Paicines (San Benito County), California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MICHAEL HAT FARMING CO., dba CAPELLO VINEYARDS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 89-CE-10-SAL 17 ALRB NO. 2

DECISION AND ORDER

On September 28, 1990, Administrative Law Judge (ALJ) Thomas Sobel issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions to the ALJ's Decision with a brief in support of exceptions and General Counsel filed a response brief.

The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm the ALJ's rulings, findings, and conclusions, and to adopt his recommended Order, as modified herein.[1/]

Respondent concurs in the ALJ's finding that Glen Ellen Winery was a successor employer to Almaden Vineyards.[2/]

[1/] Consistent with current Board practice, we will require Respondent to post copies of the attached Notice to Employees for 60 days, those days to be determined by the Regional Director, in lieu of the ALJ's recommendation that the posting continue for 90 consecutive days.

[2/] Since Respondent has not excepted to the finding concerning successorship, the Board declines to address the matter.

Respondent contests only the ALJ's further finding that Respondent Michael Hat Farming Company was a joint employer with Glen Ellen and thereby acquired a similar successorship status vis-a-vis Almaden as well as a concomitant duty to bargain with the United Farm Workers of America, AFL-CIO (UFW or Union), the certified bargaining representative of Almaden's agricultural employees. We find no merit in the exception.

In Andrews Distribution Company, Inc. (1988) 14 ALRB No. 19, as the ALJ correctly observed, we adopted the test set out in NLRB v. Browning-Ferris Industries (3d Cir. 1982) 691 F.2d 1117 [111 LRRM 2748] for determining whether two or more nominally independent business entities may be deemed joint employers for purposes of the labor statutes. Under that standard, we are required to decide whether separate employers "share or co-determine those matters governing the essential terms and conditions of employment" of a given set of employees. (Browning-Ferris, supra, 691 F.2d at 1123; 0. Voorhees Painting Co. (1985) 275 NLRB 779, 780 [119 LRRM 1228].) Respondent may be considered a joint employer if it exercised significant control over the employees in question. (Lutheran Welfare Services v. NLRB (7th Cir. 1979) 607 F.2d 777, 778 [102 LRRM 2672].) Such a determination "is essentially a factual issue" (Boire v. Greyhound Corp. (1964) 376 U.S. 473, 481 [55 LRRM 2694]), and turns on such factors as the authority to hire or fire employees, supervision of their day to day activities, and work assignments. (See, e.g., Pacemaker Driver Service (1984) 269 NLRB 971, fn. 2 [116 LRRM 1462], enfd. in pert, part sub nom. Carrier Corp. v.

NLRB (6th Cir. 1985) 768 F.2d 778 [119 LRRM 3603]; C. R. Adams Trucking Co. (1982) 262 NLRB 563, 566 [110 LRRM 1381], enfd. (8th Cir. 1983) 718 F.2d 869 [114 LRRM 2905].)

The operative facts are fully set forth in the ALJ's Decision. In relevant part, the record reveals that Heublein, Inc. purchased Almaden's Paicenes (San Benito County) vineyards and immediately leased them to Glen Ellen for the whole of the 1987 and 1988 grape production seasons. Respondent Michael Hat testified that he is a self-employed provider of viticultural services who was retained by Glen Ellen to run the San Benito operations and to conduct all year-round functions necessary to produce the crop, including cultivating, pruning, spraying and harvesting as well as the hiring and supervision of employees to carry out those tasks. Respondent's land management agreement with Glen Ellen further required responsibility for payroll services including the making and scheduling of work assignments, maintaining payroll records and issuing payroll checks. Those costs were reimbursed by Glen Ellen which compensated Respondent for its overall services on the basis of a set per acre fee. Upon inception of his relationship with Glen Ellen, Hat secured the services of various labor contractors to provide him with field workers, prompting the UFW to object to his failure to hire the former Almaden employees and to bargain. In response to the Union's concerns, Michael Benzinger, Glen Ellen's general manager, set up a meeting between himself, on behalf of Glen Ellen, Hat and the Union. During the course of the meeting, Benzinger signed an agreement with the Union whereby Hat ceased

utilizing the labor contractors, hired back the former Almaden employees and thereafter, in accordance with the agreement, consulted with the Union whenever he had need for additional employees. In what would appear to be acquiescence in the Almaden-UFW collective bargaining agreement, Respondent deducted and remitted Union dues and continued to make contributions to various UFW benefit funds on behalf of employees.[3/]

Upon commencement of the 1989 pruning season in early January of that year, Heublein, having elected to farm the Paicines vineyards itself, entered into a management agreement with Respondent on virtually the same basis as had Glen Ellen two years before. Hat testified that he again assumed all responsibility for the hiring of employees but did so exclusively through labor contractors except for three individuals whom he hired directly (an irrigator, a mechanic and a specialist in spray operations). During this same period Respondent failed or refused to

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[3/]Hat questioned whether he was bound by whatever agreement was a direct result of the meeting called by Benzinger, since he did not actually "sign" it, although he did append his name to the document below Benzinger's signature. This was done, he explained, for the limited purpose of merely identifying himself to the Union, as he would "be providing the services and acting as his [Benzinger's] agent." (Tr. 11.) Almaden and the UFW had entered into a two-year collective bargaining agreement which was to expire on December 31, 1988, approximately one year after Glen Ellen took over the former Almaden operations. Although a successor employer incurs a duty to bargain with the incumbent union which represented its predecessor's employees, it need not adopt an existing contract and is free to set its own initial terms and conditions of employment. (See, e.g., Harbor Cartage (1984) 269 NLRB 927 [116 LRRM 1016]; EG & G Fla. (1986) 279 NLRB 444 [123 LRRM 1278].) It is not clear from the record whether Glen Ellen and Hat agreed to adopt the Almaden-UFW contract in whole or in part or to enter into a new agreement. Therefore when the ALJ in his recommended Order refers to the Almaden-UFW contract, we interpret his reference to denote the agreement which resulted from the meeting called by Glen Ellen.

acknowledge the UFW, or to respond to its written requests to bargain, believing it had no such duty for the sole reason that it "had no contract with them." (Tr. 22.)

On the basis of the facts set forth above, the ALJ found, and we agree, that Michael Hat Farming Company in its own right met the statutory definition of an agricultural employer.[4/] We also agree with the ALJ's further finding that the relationship between Respondent Hat and Glen Ellen vis-a-vis the former Almaden employees was that of joint employers.[5/]

Having found that Respondent is a joint employer, the ALJ turned to the allegation in the complaint that Respondent violated the Act by its failure or refusal to continue to honor its bargaining and contractual obligations to the UFW when it again

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[4/]Section 1140.4(b) of the Agricultural Labor Relations Act (ALRA or Act) defines agriculture in accordance with the definition set forth in section 3(f) of the Fair Labor Standards Act (29 U.S.C. § 203(f).) Employees engaged on a farm in the actual production of agricultural commodities including the cultivation, growing or harvesting of a crop are engaged in direct farming activities (Farmer's Reservoir & Irrigation Co. v. McComb (1949) 337 U.S. 755) and their employer is whoever hires, fires, disciplines and supervises them and, most importantly, formulates or directs the labor relations policies which govern them. In this instance, and on this record, Michael Hat clearly satisfies the statutory definition of an employer of employees engaged in agriculture and thus is subject to the jurisdiction of the Act.

[5/]A major argument put forth by Respondent in opposition to the joint employer finding is predicated on the fact that it was Glen Ellen's Benzinger rather than Hat who actually agreed initially to meet with the UFW and sign the resulting agreement. Respondent's contention is misplaced since "participation in the collective bargaining process constitutes a relevant factor in establishing a joint employer relationship." (Lucky Service Company (1989)292 NLRB No. 130, at p. 12 [131 LRRM 1625].) Not only did Hat participate in the meeting, but it was also he who assumed responsibility for carrying out all the terms and conditions of employment set forth either in the Almaden-UFW contract or a new collective bargaining agreement covering the same employees.

substituted labor contractors for the former unit employees following expiration of the Glen Ellen lease interest in the former Almaden vineyards. Hat testified that, pursuant to his management agreement with Heublein, he assumed virtually the same managerial tasks for which he was responsible under Glen Ellen and, further, he was solely responsible for all hirings but "hire[s] everyone now through labor contractors."

As the ALJ recognized, "Hat is no different from any other land management company which, once having been determined to be an employer, is hired by successive owners or lessees of agricultural property." (ALJ's Decision at p. 23.) Thus, following expiration of the management agreement with Glen Ellen, there was no change in Respondent's status as an agricultural employer. Nor do we find an intervening event which would permit Respondent to ignore its statutory duty to bargain or its duty to honor valid contractual obligations.

Accordingly, we concur in the ALJ's finding that Respondent engaged in unfair labor practices within the meaning of Labor Code section 1153(e) and (a) by failing to meet and bargain with the UFW and failing to continue to honor the terms and conditions of its contract with the UFW.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (ALRB or Board) hereby orders that Respondent Michael Hat Farming Co., dba Capello Vineyards, its officers, agents, successors, and assigns, shall:

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1. Cease and desist from:

a. Failing and refusing to meet and bargain collectively in good faith, as defined in Labor Code section 1155.2(a) with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of Respondent's agricultural employees at Michael Hat Farming Co.;

b. Failing or refusing to honor the terms and conditions of the UFW-Almaden contract;

c. In any other manner interfering with, restraining, or coercing agricultural employees in the exercise of the rights guaranteed them by Labor Code section 1152.

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 at Michael Hat, Inc., dba Capello Vineyards, and if an understanding is reached, embody such understanding in a signed agreement;

b. Make whole its agricultural employees for all losses of pay and other economic losses sustained by them as the result of its refusal to bargain, such amounts to be computed in accordance with Board precedent plus interest thereon in accordance with E. W. Merritt Farms (1988) 14 ALRB No. 5 for the period from January 1, 1989 until the commencement of good faith bargaining which leads to contract or impasse;

c. Refrain from unilaterally altering the terms and conditions of employment of its agricultural employees;

d. Preserve, and upon request, make available to the Board or its agents for examination and copying, all records relevant and necessary to a determination of the amounts due its employees under the terms of this Order;

e. Sign the Notice to Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter;

f. Post at Michael Hat Farming Co., dba Capello Vineyards, copies of the attached Notice for 60 days at times and places to be determined by the Regional Director;

g. Provide a copy of the attached Notice to each employee hired during the 12-month period following the issuance of this Order;

h. Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order to all employees named in Appendix A to the First Amended Consolidated Complaint;

i. Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified 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 employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable

rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period;

j. Notify the Regional Director in writing, within 30 days from the date of issuance of this Order of the steps which have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing of further actions taken to comply with this Order.

DATED: February 7, 1991

BRUCE J. JANIGIAN, Chairman[6/]

GREGORY L. GONOT, Member

JIM ELLIS, Member

JOSEPH C. SHELL, Member

[6/]The signatures of Board Members in all Board decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority. Member Ramos Richardson did not participate in this matter.

CASE SUMMARY

Michael Hat Farming Co., dba Capello Vineyards (VFW)

17 ALRB No. 2
Case No. 89-CE-10-SAL

Decision of the Administrative Law Judge

Following an evidentiary hearing, the Administrative Law Judge (ALJ) found that General Counsel had proved by a preponderance of the evidence that Respondent Michael Hat Farming Co., dba Capello Vineyards (Respondent) was an agricultural employer in its own right with regard to employees the company hired and supervised to work in the Paicines (San Benito County) vineyards which had been sold by Almaden Winery to Heublein, Inc. and subsequently leased by Heublein to Glen Ellen Winery. He further found that while Respondent was actually retained by Glen Ellen to provide "viticultural and payroll services," the two entities, i.e., Hat and Glen Ellen, co-determined or shared in controlling the labor relations of the employees in question, thereby rendering them joint employers.

After Glen Ellen entered into the management agreement with Respondent, the latter engaged the services of labor contractors to provide employees to work in the former Almaden vineyards. As the United Farm Workers of America, AFL-CIO (UFW or Union) was the certified bargaining representative for Almaden[1]s agricultural employees, the Union contended that Respondent and/or Glen Ellen had succeeded to Almaden[1]s bargaining obligation with the UFW and objected to Respondent's having hired non-unit employees. Glen Ellen responded by arranging a meeting with the Union and subsequently entered into a bargaining agreement, the terms of which Respondent adopted and carried out. Having succeeded to Almaden's bargaining relationship with the incumbent Union, Glen Ellen's successorship would naturally devolve upon and include Respondent as its joint employer.

The ALJ also found that after the contract had expired, Respondent again began contracting out unit work to non-unit employees, thereby violating its continuing duty to bargain with the employees' certified representative. He recommended that Respondent be ordered to bargain with the UFW, to honor the terms of the expired contract until the parties bargain to a new contract or impasse, and to compensate employees for any losses they may have suffered as a result of having been deprived of unit work.

Decision of the Agricultural Labor Relations Board

Respondent did not dispute the ALJ's finding that Glen Ellen was a successor employer to Almaden Vineyards but excepted to his

further finding that Respondent was a joint employer with Glen Ellen. Having reviewed the record as a whole, the Board found that Respondent, in its own right, met the statutory requirements for agricultural employer status but additionally satisfied the factors relevant to a joint employer determination. The Board found, inter alia, that Respondent and Glen Ellen shared or co-determined the labor relations policies which governed the agricultural employees who worked in the former Almaden vineyards. Accordingly, the Board affirmed the ALJ's findings in that record and adopted his proposed remedial provisions.

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

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September 28, 1990

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: MICHAEL HAT FARMING CO., dba CAPELLO VINEYARDS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 89-CE-10-SAL

Appearances:

Jerrold C. Schaefer and
Lee Ann M. La France
Hanson, Bridgett, Marcus,
Vlahos & Rudy San
Francisco, California
for the Respondent

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

Sally Parsley
United Farm Workers of America, AFL-CIO
Keene, California
for the Charging Party

DECISION OF ADMINISTRATIVE LAW JUDGE

THOMAS SOBEL, Administrative Law Judge:[1]

This case was heard by me on May 23, 1990 in Hollister, California.

The complaint alleges that Respondent Michael Hat Farming Company, doing business as Capello Vineyards (hereafter "Michael Hat"),[2] has a duty to bargain with Charging Party, the United Farm Workers of America, AFL-CIO (hereafter UFW) which duty devolved upon him by virtue of his having succeeded to the collective bargaining obligation of Almaden Vineyards. Respondent has refused to bargain on the grounds that it is not the agricultural employer of the employees over whose terms and conditions of employment the Union has requested bargaining and that it is not a successor to Almaden.

FACTS

On November 18, 1975, the UFW was certified as the

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[1]Respondent has moved to correct two portions of the transcript on p. 13: (1) a misidentification of counsel on line 4 (substituting the General Counsel as speaker for Respondent's Counsel); (2) attribution of my remarks to Respondent's Counsel on line 5. I grant as to line 5 because I recall making the remarks attributed to Mr. Schaeffer. Without access to the tapes of the hearing, I do not know whether the General Counsel is erroneously identified as the speaker on line 4.

[2]Michael Hat testified that he has variously used Michael Hat farming Company and Capello Vineyards as business names.

[3]The complaint also alleges that Respondent discriminatorily refused to rehire five employees because of their union activities. General Counsel has apparently abandoned this allegation since he does not address it in his Post-Hearing Brief. In any event, I do not believe he has even made out a prima facie case of discrimination against these employees. Paragraph 8 of the Complaint is hereby dismissed.

collective bargaining representative of all the agricultural employees of Almaden Vineyards. Although the unit described in the certification consisted of all of Almaden's employees working in Pleasanton, Los Gatos and King City, (which are located in Alameda, Santa Clara and Monterey counties respectively,) as well as all of Almaden's employees working in Paicines and Cienega (which are located in San Benito County), only the status of the Paicines component of the unit is at issue here. What happened to the rest of employer's operations (and the employees engaged in them) in the other locations does not appear on this record.[4]

Almaden and the UFW entered into a collective bargaining agreement effective from January 1, 1986 through December 31, 1988. In March 1987, Almaden sold the Paicines ranches to Heublein, Inc. Although it is not entirely clear, I take it from the fact that the employees received severance pay when the properties were sold (I:51), that the workforce was dismissed. Instead of farming the vineyards, Heublein leased them to Glen Ellen under an arrangement in which Glen Ellen produced the crop, took it to a winery located in the vineyards, whereupon Heublein turned it into wine which Glen Ellen then sold under its label. (I:9) Glen Ellen in turn hired Michael Hat to provide "all the services that would be needed for the entire year to produce the grape crop" (I:8), including payroll

[4]In view of the fact that neither party has made an issue of the effect of contraction of the unit on the successorship question, I address it no further than to note that reduction in unit size does not necessarily effect successorship. See, generally Gorman, Basic Text on Labor Law, 1976, p. 128.

services. There was no written agreement. Hat's sole compensation was a per-acre management fee.

While the details of Glen Ellen's and Hat's relationship are scanty, Hat testified that it worked in roughly this way: At the beginning of each year,[5] he prepared a budget for Glen Ellen's approval. Although Hat testified that Glen Ellen made changes in the budget "from time to time", he also spoke as though Glen Ellen routinely approved his budget.

> Q: (By General Counsel): Did Glen Ellen approve the budget in all instances?
>
> A: They would make changes in it from time to time, but at the start of the year they approved it.
>
> (I:27.)

If this testimony indicates that Hat was responsible for overall planning, and if the previously quoted description of Hat's duties further indicates that he was responsible for routine management, the reference to Glen Ellen's making changes in the budget from "time to time," and Hat's testimony that Glen Ellen's general partner, Mike Benzinger, came to the vineyards regularly ("about once or twice a month" (I:24), to "go over things he wanted done,") shows that Glen Ellen, too, had an ongoing operational role in the vineyards. Indeed, Hat emphasized that either Benzinger or someone else from Glen Ellen oversaw every phase of the operation. During harvest, for

[5]Hat provided services to Glen Ellen in 1987 and 1988. Since he took over in mid-1987, I take his testimony about preparing a yearly budget to refer to crops, rather than calendar years.

example, someone from Glen Ellen checked on the quality of the grapes going to the winery. More generally, if Benzinger thought "operational" changes were required he would direct them. Though he would consult with Hat about such changes, if the two men disagreed, Benzinger had the last word.

During the time Hat worked for Glen Ellen, he used Heublein's equipment.[6] It also appears from his repeated references to being "reimbursed" by Glen Ellen for all farming expenses, see e.g. I:25, 26, that he may have advanced money to meet expenses.[7]

So far I have been concerned only with the relationship between Hat, Glen Ellen and, to some extent, Heublein. I will now address the relationship between them and the union. Although there is no testimony concerning either Heublein's or Glen Ellen's knowledge that the UFW had been previously certified at Almaden, Hat did testify that when he was retained by Glen Ellen, he did not know there had been "a contract" between the UFW and Almaden.[8] (I:10.) In the first three weeks after he was

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[6]Although Hat testified that he was "reimbursed" by Glen Ellen for equipment he leased, (I:26) thereby implying that he leased equipment, in response to a direct question about whether he leased equipment during the term of his relationship with Glen Ellen, he stated: "Not really. Most of the equipment was left over from—it was the old Almaden equipment and we just used it." (I:33.) That equipment has apparently now been sold.

[7]While it is always possible that Hat misused the word "reimbursed," I have no reason not to take him "at his word."

[8]Since there is a distinction between survival of the bargaining obligation through successorship, and survival of the contract even if successorship be found, it is unclear whether Hat's reference to not being aware of a "contract" implies

retained, he hired labor contractors to do what was necessary. (I:9.) When the union discovered that work had resumed in the "Almaden" vineyards, it apparently demanded that Glen Ellen or Hat, or both, recognize it on the grounds that they were successors to Almaden's collective bargaining obligation. Hat testified without contradiction that Benzinger called him to tell him that he had scheduled a meeting with the UFW. At the meeting, which was attended by Hat, Glen Ellen and Hat agreed to use the UFW to supply workers to Glen Ellen and further to abide by the terms of the UFW-Almaden contract.[9] After the meeting, Hat ceased using labor contractors, hired "the former UFW people who had been working there all along" (I:13), and, in paying them, made all the deductions and contributions called for by the UFW-Almaden contract, including remitting dues to the union. He was reimbursed by Glen Ellen for all these payments. Before every harvest, Benzinger "set up a meeting with the union and

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ignorance of the union's certification, ignorance of the existence of the contract, or both. Once again, I will construe his testimony literally; this does not mean I find that he knew there was a certification, but only, as he testified, that he didn't know there had been a contract.

[9]Although Hat attended the meeting and admitted that his name appears on a document incorporating these agreements, he insisted that he attended the meeting only because Glen Ellen asked him to, and that he affixed his name (dba Capello Vineyards) to the agreement only "because the [union] wanted to know who I was." (I:11-12.) The agreement itself is not in evidence, General Counsel having failed to move its admission. In finding what Hat did as a result of the meeting, I am relying on his testimony and not on the contents of the agreement. I also decline to be bound by Hat's testimony about the capacity in which he participated in the hearing since that is a legal conclusion.

[went] over who was going to be working there [and] how many people we needed...." (I:24.)

Sometime "about the middle of 1988," Heublein advised Glen Ellen that it would not renew the latter's lease at harvest-end in October. As a result, when harvest ended, Hat laid everyone off. Ordinarily, he would have kept a skeleton crew (about 3 or 4 people) to irrigate, clean up and put "everything away" for the next year. (I:37.)

At this point, Hat was not certain whether he would be retained by Heublein and he pressed Heublein "whether or not [he] could be hired." (I:14.) According to him, it was not until shortly before pruning began in mid-January that Heublein told him he was hired. However, UFW crop manager Francisco Cahue was informed by Heublein sometime around the end of October 1988 that Heublein was already contemplating "leasing the vineyards" to Hat. As a result, Cahue wrote to Hat on January 19, 1989:

> On or about October 30, 1988, the Union received a letter from you in which you advised us that Glen Ellen and Capello were not going to continue the farming operations due to the termination of the lease with Heublein and that, for the same reason, you were terminating the Collective Bargaining Agreement between Glen Ellen and the United Farm Workers. On or about the same time, Mr. Robert Rossi, Representative for Heublein, informed us that the plans for the land were uncertain, but that Heublein was contemplating leasing it to you.

Hat further testified that serious discussions between and Heublein only began around the first of January and he was only asked to take charge of the pruning operation in mid-January. Whenever work actually resumed, Hat's agreement with

Heublein unambiguously runs from January 1, 1989.

Although Cahue's account of Rossi's statement is hearsay, it came in without objection and is sufficient to find that the union had intimations that Hat would have some future role in the vineyards. And if the union had intimations, it seems more likely than not that it was no surprise to Hat that Heublein retained him. This conclusion, combined with the January 1st effective date of the agreement between Hat and Heublein, implies that there was no radical discontinuity between Glen Ellen's and Heublein's operations. It may be that Heublein considered hiring other "managers," all I know is that Hat was an early candidate and was chosen.

Hat and Heublein's agreement is in evidence. It provides that Hat is "to farm and manage" Heublein's San Benito county properties, to which ends he is engaged as "an independent contractor" to "perform all acts and services which may be necessary or desireable to farm and manage the Vineyards in a good and farmerlike manner." His duties and responsibilities include:

> (i) Exercise of overall management and supervision of the care and cultivation of the Vineyards;
>
> (ii) Budding, irrigating, tilling, discing, weed control, thinning, training, pruning, typing, grafting, planting, replanting and repair of trellises;
>
> (iii) Applying any and all fertilizers and other nutrients which may be necessary or desirable;
>
> (iv) Applying any and all pesticides, including fungicides, insecticides, herbicides and;
>
> (v) Operating in a timely manner all frost protection

arid cooling systems now or hereafter located on the Property;

(vi) Removing diseased vines and planting new vines, subject to the provisions of Section 1.3 herein;

(vii) Harvesting of grapes grown on the Vineyards and delivery thereof to such point of delivery as Owner shall designate;

(viii) In complying with all federal, state and local laws, regulations and requirements which are now or may hereafter be in effect, including without limitation all estate bottling laws and regulations;

(ix) Otherwise taking all actions and performing all services which are reasonably necessary or desirable in order to permit Owner's grapes to meet the most current grape quality standards of Owner applicable to the Vineyards;

(x) Consulting with the Owner or Owner's agents, as provided in Section 1.3. below, and furnishing reports and plans as provided in Section 1.4 and 1.5 below;

(xi) Furnishing all of the labor, supervision, equipment, materials and supplies necessary or desirable in connection with the foregoing;

(xiii) And such other agricultural service as Owner may authorize form time to time.

Hat is further required to advise Heublein on a monthly basis, or as might become necessary, of the progress of the vineyards or of any significant action he has taken. Further, he is specifically authorized to take any prudent action in the event of an emergency without the consent of Heublein. Despite the broadness of Hat's responsibilities under the agreement, Hat testified that "Heublein keeps a tab on everything that I do" by having someone in the vineyards everyday and by sending a representative from the "main office" once a week. (I:29.) Under the Agreement, Hat is to prepare a written plan or a budget

for each vintage year which sets "forth in detail:"

> (i) The approximate amount of irrigation which Manager expects to undertake during the growing year in question under normal climate conditions.
>
> (ii) The approximately amount and types of nitrogen containing fertilizers and other nutrients which manager expects to apply during the period in question, and the expected times of application;
>
> (iii) Any significant change from pruning and vine training techniques used in the past, and any specific plans for thinning:
>
> (iv) Describe proposed projects of major emphasis, proposed major changes from previous operations; and recommend capital improvements;
>
> (v) Such other information as Owner may reasonably request concerning viticultural practices which may be followed by Manager during the period in question.

Curiously, although the agreement provides that Hat is to furnish labor and equipment at his own expense, the proposed budget makes no provision for either. Hat did testify that he is reimbursed for labor costs and for the costs of renting equipment he uses. It does not appear, then, that these direct farming costs, although omitted from the budget, come out of the per-acre fee he receives for his services.

Pursuant to the plan, Heublein advances enough money on or before the fifth of each month to cover each month's budgeted expenses; before the same deadline, Hat is to submit a written statement to Heublein detailing the direct farming costs he has incurred. Advanced funds not spent or spent for unapproved purposes are credited against the next month's advance.

The Agreement also clearly seeks to designate Hat the employer of all labor.

> 8 . 6 Labor and Equipment. Manager shall be solely responsible for selecting and hiring its own employees and for their supervision, direction and control. Moreover, Manager shall be solely responsible for setting wages, benefits, hours and working conditions for such employees; for furnishing, during the entire period of this Agreement, workers compensation insurance coverage; for paying wages and social security; for paying unemployment insurance and disability insurance contributions; and for withholding taxes with respect to such employees. It is specifically agreed that Owner shall not be responsible for any of the undertakings set forth in this paragraph relative to Manager's employees.

While the agreement is ostensibly to continue through the completion of harvest 1991, it also provides that it may be terminated by either party pursuant to notice.[10] After Hat was hired by Heublein, he hired four or five labor contractors to do the pruning and tying. Around the time work started in the vineyards again (mid-January), the Union requested Hat to bargain. Hat did not respond. The Union again requested bargaining in March, 1989; again Hat did not respond because he "didn't have a contract with them." After Hat's refusal, the UFV7 filed charges and the purpose of these proceedings is to determine whether Hat has any bargaining obligation.

II

ANALYSIS

General Counsel contends that prior to the termination of the agreement between Glen Ellen and Heublein, both Glen Ellen

[10]The agreement is ambiguous on this point. One the one hand, it appears to provide for a two year term through the end of harvest 1991. On the other hand it specificaly authorizes the agreement to be cancelled pursuant to written notice given by November 5, 1990.

and Michael Hat were successors to Almaden; that when Heublein hired Hat to perform the same sorts of services in the same place which he provided Glen Ellen he was still a successor to Almaden. Respondent, on the other hand, contends that he is not even an agricultural employer with respect to the employees in the vineyards formerly owned by Almaden, let alone Almaden's successor. I will address the "agricultural employer" question in connection with Hat's relation to Glen Ellen first.

a.

Labor Code section 1140.4 defines an "agricultural employer" as:

> any person acting directly or indirectly in the interest - of an employer in relation to an agricultural employee, any individual grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns, leases or manages land for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor...and any. person functioning in the capacity of a labor contractor.

This definition has three parts: (1) a set of functional criteria which defines what an agricultural employer is ("any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee"); (2) the enumeration of certain entities specifically declared to be employers ("any individual grower, harvesting association, land management group, any association of persons or cooperatives engaged in agriculture and shall include any person who owns, leases, or manages land for agricultural purposes"); and, finally

(3) a set of persons, and functional criteria for identifying such persons, who are outside the definition ("any person supplying agricultural workers to an employer, any farm labor contractor...and any person functioning in the capacity of a farm labor contractor.")

Since the services provided by Hat—pruning, tying, spraying, harvesting--are included within the primary definition of agriculture, Labor Code section 1140.4(a), those who performed them are "engaged in agriculture" and are therefore, agricultural employees. Labor Code section 1140.4(b). And since the employees were indisputably agricultural, even if the owner of the vineyard (Heublein), or the lessee (Glen Ellen), are to be considered employers, Michael Hat, who was plainly acting in their interests, would also be an "employer."[11] And if it is not obvious that Hat's "acting in the interest" of the only other possible agricultural employers of the vineyard employees also makes him an agricultural employer, the services he provided, and which he described as "all the services...needed for the entire year to produce the grape crop" (I:8), clearly bring him within the scope of the second part of the definition, as one who "manages land for agricultural purposes." Despite Hat's qualification as an agricultural employer under the functional definition, and by virtue of his falling within one of the

[11]It is clear from the "acting directly or indirectly" language in the definition that the possibility of multiple "employers" is contemplated by the Act. See also, Rivcom Corporation v. Agricultural Labor Relations Bd. (1983) 34 Cal.3d 743, 769.

specific categories of employers named in the Act, Respondent urges that he is within the exclusionary language because he is a mere supplier of Labor. Post-Hearing Brief p. 15.

I cannot find Hat to be a labor contractor or a supplier of labor. Not only is there no evidence that he even holds a contractor's license, but also, if he is a mere supplier of labor, I don't know how to regard the labor contractors he hired. Respondent himself concedes that he "provides something more to the landowner than" labor, Post-Hearing Brief, p. 16. Generally speaking, our Board regards entities *as* employers when they do "something more" than provide labor. Indeed, the Board early developed the notion of a "labor contractor plus" in response to claims that merely holding a labor contractor license pat one within the labor contractor exclusion. How much more a contractor must to be an employer has never been precisely quantified, but it isn't much. Thus, in Kotchevar Bros. (1976) 2 ALRB No. 45, the Board held that the provision of small amounts of equipment was enough "more" to qualify a labor contractor as an employer. And in Jack Stowells (1977) 3 ALRB No. 93, the Board found that a labor contractor was "something more" than a mere contractor because he exercised managerial judgment and received a per acre management fee, both of which features characterize Hat in his relationship to Glen Ellen.

While Hat did not exercise sole managerial judgment with respect to Glen Ellen's operations it does not follow, as Respondent would have it, that he was not an agricultural

employer. Indeed, if sharing managerial control disqualified one as an agricultural employer, as Respondent's argument would have it, since Hat and Glen Ellen shared control neither could be considered agricultural employers, which is an absurdity. The consequences of Respondent's argument aside, Respondent overstates its case when it argues that because a representative of Glen Ellen came every other week "to direct" farming operations, that Glen Ellen exercised daily control over the vineyards. To the contrary, Hat described himself as providing all the services necessary to produce a crop. As the Board concluded in Napa Valley Vineyards (1977) 3 ALRB No. 22 "the fact that the company performs year-round farming operations indicates the owners have contracted with it to do more than just to provide [labor for a fee.] 3 ALRB No. 22, p. 16. Hat was an agricultural employer from 1987 through December, 1988.

b.

This does not end the inquiry for, even though Michael Hat qualified as an agricultural employer under our Act, it is a separate question whether he should have been considered "the employer" for collective bargaining purposes. When the Board recurred to the question of the status of labor contractors under the Act in Napa Valley Vineyards (1977) 3 ALRB No. 22, it introduced a distinction between simply being an employer and being the appropriate employer for collective bargaining purposes. After determining that the contractor named as the employer in that case could be an employer by virtue of its

functions, the Board buttressed its conclusion by next considering whether the collective bargaining obligation should be "assigned" to it:

> [W]e have focused on all of the functions of the company, that is, on what it actually does, to reach our conclusion that it is an agricultural employer within the meaning of Section 1140.4 of the Act. We further find it supports the purposes of our Act which includes the right of agricultural employees "to negotiate the terms and conditions of their employment"...to find this company to be the employer. Here it is the company and not the landowners, which determines the terms and conditions of the workers' employment and thus it best serves the interest of the workers to negotiate directly with the company as their employer.
>
> Napa Valley Vineyards 3 ALRB No. 22 at p. 12

Although this analysis appears as ancillary to the threshold "employer" determination, in cases after Napa Valley, the Board tended to focus on it and to fix the bargaining obligation upon the entity with "the substantial long-term interest in the ongoing agricultural operation." Rivcom Corporation and Riverbend Farms, Inc. (1980) 5 ALRB No. 55. By now, the distinction between being an employer and being the employer for collective bargaining purposes is firmly established. Thus, in S & J Ranch (1985) 10 ALRB No. 26 the board wrote:

> We have frequently dealt with the issue of the difference between a "mere" labor contractor ... and labor contractors who possess sufficient indicia of employer status to qualify as agricultural employers under the ALRA.
>
> * * *
>
> In the agricultural context we are governed by a statute that directs that labor contractors be excluded from the employer definition but that the definition of an employer should be broadly interpreted. Accordingly, we are often presented with more than one

> eligible employing entity. Our analysis then turns from a mechanical application of statutory language to a weighing of policy considerations.
>
> 10 ALRB No. 26, p. 5.

See also, Tony Lomanto (1982) 8 ALRB No. 44; San Justo Farms (1983) 7 ALRB No. 29. The overriding goal of such policy considerations is to attach "the collective bargaining obligation to the entity which will promote the most stable and effective labor relations." Tony Lomanto 8 ALRB No. 44, p. 6.

At this point in my analysis, having drawn this distinction, I must leave it aside for now, because if I understand General Counsel correctly, he is not contending that Michael Hat was the sole agricultural employer of the vineyard employees during the period of Glen Ellen's lease, but, rather, that Hat and Ellen were joint employers.[12] Thus, I do not have to choose between Glen Ellen and Hat as the agricultural employer.

The focus of a joint employer claim is whether two or more separate business entities "codetermine" the essential terms and conditions of employment of the employees in question. See, Andrews Distribution Company, Inc. (1988) 14 ALRB No. 19, p. 7.

[12]Although General Counsel does not make this argument directly, it is implied by his argument on the successorship issue: "The real issue in this case is not so much successorship, since both Michael Hat and Glen Ellen agreed to as much through the end of 1988...." Post-Hearing Brief, p. 5. While the primary thrust of this argument goes to the successorship question, it is clear from General Counsel's treating both Glen Ellen and Respondent as successors, that he must also be treating them as joint employers. Otherwise, he would necessarily be contending that two "different" employers simultaneously continued "the same employing industry," a contention which I have difficulty understanding.

Although the record is scanty, I believe it is adequate to support findings on the question. While it may be that, at the beginning of Hat's relationship to Glen Ellen, Hat alone was to control "labor relations", once the union demanded recognition, it is clear from Benzinger's and Hat's both meeting with the union, and the fact that Benzinger and Hat both sat down with the union to determine labor needs at harvest-time that Glen Ellen and Michael Hat "codetermined" employee relations in the vineyards.[13] Furthermore, Glen Ellen's ongoing operational presence in the fields, through either Benzinger or other representatives, also indicates that Glen Ellen and Hat were both "employers." (See Sierra Madre-Lamanda Citrus Assoc. (1940) 23 NLRB 140 which an owner of a packing house who managed and controlled it, supplied the money by which employees were paid, and supervised the quality of their work was held a joint employer with the supplier of labor.) I conclude that Hat and Glen Ellen were joint employers.

c.

All this has been prefatory to the ultimate issues in this case: were Hat and Glen Ellen in their capacity as joint employers successors to Almaden and, if so, did Hat remain the (successor) employer when Heublein replaced Glen Ellen as the owner of the crop?

The principle that a successor may be held to its

[13]In his brief, Hat claims he attended such meetings only to "effectively implement Benzinger's directions." Post-Hearing Brief, p. 4. This is a pure gloss on the record.

> predecessor's bargaining obligation is now well established. However, what constitutes a "successor" remains a point of controversy before both the Board and the courts. The determination of successorship turns on a number of related inquiries, all focused upon the degree of continuity between the old and the new employer's business enterprises.
>
> Morris, The Developing Labor Law 2nd Ed. pp. 712-713

Generally speaking, the major elements of the "substantial continuity" of the business enterprise test are: whether the business of both employers is essentially the same; whether the employees of the new company are doing the same job with the same working conditions under the same supervisors; whether the new entity has the same production process, produces the same products, and has basically the same body of customers. Fall River Dyeing & Finishing v. NLRB (1987) 482 U.S. 27, Gourmet Harvesting (1988) 14 ALRB No. 9.

General Counsel adduced no evidence about the business of either Almaden or Glen Ellen, but relies solely upon Glen Ellen's and Hat's rehiring the former bargaining unit members, and abiding by the terms UFW-Almaden contract to establish successorship. Although only two of the elements of this multi-factored test have thus been addressed (similarity of jobs and working conditions under the contract and similarity of production process and products, namely, producing grapes for wine), I believe successorship is established.

Since Hat and Glen Ellen began adhering to the Almaden-UFW collective bargaining prior to harvest (March 1987, see Prehearing Conference Order) and since harvest is ordinarily peak

employment in grapes, I infer that by the time Respondent's representative employee complement (peak) was achieved, all of its employees were former unit members.[14] While a more ample record about the nature of Almaden's and Glen Ellen's and Hat's overall operations would have been preferable, when a "successor hires a majority of his workers from [his predecessor] presumption arises that the successor's employees also support the union." Premium Foods, Inc. v. NLRB (6th Cir. 1983) 709 F.2d 623, 627, Fall River Dyeing and Finishing v. NLRB (1987) 482 U.S. 30. This presumption can only be rebutted by a showing that any changes which took place in the successor's operations would have changed employee attitudes toward representation. U.M.W. of America Local Union 1329 v. NLRB (D.C. Cir. 1987) 812 F.2d 741, 744, N.L.R.B. v. Cablevision Systems Development Co. (2nd Cir. 1982) 671 F.2d 737, 739. Since there is no evidence that any changes did take place, the possibility that they might have is not sufficient to rebut the presumption that the former unit members continued to support the union.[15]

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[14]It is true that it was only after the union took economic action against Glen Ellen that the former unit members were hired, but I don't see how the employer's reason for hiring the predecessor's employees alters the presumption about their attitude towards the union once they were hired. The question of continuity for labor law purposes is to be considered from their point of view. Gourmet Harvesting (1988) 14 ALRB No. 9.

[15]Even without the use of the presumption flowing from workforce majority, this sparse record is not much different from that relied upon by the Board in Alpert's, Inc. (1983) 267 NLRB 159, 161 to find successorship:

> On April 1, 1981, Respondent purchased the assets of Name Brand, at its eight retail home furniture stores

After Heublein terminated Glen Ellen's lease, and hired Hat in January of 1989, did Hat remain (1) the employer for collective bargaining purposes and (2) a successor to Almaden. Once again, I will consider the "employer" question first. I previously concluded that the distinction between being an employer and the employer for collective bargaining purposes was not so important during the term of Glen Ellen's lease since under General Counsel's theory of the case, I was not required to choose between the two. However, this distinction re-asserts itself in January 1989 for under General Counsel's theory of the case, Hat is now the sole employer of the employees in the vineyard; and so Respondent's argument that Hat is not an agricultural employer at all, construed as meaning that he is not the appropriate employer for collective bargaining purposes, is again germane.

It is clear from Heublein's ability to terminate its agreement with Hat, and Hat's comparative lack of stake in the

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in the northeast Ohio area and, without hiatus, continued the same business operations at the same locations. It sold the same type furniture to the general public in that geographical locale, From the outset, Respondent utilized the identical complement of warehousemen and finishers previously employed by Name Brand, in the same classifications and at the same locations. The wages, benefits, and working conditions of the unit employees remained the same. The new warehousing and distribution systems instituted by Respondent did not cause a change in the character of the work performed by the unit employees. Rather, their jobs remained the same, even if certain details were new. In these circumstances, I conclude ...Respondent was and is the successor employer to Name Brand, Inc.

operation of the vineyards, that a strong argument can be made that Heublein should be considered either as the agricultural employer outright or as a joint employer with Hat. The first alternative is consistent with the Board's decision in S & J Ranch (1985) 10 ALRB No. 26; the second is consistent with my earlier finding that Hat and Glen Ellen were joint employers since, as Hat emphasized, Heublein exerted even more day-to-day control over vineyard operations then did Glen Ellen. Both of these possibilities, however, are foreclosed because Heublein has not even been named in this case.[16] See Alasken Roughnecks & Driller Assn. v. NLRB (9th Cir. 197) 555 F.2d 732, cert. den. 434 U.S. 1069.

Despite these considerations, I conclude that Hat remained the agricultural employer of the vineyard employees. I have identified the goal of the Board's "statutory" employer analysis as that of providing stability to collective bargaining relationships. Since pursuit of that goal drives the Board's analysis, it seems anomalous to use cases arising in initial bargaining situations, and in which the Board is essentially making a prediction about the entity most likely to endure, as

[16]I find this curious. In a case marked by changes, (1) the sale to Heublein; (2) Heublein's lease to Glen Ellen; (3) Glen Ellen's hiring Hat; (4) Heublein's termination of Glen Ellen's lease; and (5) Heublein's hiring of Hat, Heublein stands at the center of each of them and would thus seem to be the natural focus of any inquiry which aims at stability. Heublein even appears in the picture during the terms of Glen Ellen's lease, since it permitted Glen Ellen to use old Almaden equipment and it made the wine for Glen Ellen. Moreover, a number of questions arise from Heublein's leasing the vineyards to Glen Ellen until the expiration of the UFW-Almaden contract.

requiring a finding that would terminate the collective bargaining rights of employees with an employer who has endured.

While this may appear to open the door to the arbitrary fixing of the collective bargaining obligation, that is not the case: Respondent is an agricultural employer, and I have found him to be a successor to Almaden in his capacity as a joint employer with Glen Ellen. Moreover, his own agreement with Heublein is constructed so as to make him the employer for all purposes. While I do not think the Board must defer to the parties' construction of their relationship, in this case it accords with Board policy to give the agreement effect. Thus, I find no reason to cease treating Hat as the employer even after his "joint" employer has ceased to be involved in the vineyards, and even though another entity with equal "claim" to being an employer has emerged. In this respect, Hat is no different from any other land management company which, once having been determined to be an employer, is hired by successive owners or lessees of agricultural property.

This still does not settle the question for the bargaining obligation continues only if the "employing emtity" may be said to have remained "continuous" from Almaden to Glen Ellen/Hat to Hat upon his employment by Heublein. I confess I cannot find any case like this. However, once having succeeded to Almaden's obligation, by virtue of his hiring a majority of its work force, I can see no reason to permit him to evade it when he provides the same sort of services in the same vineyards

to the owner, as opposed to the leasee, of the vineyards. I conclude that Hat's obligation to bargain continued, and that having adopted the contract from 1987 through 1988, he was not free to ignore it after January 1, 1989. (Morris, Developing Labor Law 2nd Ed. 744: a successor who adopts a labor contract is bound by it.) It follows that his hiring of labor contractors violated the Act.

ORDER

Respondent Michael Hat Farming Co., their officers, agents, representatives, successors and assigns shall:

1. Cease and desist from:

a. Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1155.2(c) with the UFW, as the certified exclusive collective bargaining representative of Respondents' agricultural employees at Michael Hat Farming Co.;

b. Failing or refusing to honor the terms and conditions of the UFW-Almaden contract;

c. In any other manner interfering with, restraining, or coercing agricultural employees in the exercise of the rights guaranteed them by Labor Code Section 1152.

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 their agricultural employees at

Michael Hat, Inc., and if an understanding is reached, embody such understanding in a signed agreement;

b. Make whole his agricultural employees for all losses of pay and other economic losses sustained by them as the result of his refusal to bargain, such amounts to be computed in accordance with Board precedent plus interest thereon in accordance with E.W. Merritt Farms (1988) 14 ALRB No. 5 for the period from January 1, 1989;

c. Refrain from unilaterally altering the terms and conditions of employment of his agricultural employees;

d. Preserve, and upon request, make available to the Board or its agents for examination and copying, all records relevant and necessary to a determination of the amounts due their employees under the terms of this Order;

e. Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondents shall thereafter reproduce sufficient copies in each languages for the purposes set forth hereinafter;

f. Post at Michael Hat Farming Co., copies of the attached Notice for 90 consecutive days at times and places to be determined by the Regional Director;

g. Provide a copy of the attached Notice to each employee hired during the 12-month period following the issuances of this Order;

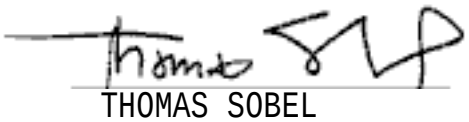
h. Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this

Order to all employees named in Appendix A to the First Amended Consolidated Complaint;

i. Arrange for a representative of Respondents or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondents on company time. The reading or readings shall be at such times and places as are specified 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 employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondents to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period;

j. Notify the Regional Director in writing, within 30 days from the date of issuance of this Order of the steps which have been taken to comply with it. Upon request of the Regional Director, Respondents shall notify him periodically thereafter in writing of further actions taken to comply with this Order.

DATED: September 28, 1990



THOMAS SOBEL
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that Michael Hat Farming, Co., had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing to notify and bargain with the United Farm Workers of America, AFL-CIO, our employees' exclusive bargaining representative, and by unilaterally changing the terms and conditions of employment. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT do anything, in the future, which restrains or coerces you or any other farm worker from doing or refraining from doing, any of the things listed above.

WE WILL offer to bargain with the Union and we will abide by the terms and conditions of employment in the expired contract until a new contract or impasse is reached.

DATED: MICHAEL HAT FARMING CO.

_____
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California 93907. The telephone number is (408)443-3161.
DO NOT REMOVE OR MUTILATE.