request information about work standards at Skalli and how they had been created. Tom Clark, who was handling the negotiations for the Company, refused to discuss

the matter, saying:

> We don't have time for that, we have too many other issues, articles, on the table to negotiate....They [the UFW] wanted to see records of work standards from years past. And...those would've been comparing apples and oranges. And I wasn't prepared to turn over all this information in the middle of negotiation sessions, we had so may other articles to discuss." (IX:177-178.)

Each time tickets were issued the union complained, and, each time, the company refused to discuss the matter.[33] (IX:179.) B. Work Standards: Legal Analysia and Conclusions 1. The Duty to Bargain over Work Standards

The issue of whether Skalli had the right to formulate and impose work standards without consulting and bargaining with the UFW is complicated by the fact that the standards were used to address two distinct problems: On the one hand, they were an important step in Ms. Rodeno's plan to cut costs and increase productivity; on the other, they were a measured means of confronting the deliberate efforts of the workforce to slow production. In the beginning, Ms. Rodeno's plan was primary; but, as matters progressed, the need to overcome employee resistence came to dominate.

Each of these two components requires distinct legal analysis. The starting point for an analysis of Rodeno's plan is the Management Rights clause, reserving to Skalli the right to

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[33] it may be that the issue was finally addressed toward the end of the negotiations. (IX:154-157.) The record is just not clear. But those discussions -- if they occurred at all -- did not take place until long after the imposition of standards and the discharge of workers.

"manage itself and direct its operations and its employees…except as specifically limited by the~agreement". (Jt. Ex. 2, Art. VI.) Since nothing is said elsewhere about work standards, it could be argued that they are within management's prerogative. However, work standards are a mandatory subject of bargaining (*Alfred M. Lewis. Inc. v. NLRB.* (9th Cir. 1978) 587 F.2d 403, 408), and, as such, any purported contractual waiver concerning them must be clear and unmistakable. (*Tenneco Chemical* (1980) 249 NLRB 1176, 1180.)

Evidence of waiver may be found in bargaining history or past practice. (Id.) But there is nothing here to indicate that the matter was discussed or even mentioned in previous negotiations. And the past practice argument is weak. The Union was aware of the disciplinary warnings which were given out in 1988 for "below standard harvesting rate per day based on averages from years past" (G.C. Ex. 4), but that was only one instance and it relied on prior crew averages, not -- as the standards announced and implemented in April and May 1990 -- on expert and supervisory experience elsewhere in the Napa Valley. While Clark had occasionally made loose appeals to workers to keep pace with the work standards he had developed for budgeting, he himself acknowledged that they were like apples and oranges when compared to the new standards (IX:177-178) which, for the most part, were based on different ways of doing the work. (*Supra*, pp. 9; 12, fn. 13; 19.) Since there is no showing that the changes were discussed with, much less waived by, the union (Master Slack (1977) 230 NLRB 1054), and since they amounted to more than the

simple preservation of the status quo (*NLRB v. Crystal Springe Shirt Corp.* (5th Cir. 1981) 637 Fed.2d 399, 404), Skalli should not have adopted or implemented work standards aimed at cutting costs and improving productivity without first notifying the Union and offering to bargain about them. (NLRB v. Katz (1962) 369 U.S. 736.)

But what of the other component -- the adoption of work standards as a measured response to the employee slowdown?

The unique thing about that kind of change in working conditions is that it comes, not a means of achieving a desired bargaining result, but *as a response to the economic pressure which was being brought to bear on the negotiation process*. It was Skalli"s tactical response to the crew's tactic of deliberately slowing production. As such, it is analogous to the right of an employer to react to a strike by hiring replacements, by temporarily subcontracting struck work, or by terminating group insurance, all of which may be done without first bargaining with the union. (*Charles Malovich* (1983) 9 ALRB No. 64; *Times Publishing Co.* (1947) 72 NLRB 676; *Empire Terminal Warehouse Co.* (1965) 151 NLRB 1359, enf'd 355 Fed.2d 842 (D.C. Cir. 1966); *Philip Carev Mfg. Co.* (1963) 140 NLRB 1103, enf'd 331 Fed.2d 720 (6th Cir. 1964)). Indeed, in *Celotex Corp.* (1964) 146 NLRB 48, *enf'd in part* 364 Fed.2d 552 (5th Cir. 1966), the National Board held that Section 8(a)(5) of the NLRA does not prevent an employer from unilaterally changing the work schedules of its employees in order to maintain production in the face of an unprotected slowdown and refusal to work overtime; the employer's conduct was

characterized as a temporary response to the work stoppage and one which it would have been futile to bargain about with the union.

Given the different legal results which follow from the differing purposes for which work standards were utilized, what was Skalli's bargaining obligation?

The answer could be made to turn on the predominating purpose, as it does in discrimination cases. But fundamental to American labor law is the policy of encouraging the resolution of disputes through bargaining. To the extent that that policy can be realized without impairing the right of an employer to protect itself from economic pressure -- particularly economic pressure as dubious as the slowdown --it should be allowed to prevail. Here that reconciliation can be effectuated by permitting the Respondent to go ahead with the implementation of work standards while at the same time requiring that it be open and willing to bargain with the union about what it was doing. That way the employer may protect itself without eliminating the very forum -- collective bargaining -- in which the problem which gave rise to the need for unilateral action can be addressed and, hopefully, resolved.

I therefore conclude that initially, when Robledo adopted work standards for tying hoses, the Respondent violated section 1153(e) of the Act because those changes were aimed at implementing Ms. Rodeno's plan to cut costs and increase productivity. Thereafter, although Skalli was entitled to adopt and implement further standards in response to the slowdown, the Company's negotiator, Tom Clark, should not have refused to

discuss those standards -- and the ones which ensued -- when the Union brought them to the negotiating table following the issuance of the first disciplinary notices. (*Supra*, pp. 28-29.) By failing to do so, the Respondent again violated section 1153(e) of the Act.

2. The Work Standards as Discrimination Against Union Activity.

Both the General Counsel and the Union argue that Skalli adopted work standards and then selectively applied them in order to punish those employees who supported the UFW and picketed the winery.

On the surface of it, their argument seems persuasive. First of all, the timing of the adoption and implementation of the standards corresponds to the onset of picketing and to Skalli's fustrated efforts to have it curtailed. Second, there is no question but that the discipline fell more heavily on union adherents than on those who were indifferent or outright hostile to the UFW. Third, the fact that the standards were discontinued as soon as most of the union supporters had been terminated, invites the inference that that was the reason they were adopted. Finally, Clark's comment about the "fucking union" (*supra*, p. 14), can easily be read as evidence of an underlying anti-union animus on the part of the Respondent. These considerations, taken together, are certainly enough to constitute a prima facie case.

Once that has been established, the burden shifts to the employer to prove that it would have taken the same action absent the statutorily protected activities engaged in by the alleged discriminatees. (*Martori Brothers Distributors v. ALRB* (1981) 29

Cal.3d 721; *Nishi Green House* (1981) 7 ALRB. No. 18; *Wright Line* {1980} 251 NLRB 1083; *NLRB v. Transportation Management Corp.* (1983) 462 U.S. 393.)

Skalli has met its burden by establishing the existence of two complementary, non-discriminatory justifications for its conduct: First -- and initially the more important—-Ms. Rodeno's plan to cut costs and increase productivity; second, the need—which later predominated -- to confront the deliberate efforts of the alleged discriminatees to slow production.

I am convinced that the work standards had a legitimate origin in the serious problems which Michaela Rodeno was hired to address and which caused her to undertake the reorganization of Skalli's vineyard operations. (*Supra*, pp. 5-6.) They were the logical outcome of what she learned from the consultant she retained and from the vineyard manager she hired. And they were aimed, not at ridding Skalli of its union, but at putting its operations on sound financial footing.[34]

As matters progressed and the Company began to encounter hostility and resistence to its plans and conduct, it increasingly utilized work standards as a means of measuring and countering the efforts of its employees to slow production. (*Supra*, pp. 9-24.) It was entitled to do this because those concerted efforts were not protected under section 1152 of the ALRA.

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[34]That Skalli violated section 1153(e) by failing to bargain about the adoption of work standards (*supra*, pp. 29-30), does not mean that its motive in adopting those standards was discriminatory under section 1153(c).

> Section 7 [the equivalent of §1152 of the ALRA] guarantees to employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. However, both the Board and the courts have recognized that not every form of activity that falls within the letter of this provision is protected....Either an unlawful objective or the adoption of improper means of achieving it may deprive employees engaged in concerted activities of the protection of the Act.
>
> Here, the objective of the carloaders' concerted activity -- to induce the Respondent to increase their hourly rate of pay or to return to the piecework rate -- was a lawful one. To achieve this objective, however, they adopted the plan of decreasing their production to the amount they considered adequate for the pay they were then receiving. In effect, this constituted a refusal on their part to accept the terms of employment set by their employer without engaging in a stoppage, but to continue rather to work on their own terms. (*Elk Lumber Company* (1950) 91 NLRB 333, 337.)

In *G.G. Conn. Ltd, v NLRB* (7th Cir. 1939) 108 Fed.2d 390, 5 LRRM 806, the Court of Appeal declined to enforce an NLRB order directing reinstatement of union activists for refusing to work overtime. The NLRB argued the workers were engaging in a partial strike when they declined to work overtime although being otherwise prepared to perform their duties. The Court stated that the employees could continue work or seek to negotiate further with their employer or the could strike in protest but:

> They did neither, or perhaps it would be more accurate to say they attempted to do both at the same time.
>
> We are aware of no law or logic that gives the employee the right to work upon terms prescribed solely by him. That is plainly what was sought to be done in this instance. It is not a situation in which employees ceased work in protest against conditions imposed by the employer, but one in which the employees sought and intended to continue work upon their own notion of the terms which should prevail. If they had a right to fix the hours of their employment, it would follow that a similar right existed by which they could prescribe all

conditions and regulations affecting their employment. (5 LRRM at 813-814.)[35]

In short, workers may either protest employer conduct by entirely withdrawing their labor or they may continue working and be paid, but they cannot force their employer to subsidize their protest by combining the two.

Here, the reason why discipline fell more heavily upon the shoulders of the union supporters is because those were the very employees who chose to resist. Had their resistence taken the form of striking, it would have been protected concerted activity, insulating them against discharge; indeed, coming as it did in response to Skalli's refusal to bargain, their status would have been that of unfair labor practice strikers immune even from permanent replacement. Or they could have continued to work, abiding by the work standards -- which were, after all, reasonable -- and allowing the ALRB the opportunity redress Skalli's violation of section 1153(e). But, instead, they chose a tactic which went beyond the pale of section 1152 and left them unprotected, thereby permitting Skalli to discipline them for failing to meet the work standards it had established. Workers are not insulated against justified discipline simply because they also happen to be union supporters. (*Martori Brothers Distributors v. ALRB*, *supra*, 29 Cal.3d at 728-29.)

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[35]See also: *Audubon Health Care Center* (1983) 268 NLRB 135; *NLRB v. Blades Mfg. Co.* (8th Cir. 1965) 344 Fed.2d 998; *NLRB v. Montgomery Ward & Co.*(8th Cir. 1946) 157 Fed.2d 486; *Mayfair Packing Co.* (1987) 13 ALRB No. 20 [Upholding termination of ranch committee member for urging employees to engage in a slowdown.]

The remaining factors which make up the General Counsel's prima facie case -- the preferences shown those who did not join the slowdown, Skalli's lack of success in Superior Court, and the abandonment of work standards once Union supporters had been eliminated -- have already been addressed and found wanting. (*Supra*, p. 26.) That leaves only the animosity toward the UFW which may be inferred from Clark's comment to Navarrette on April 12th. (Supra, p. 14.) But hostility toward a union, without evidence that that hostility has manifested itself in conduct or action, is not enough to sustain a finding of discrimination.

The one characteristic which differentiates this case from the typical unprotected slowdown is the fact that it was motivated, in part at least, by Skalli's refusal to bargain. But to argue that a employer's bargaining violation converts unprotected activity into protected activity would be to ignore the long-standing and deeply rooted policy against the use of the slowdown as a tactic in labor relations.(*Elk Limber Company. supra*; *G.G. Conn. Ltd, v NLRB. supra*; *Audubon Health Care Center. supra*; *NLRB v. Blades Mfg. Co. supra*; *NLRB v. Montgomery Ward & Co., supra*; *May fair Packing Co., supra*.)[36] Furthermore, such an

[36]In *Armstrong Nursery* (1983) 9 ALRB No. 53, the ALRB reversed an ALJ decision and held that employees may refuse to carry out an order which is discriminatorily motivated. However, the status of that decision is uncertain in view of its reversal by a Court of Appeals in a decision which the California Supreme Court later ordered depublished. In any event, the employees here did more than simply maintain their previous pace; they went further and agreed to see to it that no worker produced more than any other. In *Superipr Farming Company* (1982) 8 ALRB No. 77, the Board sustained an ALJ's holding that an employee could not be

argument would be inconsistent with the cases permitting workers to abandon the usual rules regulating economic pressure only where their employer is guilty of serious and flagrant unfair labor practices. *(Mastro Plastics Corp. v. NLRB* (1956) 350 U.S. 270; *Arlan's Department Store* (1961) 133 NLRB 802.) The bargaining violations here involved (supra, pp. 29-32 and infra, pp. 38-40) do not rise to that level.

I conclude that the Respondent has met its burden of proving that there were legitimate, non-discriminatory reasons for the issuance of warning letters and the eventual discharge of the crew members who engaged in concerted but unprotected attempts to slow production at the vineyard. I therefore recommend the dismissal of that portion of the complaint.

IV. OTHER ALLEGED UNFAIR LABOR PRACTICES

A. Failing to Notify and Bargain with the UFW before Hiring a Subcontractor to Spray Fences

Skalli's Pope Valley Vineyard is surrounded by a fence which must be sprayed periodically with herbicides to control weeds. In April 1990, without notifying or bargaining with the Union, Tom Clark and Kirk Grace hired M & L Vineyard Management to do the spraying. The work took two days, M & L provided the equipment and labor, and Skalli provided the chemicals. When Grace was asked why he hired the subcontractor, he explained:

They had a very interesting piece of equipment, which

(Fn. 36, Cont.) discharged for refusing to remove leaves from the grapes in his gondola, but that holding was based on a finding that the employee had entirely withdrawn his labor and thus become a full-fledged striker, entitled to the protection of §1152.

> was a backpack motorized sprayer that had a delivery system which was considerably different than any backpack we had. It allowed me to spray considerably more territory on a single application on a single tank. We had a total of nine miles of fence line in some extremely rugged remote territory, and to do it with what our equipment had would have required -- it would have been a logistical nightmare. (VI:102-103.)

Grace also testified that the fence had not been sprayed since the UFW had been certified. Several workers testified that Skalli's equipment was used and that the fence had been sprayed after the Union was certified. However, cross-examination revealed that their vantage points made it difficult for them either to identify the equipment being used or to know whether they were witnessing the spraying of the fence itself or just an adjacent field. I therefore accept Grace's testimony.

I cannot, however, accept the Respondent's argument that because the Union had not previously done the work, it was therefore beyond its jurisdiction. The certification and the contract cover all agricultural labor. Weed control on the perimeter of a farm is just as much agricultural work as weed control inside the perimeter. That it had not been done before is irrelevant, else every new agricultural process would be beyond jurisdiction of the certified union -- hardly the intent of the Legislature when it created all-inclusive, "wall to wall" units in agriculture.

It could, I suppose, be argued that bargaining over the use of M & L would not have been productive because Skalli lacked the needed equipment to do the work, and therefore the Union was not in a position to offer alternative solutions, thus rendering the

change "not amenable to resolution through the grievance procedure". (*First National Maintenance Corp. v. NLRB* (1981) 452 U.S. 666; *Tex-Cal Land Management. Inc.* (1985) 11 ALRB No. 31, pp. 12-13.)[37] But such an argument overlooks the broad subcontracting language of the collective bargaining agreement:

> Should the Company desire to subcontract bargaining unit work during the term of this Agreement, it will first notify and bargain about the matter with the Union, including the effects of any such decision on unit employees. Prior to the initial bargaining meeting with the Union concerning the decision to subcontract, the Company will provide the Union with written notice of the decision and an explanation of the reason(s) therefor. (Jt. Ex. 2, Article XX.)

By its terms, the clause goes beyond the limitations found in *First National Maintenance Corp. v. NLRB. supra*, and covers all subcontracting, including the spraying work here at issue[38] And the obligations it created did not terminate when the contract expired in January; they continued in effect and served to define the status quo which Skalli was required to maintain during negotiations. *(NLRB v. Crystal Springs Shirt Corp., supra*; *NLRB v. Katz*, supra.)

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[37]Even that is questionable; the Union might well have agreed to wage concessions which would have made it economically advantageous for Skalli to use its own slower, more unwieldy equipment.

[38]The broad reach of the subcontracting clause is clear not only from the terms of Article XX, but also may be inferred from Article XVIII, dealing with mechanization and requiring bargaining whenever new equipment is to be utilized. A requirement that the employer bargain when it plans to use equipment which will displace workers suggests that it should likewise bargain when it plans to subcontract bargaining unit work in order to obtain the advantage of new or different equipment.

I therefore conclude that Skalli was not entitled to subcontract out the spraying of its fences without first notifying and bargaining with the UFW. By failing to do so, it violated §1153(e) of the Act.

B. The Issuance of a Disciplinary Warning Notice to Romelio Corro

On March 23rd, a few weeks after the employees had begun picketing and a few weeks before Skalli began issuing warning tickets for failure to meet production standards, Romelio Corro, received a disciplinary notice for refusing to obey a work order.[39] Corro was working in the crew when Jesus Corro arrived and announced that Rutilio Huijon had instructed him use Romelio to assist in digging post holes in another area of the vineyard. Romelio would have been working on the mechanical auger operated by Jesus from a tractor. Romelio explained that the work is difficult:

> ...because if the auger doesn't go in, then that person [the one assisting the tractor operator] has to get up on top of the auger to make sure that it goes in. That's why its more dangerous and also more difficult or harder. (I:52.)

According to Jesus, Romelio said: "I have a lot of seniority. Why don't you get somebody that doesn't have a lot of seniority to do it." (VI:183.) Jesus left to do the work by himself; when Huijon showed up and asked about Romelio, Jesus explained what had happened, and Huijon went to speak with him. According to

[39]He, like most of the other employees, had participated in picketing the winery after working hours.

Romelio's Declaration:

> Rutilio [Huijon] approached me and told me to go with him that he was going to put me to make post holes. I asked him [if it] was possible to assign someone else, he answered by say[ing] "then you're staying here?" I told him, "well, yes I'm already here." (Resp Ex. B, page 2)[40]

The announcement that he intended to stay where he was after being told that he was going to be assigned to dig post holes constitutes insubordination, justifying the issuance of a warning notice. That he relented after Grace arrived and issued the ticket does not excuse his behavior toward Huijon.

I therefore conclude that Respondent has demonstrated good cause for the action it took, and I recommend dismissal of the portion of the complaint which alleges that Romelio Corro's first warning notice was motivated by his participation in protected union activity.

REMEDY

Having found that Respondent violated §1153(e) and derivatively, §1153 (a) of the Act (1) by unilaterally instituting and implementing a system of work standards and (2) by unilaterally subcontracting out fence spraying work, 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

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[40]The declaration was introduced because, on direct examination, Romelio had claimed that both Grace and Huijon came together to speak with him and that he never refused the assignment. The declaration effectively impeaches that testimony; moreover, Romelio's demeanor while testifying was poor.

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.

I recommend dismissal of the Complaint with respect to all allegations which were dismissed (10 of the Complaint), which were not pursued at hearing (8 of the Complaint), or in which the Respondent has been found not to have violated the Act.

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

ORDER

Pursuant to Labor Code §1160.3, Respondent Skalli Corporation, doing business as St. Supery Vineyards, its officers, agents, labor contractors, successors and assigns, shall:

1. Cease and desist from:

(a) Unilaterally instituting or implementing work standards without notifying and affording the UFW a reasonable opportunity to bargain with it over their adoption and implementation.

(b) Unilaterally subcontracting out fence spraying work, or otherwise changing the terms and conditions of employment of its agricultural employees, without first notifying and affording the UFW a reasonable opportunity to bargain with it over the decision and effect of doing so.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW, as the certified exclusive collective bargaining representative of its agricultural employees, with respect to the adoption and implementation of work standards and the effects thereof.

(b) Upon request, meet and bargain collectively in good faith with the UFW, as the certified exclusive collective bargaining representative of its agricultural employees, with respect the subcontracting out fence spraying work and the effects thereof.

(c) Make whole the present and former members of the bargaining unit for all losses of pay and other economic losses they have suffered as a result of Respondent's failure and refusal to bargain in good faith with the UFW by subcontracting out fence spraying work, such make whole amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with the Decision and Order in *E. W. Merritt Farms* (1988) 14 ALRB No. 5.

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

relevant and necessary to a determination, by the Regional Director, of the backpay period and the amount of backpay due under the terms of this Order

(e) 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 purposes set forth in this Order.

(f} 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 April 1, 1990 to the date of mailing.

(g) Provide copies of the signed Notice to each employee hired by it during the twelve (12) months following the remedial order.

(h) 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.

(i) 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 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.

(j) 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: June 5, 1991

JAMES WOLPMAN
Chief Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board by the United Farm Workers of America, the General Counsel of the ALRB issued a complaint which alleged that we, the Skalli Corporation, dba St. Supery Vineyards, 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 adopting and implementing work standards and by subcontracting out the spraying of fences without notifying the UFW and affording it a reasonable opportunity to bargain over those matters. 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 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 adopt or implement work standards, subcontract out fence spraying work, or otherwise change the terms and conditions of employment of our agricultural employees without notifying the UFW and affording it a reasonable opportunity to bargain with us over such matters.

We Will meet and bargain in good faith with the UFW with respect the imposition of work standards and the subcontracting out of fence spraying work and we will make whole our present and former employees for all losses of pay and other economic losses they suffered as a result of the subcontracting out fence spraying work.

Dated: _____

Skalli Corporation

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 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