Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: TANIMURA AND ANTLE, INC., Respondent, and CALIFORNIA RURAL LEGAL ASSISTANCE, Charging Party, And JOSE M. FARIAS, Charging Party, and TEAMSTERS LOCAL 890, Intervenor.	Case Nos. 93-CE-41-SAL 94-CE-63-SAL 21 ALRB No. 12 (November 1, 1995)

DECISION AND ORDER

On June 30, 1995, Chief Administrative Law Judge (ALJ) Thomas Sobel issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions to the ALJ's Decision with a brief in support of exceptions and General Counsel and Charging Party California Rural Legal Assistance (CRLA) each filed response briefs.

The Agricultural Labor Relations Board (ALRB or Board) has considered the attached Decision in light of the record and the exceptions, responses, and briefs of the parties, and has decided to affirm the ALJ's rulings, findings, and conclusions,

and to adopt his recommended order of reinstatement with backpay for the 14 discriminatees named herein.[1]

In his Decision, the ALJ concluded that Respondent violated Labor Code section 1153(a)2 by failing or refusing to rehire 14 celery harvesters at the start of the 1994 Salinas season because they refused to work a portion of one day in the preceding season due to what they perceived as adverse weather conditions. He recommended that Respondent be required to restore the discriminatees to their former, or substantially equivalent, positions without prejudice to their seniority or other employment rights or privileges and to compensate them for wages or other economic losses resulting from the unlawful failure to rehire.

Concerted Activity

Respondent excepts to the ALJ's finding that the concerted refusal to work was protected, mainly on the basis of the employees' alleged failure or refusal to articulate the reason for their work stoppage; therefore, Respondent rightfully could and did assume that they had voluntarily quit and immediately replaced them. For the reasons discussed below, we find the exception lacking in merit.

/ / / / /

---

[1]The ALJ inadvertently provided for the "recall" rather than the "rehire" of the discriminatees. We have adjusted our order accordingly. We have also limited his provision for the mailing remedy to encompass a one year period, from June 20, 1994 to June 19, 1995.

[2]A11 section references herein are to the California Labor Code, section 1140 et seq., unless otherwise indicated.

The facts, briefly stated, are these: celery harvest supervisor Miguel Coronel testified that June 24, 1993 was unseasonably hot when foreman Fidencio Morales informed him by radio communication in mid-afternoon that the celery harvest crew comprised of 60 employees had stopped working. Upon reaching the Soledad work site, Coronel found some employees standing, others sitting. The supervisor declared that work was available for anyone who wished to continue working; anyone who didn't should board the bus in order to be driven back to the Company parking lot where crews meet to be transported to and from the work site. He observed 14 employees get on the bus.

Prepared to resume work, the 14 employees returned to the lot the next morning at the usual starting time only to be told by Coronel that they had already been replaced. They immediately proceeded as a group to the Company's offices to complain to Mike Antle, Respondent's co-owner. Antle testified he told them they had been terminated because they failed to explain to Coronel why they were reluctant to continue working. He compared them to some of their coworkers who also had left work early the day before, noting they were permitted to return to work that morning because they told the foreman the heat made them ill. Antle then declared that the Company "cannot tolerate people that aren't going to follow instructions" and explained that he considered their refusal to work an act of insubordination. He suggested to them that "down the road...if we ever need to hire new people...we will consider you for rehire."

Antle had been apprised of the work stoppage before meeting with the employees as Coronel had given him a telephone report of the incident the evening before. According to Antle, Coronel told him the entire crew had stopped working and that although the discriminatees failed to respond when he asked them why, the supervisor surmised that it was "because they didn't want to work in the heat...it was extremely hot that day...". Before directing Coronel to terminate the employees, Antle made certain that they were not needed, Coronel having assured him that, the harvest was in "good shape" and thus the disinclination of 20 percent of the crew to continue working after about 3 p.m. would not have impeded the normal production schedule.[3]

All of the employees resumed working for Respondent on July 9, 1993 after CRLA intervened on their behalf. CRLA later filed an unfair labor practice charge in which it was alleged that Respondent had discharged the employees because they had engaged in protected activity. Respondent, CRLA, and General Counsel subsequently entered into an informal settlement agreement in which Respondent denied liability, but nevertheless agreed to reimburse the 14 employees for wages lost prior to their reinstatement.

---

[3]CLRA has adopted the position that the discharge was discriminatorily motivated in response to the refusal to work and, additionally, was implemented in contravention of the Company's declared policy of issuing warning notices prior to actual termination. Assuming that he considered the employees' leaving to be a voluntary relinquishment of employment, Antle would not have believed that he was obligated to follow the Company manual insofar as it pertains to discharges.

Section 1152 (correspondingly, section 7 of the National Labor Relations Act (NLRA or national act)) grants employees the right to engage in concerted activity for mutual aid and protection, including the right to refuse to work in conditions they deem unsafe. In *Daniel International Corp.* (1985) 277 NLRB 795 [120 LRRM 1289], the National Labor Relations Board (NLRB or national board) found that four employees were engaged in protected conduct when they "discussed their mutual concerns about their discomfort and safety" and then refused to work for one day as a means of protesting the Company's refusal to permit them to leave the work site during a cold rainstorm. As the NLRB explained in that case,

> . . .we find that the employees' spontaneous refusal to work for 1 day in protest of unique and adverse working conditions, even in the face of a company policy requiring permission to leave the job, is protected by the Act. Such a single concerted walkout is presumptively protected, absent evidence that the work stoppage is part of a plan or pattern of intermittent action inconsistent with a genuine withholding of services' or strike.

Similarly, in *McEver Engineering, Inc.* (1985) 275 NLRB 921 [119 LRRM 1219] , the national board found the employer to have engaged in an unfair labor practice when it discharged seven employees who refused to work "in what they perceived as unsafe working conditions [working high off the ground in rain] ." The NLRB viewed the refusal to work as a one-time event, depriving the employer of their services for a short time until weather conditions improved, and thus did not render the stoppage an unprotected "partial strike." In yet another case, four employees

declined to work in rainy weather and discussed their mutual concerns among themselves before walking off the job. Their refusal to work as a means of protesting "uncomfortable working conditions" was deemed concerted and protected. (*Hudson T. Marsden* (1982) 259 NLRB 909 [109 LRRM 1047].)

We find the authorities discussed above dispositive, and therefore must also find, in agreement with the ALJ, that the employees who left work did so concertedly for mutual aid in regard to their working conditions.

In reaching our conclusion, we considered, but rejected, Respondent's contention that the employees' alleged failure to respond when Coronel asked them why they weren't working invalidated any statutory protection otherwise available under the Act. The ALJ found that the discriminatees had implored their immediate foreman, to no avail, for a break until the weather cooled because they were experiencing heat induced illness and ultimately persuaded him to summon Coronel. He also credited the testimony of an employee witness who offered Coronel a similar explanation. We concur in the ALJ's observation that Coronel must have, independently or otherwise, ascertained the reason for the employees' discomfort and indicated as much to Antle who testified that Coronel had probably figured out for himself why the employees were reluctant to work.

Notwithstanding the Board's concurrence with the ALJ, the Board is sensitive to the exigencies inherent in the production of agricultural commodities which may require an

employer to protect the harvest of a perishable commodity by acting quickly to assure itself of an adequate labor pool, particularly where there is a history of rapid employee turnover and lack of workforce stability. In such circumstances, an employer may be able to persuasively demonstrate to the Board that there was a reasonable basis by which to assume that they were indeed relinquishing their employment and therefore it was appropriate to replace them. That, however, was not the situation here. Employees with a history of continuous employment were terminated immediately following their exercise of statutory rights in order to protest working under what Respondent clearly understood was a temporary condition. Moreover, by Respondent's own assessment, the season was just getting started and the brief loss of the discriminatees would not have interfered with the harvest schedule. Thus, there appears to have been no need to immediately hire replacement workers.

Failure to Rehire

The ALJ found that Respondent avoided rehiring the discriminatees at the start of the 1994.Salinas celery harvest season by circumventing its own long established hiring practices. While Respondent concedes that all of the discriminatees were present and properly applied for work on the first two days of the relevant season, it contends they were not included in either of the two crews assembled on those dates simply because there was no work for them at that time. We find no merit in the exception.

/ / / / /

Respondent grows and harvests celery in Oxnard and Salinas. According to Antle's testimonial account, consistent with the Company's employee handbook, employees who are willing to work in both locations are granted super-seniority status. Thus, employees who apply for work in Salinas, and who have completed the immediately preceding Oxnard season, are entitled to first preference in hiring. The next order of hiring takes in those who work only in Salinas, but who finished the prior Salinas season. All of the discriminatees completed the prior Salinas season and thus were entitled to consideration when the second tier of employees were given work assignments. None were hired. The question before the Board is whether they were not rehired because, as Respondent asserts, there was no work for them[4] or because they were passed over for hirees with lesser status for

---

[4]Respondent asserts that since the discriminatees had completed the prior Salinas season in Crew No. 3, and since Respondent had no need for a third crew on June 20 and 21, it was not obligated to consider the discriminatees for placement in either of the first two crews which it did assemble on those dates. The argument is unpersuasive. The suggestion that an employee's crew position in one season completely controls placement in a subsequent season belies the testamentary description of the hiring policy described by Antle, as discussed above and as reflected in the Company's employee handbook. Because super-seniority employees were late in reaching Salinas for the start, of the 1993 season due to a late Oxnard harvest, all of the discriminatees were hired into Crew No. 1, and later reassigned to other crews. When the discriminatees were reinstated following their June, 1993 discharge, Respondent explained that they were placed in Crew No. 3 because Crews Nos. 1 and 2 were filled, suggesting that they could have been assigned to spots in the other crews had there been vacancies. Even were we to accept Respondent's present description of its hiring policy, that would not account for two of the discriminatees who had worked Crew No. 2 in the 1993 season (i.e., Angel Mendoza and Barreto Martin Valencia).

purposes of rehire. We need only examine Respondent's payroll records for June 20 and 21, 1994, when Crews l and 2, respectively, were assembled, to resolve this question.[5]

On June 20 and 21, Respondent hired 69 employees and

---

[5]The Board examined only the first two days of the relevant season when Respondent contends the discriminatees applied for work, but there was no work available for them. In its exceptions to certain of the ALJ's findings concerning the seniority status of certain employees, Respondent contends that the ALJ incorrectly found that three employees who were hired at the start of the 1994 season had not worked during the close of the prior season, They are Jesus Sanchez (10373), Jesus Betancourt (3573) and Ilario Castro (3734) . However, each of those employees was hired on June 22, while our analysis is based only on July 20 and 21, the two days on which the discriminatees were present and available for work and should have been hired had Respondent adhered to its own rehire policy. Respondent also contends that the ALJ erred in citing additional employees whose names he could not locate on crew records for the preceding season. Respondent is correct inasmuch as the ALJ apparently relied on the week ending payroll records for the entire first week of the 1994 harvest whereas, consistent with ALRB precedent, the controlling dates herein would be the dates on which the discriminatees actually applied for work. The names submitted by Respondent are Cristobal Bravo (3582), Roberto Bravo (3591), Luis Rodriquez Martinez (3769), Jose Fuentes (9195), Luis Alcala (2040), Ramon Garcia (4730), Samuel Morales (5428) , and Maximo Soria (5777) . As we agree that the following completed the 1993 season in either Oxnard Celery 1 (Luis Rodriquez Martinez and Samuel Morales), Salinas Celery l (Cristobal Bravo, Jose Fuentes) , Salinas Celery 2 (Jose Luis Alcala, Ramon Garcia, Maximo Soria) , and Salinas Celery 3 (Roberto Bravo), their names do not appear among the employees listed in Table A, above. The two remaining rehirees whose names Respondent contends the ALJ incorrectly determined did not qualify for hiring in preference to the discriminatees because their names do not appear on crew records for the prior season are Armando Renteria (4359) and Raul Velasquez Solis (10420). General Counsel agrees with Respondent as to Raul Velasquez Solis whose name also is absent from the list set forth above, leaving only Armando Renteria. However, Armando F. Renteria (4359), who Respondent correctly asserts worked in Salinas Celery 1 through the end of 1993 does not appear to have been hired on either June 20 or 21. Therefore, his status would not affect our conclusion that there were sufficient positions within Respondent's rehire policy to have accommodated all of the discriminatees on the two days at the beginning of the season when they did indeed apply for work.

assigned them to Crew No. 1. On June 21, Respondent formed Crew No. 2 with 26 newly hired or rehired employees and the transfer of 19 employees who had been hired and placed in Crew No. 1 the day before. Of the 95 or 96 employees so hired while the 14 discriminatees were present and available for work, our review of the payroll records shows that at least 18 of them failed to meet any of the criteria Respondent asserts is the basis for preferential rehirings. The names of those employees (and their corresponding employee numbers to aid in identification) who appear to have been hired outside the parameters of Respondent's rehire policy are set forth in the attached Table A.[6]

In sum, we have found that, in effect, the failure to rehire is directly correlated to Respondent's failure to adhere to its announced policy governing start of season hirings.[7] As a

---

[6]Due to occasional overlaps between the end of one season and the beginning of another, Oxnard area employees are permitted a grace period of three days in which to report for work in Salinas. In the relevant year, there was no overlap in seasons which explains why Oxnard employees who wished to work in Salinas were available at the start of the Salinas season.

[7]The ALJ utilized a similar method in arriving at the same result; i.e., that Respondent failed to follow its own prescribed policies governing rehiring inasmuch as the discriminatees were passed over for employees with lesser rights to rehire. Our analysis differs, however, insofar as we have limited our examination to the two days on which the discriminatees were present and available for work. Respondent does not have a recall policy, relying instead on employees calling its offices or contacting other employees to learn when work is expected to start. Therefore, in this instance, we adhere to established ALRB precedent which holds that for General Counsel to establish an unlawful refusal to hire or rehire, it must first be shown that the alleged discriminatees applied for work when work was available. (See, e.g., Prohoroff Poultry *Farms* (1982) 5 ALRB No. 9.) Once such a showing is met, General Counsel must then establish that the discriminatees were not hired, or rehired, due

result, employees who would have been eligible to receive the early work assignments under the original long-established policy experienced significant losses of employment. Respondent's denial that it altered established policy is contrary to the record evidence, and therefore, its proffered justification for the failure to rehire is found to be pretextual. By failing or refusing to hire the celery harvest workers, allegedly because there was no work for them when the real reason was their concerted refusal to follow Coronel's directive to resume working, Respondent engaged in discrimination within the meaning of section 1153(a) of the Act.

ORDER

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

1. Cease and desist from:

(a) Refusing to rehire, or otherwise discriminating against, any agricultural employee for engaging in protected concerted activity.

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

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

---

to reasons proscribed by the Act.

(a) Offer to the following individuals immediate and full reinstatement to their former or substantially equivalent position, without prejudice to their seniority or other employment rights or privileges:

Martin Castillo	Angel Mendoza
Jose Farias	Efrain Mendoza
Victor Gomez	Gonzalo Mora
Jaime Gonzales	Arturo Sanchez
Miguel Guerra	Norberto Sanchez
Ramiro Guerra	Martin Valencia
Simitrio Lopez	Jesus Vega

(b) Make whole the above-named individuals for all losses of pay and other economic losses they have suffered as a result of Respondent's unlawful failure or refusal to rehire, the makewhole amount to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with our Decision and Order in *E. W. Merritt Farms* (1988) 14 ALRB No. 5.

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

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of the Order, to all agricultural employees employed by Respondent at any time during the period from June 20, 1994, to June 19, 1995.

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

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages to all of its agricultural employees on company time at time(s) and place (s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and 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 work time lost at this reading and the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to

/ / / / /

report periodically thereafter, at the Regional Director's request until full compliance is achieved.

Dated: November 1, 1995

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

TABLE A

Employees hired on June 20 and 21 at the start of the 1994 Salinas harvest, but for whom the ending 1993 payrolls do not reflect that they completed the preceding Oxnard or Salinas harvests:

Employee	Number
Martin Ramirez	1253
Daniel Bravo	3585
Griseldo Rivas	4226 or 9226
Gerardo Hernandez J.	5415
Guadalupe Arias Jose	8893
Cruz Ernesto Esparto	10309
Raul Martinez Juan	10390
Andrade Manuel	10499
Hernandez Victor	10500
Viveros Juan Perez	10503
Salvador Munguia	10615
Salvador Sanchez	3058
Jesus Hernandez	5565
Panfilo Perez Jose	5915
Melgoza Gonzalo	10303
Sanchez	10369
	10502
	10584

CASE SUMMARY

Tanimura & Antle, Inc.
(CLRA, Farias, Teamster Local 890)

21 ALRB No. 12
Case Nos. 93-CE-41-SAL
94-CE-63-SAL

Background

Respondent grows and harvests celery in Oxnard and Salinas. Employees who work through the end of the Oxnard harvest are accorded first preference in hiring should they seek work at the beginning of the following Salinas season. The next preference in hiring goes to employees who work only in Salinas, provided they completed the previous Salinas season.

Shortly after commencement of the 1993 Salinas season, an entire harvest crew of approximately 60 employees stopped working one afternoon because of unseasonably hot weather. Their harvest supervisor directed them to resume working or leave the fields. Fourteen of them boarded the Company bus which returned them to the parking lot where employees are picked up and dropped off daily. When they returned to the same lot the next morning prepared to resume work, they were not permitted to do so. They complained to one of Respondent's principals who considered their refusal to work a voluntary relinquishment of employment as well as an act of insubordination for failing to resume working when so directed by their supervisor. At the urging of California Rural Legal Assistance (CRLA) whose help the employees solicited, they were reinstated approximately two weeks later and completed the season.

The subsequent Salinas season began on June 20, 1994 with the hiring of one crew. A second crew was added the next day. The 14 employees who had engaged in the 1993 work stoppage sought work on both days. None was hired.

Decision of the Administrative Law Judge

Following the filing by CRLA and one of the discharged employees of an unfair labor practice alleging that the employees were denied rehire because of their concerted work stoppage, General Counsel issued a complaint which was the subject of a full evidentiary hearing before an Administrative Law Judge (ALJ). The ALJ found that the employees had advised their foreman that they could not continue to work because of the heat, that they did so concertedly for mutual aid and protection in regard to a working condition, and therefore their conduct was statutorily protected. The ALJ considered, but rejected, Respondent's contention that they were not hired simply because there was no work for them when they applied for work, finding instead that Respondent altered its establishing hiring policies in order to avoid rehiring the discriminatees in retaliation for their conduct in the prior season. The ALJ found that the discriminatees were passed over for

employees with a lesser entitlement to rehire under the declared policy.

Decision of the Agricultural Labor Relations Board

The Board affirmed the findings and conclusions of the ALJ, and adopted his recommendation that Respondent be directed to reinstate the discriminatees with backpay.

* * * * * * *

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

* * * * * * *

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that alleged we, Tanimura and Antle, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by refusing to rehire employees for engaging in protected concerted activities.

The ALRB has told us to post and publish this Notice.

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 a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether you want a union to represent you or to end such representation,-
4. To bargain with your employer about your wages and working conditions through a bargaining representative 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.

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

WE WILL NOT fail or refuse to rehire employees who engage in protected concerted activities.

WE WILL make whole those employees who were not rehired during the 1994 Salinas season for any economic losses they suffered as the result of our unlawful acts.

DATED:

TANIMURA AND ANTLE, INC.

By: _____
(Representative) (Title)

If you have any questions 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, CA 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

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case No. 94-CE-63-SAL
	)	
TANIMURA AND ANTLE, INC.,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
CALIFORNIA RURAL LEGAL ASSISTANCE,	)	
	)	
Charging Party,	)	
	)	
JOSE M. PARIS,	)	
	)	
Charging Party,	)	
	)	
and	)	
	)	
TEAMSTERS LOCAL 890,[1]	)	
	)	
Intervener	)	
	)	

DECISION OF THE ADMINISTRATIVE LAW JUDGE

[1]Although Teamsters Local 890 formally intervened, it did not appear at the hearing and filed no brief of its own.

This case was heard by me in Salinas, California on April 25, 26, and 27, 1995. General Counsel alleges that Respondent, an admitted agricultural employer, refused to rehire Martin Castillo, Jose Farias, Victor Gomez, Jaime Gonzales, Miguel Guerra, Ramiro Guerra, Simitrio Lopez, Angel Mendoza, Efrain Mendoza, Gonzalo Mora, Arturo Sanchez, Norberto Sanchez, Martin Valencia, and Jesus Vega for the 1994 Salinas celery harvest because of their protected concerted activities. Respondent contends the men were not rehired when it eliminated its least seniority crew for the 1994 Salinas celery season for legitimate business reasons.

BACKGROUND

Respondent is a grower-shipper of, among other crops, celery. All the alleged discriminatees in this case were celery harvest workers.[2] Respondent ordinarily harvests celery in Oxnard from the first week of December until the first week of June, but, depending on the weather, the Oxnard season may extend through the first week of July. When it does, it may overlap the beginning of the Salinas harvest, which generally runs from late June until the first week of December.

All the employee witnesses who testified described learning about the start of a season by word of mouth from other employees. Apparently, a number of employees periodically call

[2]For convenience, I will not continue to iterate that the harvest work at issue is the Salinas celery harvest; from now on when I speak of the celery harvest, *I* will be speaking of the Salinas celery harvest unless I specifically state otherwise.

Respondent's office to find out when Respondent would be making up its Salinas' crews and these few employees spread the word about the start of the season. Informal as the system is, it works: employee witnesses typically testified they knew when the Salinas season was supposed to begin. The same technique is used when Respondent needs more men: it sends word through the members of its crews. As Antle testified, "it's just like a big gossip pool...and everyone knows who's heavy...." 1:44

Prior to the 1994 Salinas season, Respondent had' three harvest crews in Salinas, referred to simply as nos. 1, 2, and 3.[3] It is undisputed that Crew 1 would be the first to be put to work.[4] Respondent's Vice-President, Mike Antle, testified that Crew 1 would be filled according to the following protocol: 1) first preference would go to employees coming from the Oxnard harvest, who would have three days to claim their places; 2) second place would go to employees who "finished"[5] the Salinas

[3]Antle testified they only put on a third crew in midsummer, 1993; a number of the discriminatees testified, they worked in the third crew as early as 1987. Compare: Antle 1:16

[4]That it was the first to be put to. work does not imply that it was composed of the "longest-term" employees. Indeed, "seniority" attaches only to employees who finish the previous season; by way of example, an employee who worked for Respondent for the 1992 Salinas season only, but who finished that season, has greater "area seniority" for the subsequent 1993 season than an employee who worked in Salinas from 1987-1992, but who did not finish the 1992 season.

[5]Since employees moved from crew to crew, it is not entirely clear if "finishing" the season in Crew l so as to be entitled to area seniority in it required one to work the entire season in Crew 1 or only the last week in it. As a result, General Counsel and Charging Party ascribe Crew l seniority to different employees than Respondent does. Because of the stringency of Respondent's "break-

harvest the year; 3) finally new employees would be hired. Respondent's witnesses referred to the preference for the Oxnard employees as superseniority[6], and the preference for employees who finished the previous Salinas season as area seniority.[7]

In practice, however, crews were not always filled in the above-described order. Thus, in 1993, Crew 1 was made up of people with Salinas area seniority only, and employees coming from Oxnard were placed in Crews 2 and 3 as they arrived because the Oxnard season had not ended when the Salinas season began, 111:253. Indeed, all the alleged discriminatees in this case were put in Crew 1 at the start of the 1993 season.[8] Antle explained, however, that as superseniority employees arrived in Salinas, "there would [have been] a juggling of employees", and that employees in Crew 1 with area seniority only would not "necessarily" remain there.[9]

---

in-service" policy, I am assuming without deciding, that "finishing" the season in a crew means "working the whole season in it."

[6]I have frequently encountered a similar hiring preference for employees who move from area to area, it is generally referred to as "company", as opposed to area seniority.

[7]Miguel Coronel, Respondent's Celery Harvest Supervisor, testified that employees who own homes in Salinas would be recalled before employees coming from Oxnard who do not finish the Oxnard season, see 1:54. Thus, according to Coronel superseniority only "attaches" to employees who "finish the season"; this is consistent with Respondent's "area-seniority" principle.

[8]Only Gonzalo Mora and Miguel Guerra were members of Crew 1 during the 1992 Salinas season.

[9]Such juggling is consistent with Respondent's written Personnel Policy which provides that "[i]n case of overlapping seasonal operations, an employee having seniority in more than one area [superseniority] shall not lose his/her seniority so long as he/she works in the area to which he/she is assigned by the company."

THE DISCRIMINATEES' CONCERTED ACTIVITIES

As noted earlier, in 1993 all the discriminatees were assigned to Crew 1. On June 24, 1993, Crew 1 was working somewhere near Soledad.[10] Everyone agrees that it was an extraordinarily hot day. The crew repeatedly asked foreman, Fidencio Morales, if they could take a break and resume work when it was cooler. Morales told them to keep working. They asked him to call his supervisor, Miguel Coronel, to see if he would authorize a break. Morales told them Coronel was unreachable by radio. Sometime in mid-afternoon, the entire crew stopped'working because of the heat. I:67 [Coronel]; I:126 [Mora].

Shortly after the crew stopped, Coronel, who had, in fact, been called by Morales, I:65, arrived. He asked why they had stopped. According to Gonzalo Mora, he told Coronel it was too hot. Mora testified that a number of other workers, including Jaime Gonzales and Gonzales' brother, also complained about the heat. Jaime Gonzales testified that he said nothing, but he remembered Mora explaining to Coronel that it was too hot to work. Jesus Vega and Jose Farias testified that several of the workers, including himself, complained about the heat. Under cross-examination, Mora admitted that he didn't speak up right away, but he testified that he didn't have to because other workers complained about the heat. Coronel's version of events is not much different from that of the discriminatees except that,

---

[10]The incident I am about to relate was the subject of an unfair labor practice complaint which was formerly consolidated with this case and which was settled by the parties. It is being utilized in this case as background and to establish knowledge of the concerted activities of the fourteen named discriminatees. See, Roberts Farms (1983), 9 ALRB No. 27, n. 3

according to him, not only did Fidencio not know why the crew stopped, but also the employees refused to tell him the reason when he confronted them.

In view of the employees' uncontradicted testimony that they complained to Fidencio about the heat, and the added fact that Coronel came to the field in response to Fidencio's telling him that the crew had stopped work, it seems more likely than not, and I so find, that Morales also told Coronel why they had stopped. Even if Fidencio did not tell Coronel, I find in accord with the employees' fairly uniform testimony that they made it known to Coronel why they had stopped work.[11]

It is undisputed that Coronel told "whoever did not want to work" to go to the bus,[12] and that the fourteen alleged discriminatees boarded the bus. That evening, Coronel told Mike Antle what had happened. Antle testified he told Coronel not to put them back to work because he considered the fourteen to have quit.

The next morning, the fourteen arrived as usual at the parking lot where they met the bus to the fields. Some of the crew had already boarded the bus when Morales announced that

---

[11]Althcugh, as noted, Coronel testified that no one answered him, and the employees testified inconsistently about who answered him (with, for example, Mora's saying Gonzales spoke and Gonzales denying that he did), it seems unlikely that employees who wanted their foreman to speak to Coronel about taking a break, would refuse to state their case to Coronel upon his arrival.

[12]It is undisputed that another group of employees complained about the heat and were permitted to go home. Antle testified that these employees went home "earlier" than the fourteen, see I:30.

anyone who had left work the day before had to talk to Coronal. The group sought out Coronel who told them he wouldn't put them back to work. The group went to the office to speak to Mike Antle.

Antle told them that he was standing by the decision of Coronel. Mora objected that they couldn't work because of the heat; Antle told them that they were there to work, and that if they didn't want to, they shouldn't come to work. He told them they could complain where they liked, he would not put them back to work. I find the fourteen were terminated.[13] The fourteen sought help from California Rural Legal Assistance.

The fourteen were called back to work and placed in Crew 3 on July 9, 1993. Antle put them back to work after he was contacted by California Rural Legal Assistance.[14] After being returned to work on July 9, the discriminatees filed a complaint with the Labor Commissioner about not being paid within 72 hours of their termination on June 24. This complaint was settled in

---

[13]Antle spoke of having "replaced" the employees; he also testified that he told Coronel the previous evening to prepare their checks; the employees testified they were told they were terminated.

[14]In Charging Party's and General Counsel's Post-Hearing Brief, much is made of the fact that the fourteen were not reinstated to Crew #1 when they returned to work. As noted above, the employees were originally reinstated pursuant to an agreement between Respondent and CRLA; no evidence was presented that the agreement required them to be returned to Crew #1. Pursuant to charges filed by CRLA, General Counsel issued a complaint alleging that terminating the employees was an unfair labor practice. That case was settled prior to hearing. The settlement does not require restoration of the employees to Crew #1. See, Settlement Agreement, Case # 93-CE-41-SAL.

November with Respondent's incurring monetary liability. The discriminatees worked until December 4th, the end of the 1993 Salinas season.

Respondent again failed to pay them within 72 hours of their last day. On December 21, 1993, CRLA demanded Respondent pay penalties in the amount of $336 for each of the fourteen discriminatees.[15] On February 7, 1994 Respondent remitted the penalty amounts to CRLA.

THE 1994 REFUSAL TO REHIRE

None of the fourteen worked the winter 1994 Oxnard harvest. The Oxnard season had already ended when the Salinas season started June 20, 1994. All fourteen discriminatees reported to the parking lot where the crews were being made up. It is undisputed that only Crew 1 was filled that day and that none of the alleged discriminatees was placed in it.

Antle initially testified that the crew was composed "primarily, if not entirely" or by at least "a majority" of Oxnard employees with superseniority, I:34. He re-emphasized this hiring order when he testified that, if Coronel were not personally present on the first day of the 1994 Salinas season, Coronel would have instructed "the bus driver or the foreman who would have been there. And he would have been relaying my instructions to him, which were that we were going to be downsizing and that it was very important to only hire the guys with superseniority that came

[15]CRLA also suggested Respondent pay late penalties to any other members of the discriminatees' crews or any of Respondent's employees who received late payment.

up from Oxnard and then the guys in crew one. " I:35.

Upon being recalled by his own counsel, Antle added additional criteria for filling the crew: "superseniority employees who came up from Oxnard . . . were first. Then members of crew one, members of crew two, and then members of crew three,"[16] III:257. Jesus Vega testified similarly: according to him, Coronel told the employees that day that if Crew *1* were not filled after accommodating the superseniority and the Crew 1 area seniority employees, remaining positions would be filled by Crew 2 employees, II:163.

Coronel testified that he was not present on the first day of the harvest and that Fidencio Bravo put together the first crew. Antle originally testified he thought Coronel was there, but then corrected himself to say he was not sure, I:35. Other alleged discriminatees testified Coronel was not there, see, e.g., I:109. In view of the consistency in the Antle's and Coronel's testimony on this point, and the conflict in testimony among the alleged discriminatees, I find that Coronel was not present.

Although I find that Coronel could not have told Vega that remaining spots in Crew 1 would go to members of Crew 2, I nevertheless find that Antle's (later) and Vega's description of how the crew was to be filled more accurately describes Respondent's hiring policy than did Antle's original description. Since Crew 1 was the first to be hired, and Crew 2 the next to be

[16]Antle testified that no members of crew 3 were placed in Crews 1 and 2 during the first days of the 1994 harvest, III:257.

hired, it makes sense that any openings in Crew 1 which remained after employees with Oxnard seniority and Crew 1 area seniority were accommodated would be filled by members of Crew 2.[17] Indeed, we have already seen that Respondent filled Crew 1 in 1993 with a number of employees who had area seniority in other crews.

With Respondent's crew records in evidence for the relevant time period, I can determine if they demonstrate the seniority patterns Respondent contends it followed. Since it is undisputed that no members of Crew 3 were put in Crew 1, Respondent's records should show that every employee in Crew 1 in the first week of the Salinas harvest either: 1) finished the 1994 Oxnard season; or 2) finished the 1993 Salinas season in Crew 1 or Crew 2.[18] In Appendix A, I have listed in order of ascending employee number the names of all members of Crew 1 for the week ending 6/25/94; and 1) marked those who finished the 1993 season in Crew 1 or 2; and 2) noted whether or not their names appear in any of the three Oxnard crews for the week ending 6/18/94. Subtracting all the names in Appendix A who 1) finished the Salinas season in 1993 and 2) appeared on any of the Oxnard

---

[17]Although Vega has Coronel present when I have found he was not, I do not discount his testimony about the order the crew was to be filled: I consider it far more likely that he would have remembered how the crews were to be filled than who told him.

[18]Crew sheets for the first day of the Salinas season are contained in GCX 3; crew sheets for the last day of the 1993 Salinas season are contained in GCX 2; and crew lists for the Oxnard celery crews are contained in GCX 1. I should note that the crew lists supplied in GCX 1 do not indicate what days were worked during the last week of the Oxnard season and, therefore, do not necessarily show who "finished" the Oxnard season.

payrolls for the week before the start of the 1994 Salinas season, it appears that 9 employees did not meet these criteria. They are:

03582 Cristobal Bravo

03591 Roberto Bravo

03769 Luis Rodriguez

04354 Armando Renteria (possibly 4359)

08893 Guadalupe Arias

09195 Jose Fuentes

10373 Jesus Sanchez

10420 Raul Velazquez

10503 Juan Manuel Hernandez

The day after Crew 1 was put together, the second crew was put to work. It is undisputed that Coronel was present on. this day. According to him, the employees placed in Crew 2 were "the people that were left over from Crew number 1 and some people from crew number 2." I:63 The fourteen alleged discriminatees were present, along with a good many other members of Crew 3. Since, it is undisputed that no member of Crew 3, including the fourteen alleged discriminatees, was placed in it.

As I did with respect to Crew 1, so in Appendix B, I have listed the names of the members of Crew 2 for the week ending 6/25/94; and 1) marked those who finished the 1993 season in either Crew 2 or Crew 1; and 2) noted whether or not their names appear in any of the three Oxnard crews for the week ending 6/18/94. Again, subtracting all the names in Appendix B who fell into categories (1) and (2) it appears that 7 employees neither

finished the 1993 Salinas season nor worked in Oxnard. They are:

02040 Luis Alcala

03573 Jesus Betancourt

03734 Ilario Castro

04730 Ramon Garcia

05177 Maximo Soria

05428 Samuel Morales

10503 Juan Manuel Hernandez[19]

The discriminatees final contact with the company was on August 14, 1994, when they went to the office because they had heard that Respondent was going to open up *a* third crew. Besides the fourteen discriminatees, quite a few other members of Crew 3 were present. According to several of the alleged discriminatees, Coronel told them they had been thinking of opening the last crew but that the weather was not right. Although not directly asked if he ever said the weather was not right for a third crew, Coronel testified that he told the employees "that for the being [Crew 3] was not going to start", that they should keep checking, I:81.

In fact, Respondent never put on a third crew and Antle testified that he had any intention of doing so. According to Antle, sometime before the end of the Oxnard harvest at the latest, the company had decided to replace the third crew with a

[19]Hernandez apparently worked the first day in Crew 1 and transferred to Crew 2. In addition to him, Appendix B shows that four other employees, Lionel Arreguin, Jaime Avina, Javier Rubalcaba, and Sergio Sanchez also worked the first day in Crew #3

machine as a cost-cutting measure. As a result, Antle testified, he instructed Coronel at the start of the season that Respondent would not be using a third crew, I:35. Since Coronel knew of the efforts to adapt a lettuce machine for the celery, it seems far more likely to me that he would not have told anyone that it was too hot to put on a third crew, and I find that he did not.

The process of adapting a machine for the celery harvest began in Oxnard, and the prototype was actually tested in April or May. However, the machine was not ready for the start of the Salinas season. When the machine was ready around the first week of September, Respondent filled it with volunteers from Crews 1 and 2. Thirty-three employees eventually volunteered, mostly from Crew 2.

Antle also testified that Respondent knew that it could not perform all its 1994 harvest work with the two crews and the single machine. Indeed, Respondent planned a big "spike" in production around Thanksgiving and anticipated either hiring a labor contractor or selling the field to someone else to handle the expected harvest. In the end, Respondent decided to hire a labor contractor. This decision to do so was made approximately a week or two before this anticipated spike. Antle testified that he didn't put on another crew because he had sold the equipment needed for the harvest: thus, they didn't have either the forklift or the transfer buggy to support the additional crew. They did not rent the equipment because it was cheaper to hire the contractor to do the work and to supply the equipment. The contractor

Respondent used was Escamilla and Sons.

Jaime Gonzales and Arturo Sanchez testified that they worked in September for a labor contractor named SeaSun, which turns out to be Escamilla and Sons. Their foreman was Jesus Bravo, a former employee of Tanimura and Antle. Both men tell roughly similar stories: one day while working for SeaSun, they were told by Bravo that his crew was going to be split the following day with some employees staying where they were and others, including Gonzales and Sanchez, going to Tanimura and Antle fields, see, e.g., II:222; I:138.

Both employees testified that Bravo called them later that evening and told them they would not be going to Tanimura and Antle. About two weeks later, according to both men, they asked Bravo why he hadn't taken them to Tanimura and Antle and Bravo told him that Miguel said something to the effect that he didn't want "those two people." Bravo denied having any such conversation with Sanchez and Gonzales and Coronel denied ever telling Bravo that he didn't want the two men.

I decline to rely in any way upon Bravo's purported admission: Coronel could only have told Bravo not to move Gonzales and Sanchez to Respondent's fields if he knew they were working in Bravo's crew. In the absence of some sort of foundation laid for Coronel's knowledge of the makeup of Escamilla's crews, I do not understand how Coronel could have known that Gonzales and Sanchez would be coming to work for him the following day.

It is undisputed that some Crew 3 employees were

eventually placed in Crew 2. According to Coronal, they were employed because they continued to come to the fields to see if work was available. Antle, however, testified that the foreman might have told certain members of the crew that there would be a few openings. I:44. GCX 10, shows that during the week ending 10/18/94 Respondent placed 10 employees in Crew 2. Respondent's Manager for Human Resources, Joe Fink, explained that 10 of the employees placed in Crew 2 were brought over from Respondent's lettuce wrap operation;[20] and three other employees worked in the Oxnard celery harvest: Gonzalo Avina Sanchez, Javier Ramirez Rodriguez, and Jesus Manuel Hernandez. However, only Javier Ramirez Rodriguez appears on the payroll lists for the last week in Oxnard, GCX 1. Respondent's Personnel Policy handbook, GCX 4, indicates that celery crew seniority and lettuce crew seniority are different, See, GCX 4, p.8.[21]

ANALYSIS

To make out a violation of Labor Code Section 1153(a) , General Counsel must prove that the alleged discriminatees engaged in protected concerted activity, that the employer knew of their activity, and that there was a causal connection between that activity and the employer's action. CALIFORNIA VALLEY LAND CO. . INC.. AND WOOLF FARMING CO. OF CALIFORNIA. INC.. 17 ALRB No. 8. So far as the third, causal, element is concerned, the Board has

[20]These are the employees marked with an asterisk on Respondent's version of the Exhibit, RX 3.

[21]1 should add that Charging Party and General Counsel have purported to analyze the overtime hours for the 1994 season and contend that they show that Respondent worked more overtime and, therefore, that it really needed more employees. I have no idea whether or not any market variables accounted for these hours and I do not take them as indicators of discriminatory motive.

adopted the two-part test established in Wright Line, A Division of Wriqht Line. Inc. (1980) 251 NLRB 1083 (105 LRRM 1169), under which General Counsel must first make a prima facie showing sufficient to support an inference that protected conduct was a "motivating factor" in the employer's decision.

Once General Counsel has established a prima facie case, the Board distinguishes between two types of cases, so-called pretext cases and so-called dual motive cases.[22] In a pretext case, the employer has no credible and legitimate explanation for its action; in a dual motive case, the employer has a credible, legitimate business reason for acting as it did and the question then becomes whether or not it would have taken the same action in the absence of the employees' protected activity.

In this case, both General Counsel and Respondent rely upon Respondent's seniority system to make their respective cases with the important difference that General Counsel contends Respondent deviated from it to avoid hiring the fourteen alleged discriminatees while Respondent contends that, in neutrally relying upon it, it just so happened that the fourteen were not hired. The parties' focus on seniority entails two corollary results: first, in the absence of proof that Respondent deviated from its seniority practices, General Counsel fails to make out a prima facie case and the complaint must be dismissed; second, to the extent Respondent's business defense depends upon proof of

[22]When an employer's proffered justification for its action is found to be false, the national Board does not require a burden shifting analysis, Arthur Young and Company (1988) 291 NLRB No. 6

adherence to its seniority system, a finding that seniority does not account for the failure of the fourteen alleged discriminatees to be recalled means that Respondent's defense is pretextual.

Finally, since this case involves a refusal to rehire, it is also necessary to show that the alleged discriminatees applied for work when it was available. Since it is undisputed that the fourteen alleged discriminatees were present on both days when the two crews were put together, this part of General Counsel's case is satisfied.

Little extended discussion is required to consider the first two elements of General Counsel's case, the employees' protected activities and Respondent's knowledge thereof. The complaint to the Labor Commissioner and demand made by CRLA on behalf of the fourteen were clearly protected concerted activities and Respondent cotnmendably does not contend otherwise, see Hardin, Developing Labor Law, 3rd Ed. p. 145. So far as the incident in Soledad is concerned, the only real question is whether the employees' action was protected. Although Respondent does not specifically argue the point, I take it that the dispute over whether or not the employees told Coroiiel why they had stopped is meant to bear on the protected nature of their activities. Although I have found that the fourteen did tell Coronel why they had stopped work, even if they had not, the fact that Antle clearly knew why they had stopped work before ratifying Coronal's decision to terminate them means the discriminatees did not lose

the protection of the Act.[23] Accordingly, the first two elements of General Counsel's prima facie case -- protected activity and Respondent's knowledge thereof -- are readily established.

The question in this case reduces to the connection between the employees' activities and their failure to be rehired. Respondent disputes the existence of any connection on the grounds that General Counsel has not shown that the fourteen were "singled out" for adverse treatment in any way after their return to work on July 9, 1993. If nothing else had happened after the work stoppage, the fact that the fourteen returned to work in July without further incident would seriously weaken the inference of a causal connection between the 1993 work stoppage and the 1994 refusal to rehire.

But something else did happen: the two wage claims were likely to mark the fourteen as a continued source of irritation, and the fact that Respondent's crew records show

---

[23]The work stoppage in this case is surprisingly similar to that which motivated the employees in NLRB v. Washington Aluminum Co (1962) 370 U.S. 9. In that case, just as in this, a group of unorganized employees complained about the temperature --it was too cold --of their work place to their foremen who did nothing about it; on a particularly cold day they simply walked off the job. The Court held the walkout protected.

> We cannot agree that employees necessarily lose their right to engage in concerted activities under [Sec.] 7 merely because they do not present a specific demand upon their employer to remedy a condition they find objectionable. The language of [Sec.] 7 is broad enough to protect concerted activities whether they take place before, after, or at the same time such a demand is made. [370 U.S. 12]

that seniority does not account for the constitution of Crews 1 and 2 at the start of the harvest implies that other, hidden criteria governed their selection. That Respondent did not use a third crew does not explain why its ordinary seniority principles were not followed in making up the two crews it did use. When to these considerations is added Respondent's apparent change in the word-of-mouth recall system which, by substituting lettuce crew employees for celery crew employees, deprived Crew 3 employees of the opportunity to even apply for the ten openings which Respondent filled in October, the inference that Respondent systematically chose to avoid hiring any Crew 3 employees in order to avoid taking on the fourteen is strengthened. Accordingly, I find Respondent violated section 1153(a) and will order the appropriate remedies.

ORDER

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

1. Cease and desist from:

(a) Refusing to rehire, or otherwise discriminating against, any agricultural employee for engaging in protected concerted activity.

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

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

(a) Offer to the following individuals immediate and full reinstatement to their former or subsequently equivalent position, without prejudice to their seniority or other employment rights or privileges:

Martin Castillo	Angel Mendoza
Jose Farias	Efrain Mendoza
Victor Gomez	Gonzalo Mora
Jaime Gonzales	Arturo Sanchez
Miguel Guerra	Norberto Sanchez
Ramiro Guerra	Martin Valencia
Simitrio Lopez	Jesus Vega

(b) Make whole the above-named individuals for all losses of pay and other economic losses they have suffered>as a result of Respondent's unlawful discharges, the makewhole amount to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with our Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5.

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

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of the order, to all agricultural employees employed by Responder

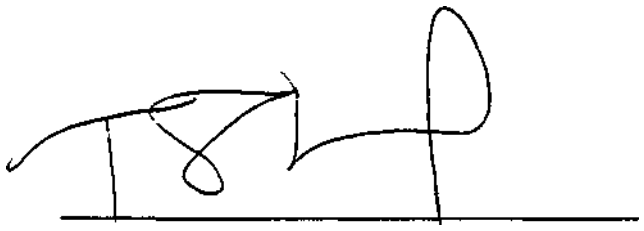
at any time during the period from June 20, 1994.

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

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages to all if its agricultural employees on company time at time(s) and place (s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and 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 work time lost at this reading and the question-and-answer period.

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

Dated: June 30, 1995



THOMAS SOBEL
Chief Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued *a* complaint that alleged we, Tanimura and Antle, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by refusing to recall employees for engaging in protected concerted activities.

The ALRB has told us to post and publish this Notice.

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.

WE WILL NOT fail or refuse to recall employees who engage in protected concerted activities.

WE WILL make whole those employees who were not recalled during the 1994 Salinas season for any economic losses they suffered as the result of our unlawful acts.

DATED:

TANIMURA AND ANTLE INC.

By: _____
(Representative) (Title)

If you have any questions 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, CA 93907. The telephone number is (408) 443-3225.

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

DO NOT REMOVE OR MUTILATE

APPENDICES

A.

List of Employees
in Salinas Crew #1
As of 6/25/94

An asterisk marks the employees who finished the 1993 Salinas season in Crew 1. Employees who finished the 1993 Salinas season in Crew 2 are marked in bold.

Employees whose names appear on the Oxnard payroll for the week before the start of the 1994 Salinas season on GCX 1 are underlined.

The names of employees not belonging to any of these categories are indented and capitalized.

02021 Pascual Arreguin Oxnard #1 - 6/18/94 (See GCX 1)
03437 Gabino Aguilera Oxnard #2 - 6/18/94
03505 Lionel Arreguin*
03522 Jaime Avina
03571 Arturo Betancourt*
03581 Crisanto Bravo*
03582 CRISTOBAL BRAVO
03587 Martin Bravo
03591 ROBERTO BRAVO
03718 Fidel Castillo*
03749 Martin Cazares*
03769 LUIS RODRIGUEZ
03817 Guadalupe Perez
03853 Daniel Bravo*
03858 Juan Perez
04044 Alfonso Mendoza*
04122 Jaime Mendoza*
04126 Javier Mendoza*
04144 Manuel Quinteros*
04162 Martin Mendoza*
04215 Gonzalo Ramirez*
04242 Manuel Ramirez
04253 Martin Ramirez* Oxnard #2 - 6/18/94
04354 ARMANDO RENTERIA (Possibly 4359)
04437 Rigoberto Farias*
04496 Anastacio Flores Oxnard #1 Oxnard # 1 – 6/18/94
04526 Jesus Rivera
04678 Jorge Garcia*
04905 Emidio Rodricruez-Jimenez Oxnard # 1 - 6/18/94
04909 Eloy Martiniano Eloy Rojos Oxnard # 1 – 6/18/94
05073 Javier Rubalcaba
05087 Miguel Gonzales*
05143 Sergio Gonzales*
<u>05323 Alfredo Salmeron*</u> Oxnard #2 - 6/18/94

APPENDICES (cont.) A.
(cont.)

05324 Gabriel Morales Oxnard #1 - 6/18/94 handwritten
05329 Gilberto Morales
05354 Arnulfo Sanchez*
05373 Benjamin Sanchez*
05400 Maximiliano Morales*
05413 Raul Morales* Oxnard #1 - 6/18/94
05463 Jorge Sanchez*
05555 Martin Sanchez*
05565 Salvador Munguia
05615 Gerardo Hernandez Oxnard #1 - 6/18/94
05746 Edaardo Navarette Oxnard #2 - 6/18/94
05912 Salvador Sanchez
05916 Seraio Sanchez Oxnard #2 - 6/18/94
06015 Rogelio Pros Oxnard #1 - 6/18/94
06142 Jose Torres*
06270 Fidencio Vasquez
06288 Roberto Vasquez*
06305 Gerardo Vega*
06361 Samuel Ysarraras*
06954 Guadalupe Vasguez Oxnard #1 - 6/18/94
07370 Josafad Velasco Oxnard #1 - 6/18/94
08893 GUADALUPE ARIAS
09055 Roberto Bravo*
09195 JOSE FUENTES
09196 Juvenal Zarabia
09207 Raul Nicolas Oxnard #1 - 6/18/94
09226 Griseldo Rivas* (possibly 4226)
10309 Jose Cruz Oxnard #1 - 6/18/94
10373 JESUS SANCHEZ
10390 Ernesto Esparza Oxnard #2 - 6/18/94
10420 RAUL VELASQUEZ
10499 Raul Martinez Oxnard #1 - 6/18/94
10500 Juan Lua Andrade Oxnard #1 - 6/18/94
10503 JUAN MANUEL HERNANDEZ
10615 Victor Viveros Oxnard #3 - 6/18/94

APPENDICES (cont.)
B.
List of Employees in Salinas Crew #2
As of 6/25/94

An asterisk marks the employees who finished the 1993 Salinas season in Crews 1 or 2.

Employees whose names appear on the Oxnard payroll for the week before the start of the 1994 Salinas season on GCX 1 are underlined.

The names of employees who do not belong to either category are indented and capitalized to distinguish them.

01373 Jesus Banuelos* Oxnard #2 -6/18/94
02021 Pascual Arreguin* (worked first day in #1)
02040 LUIS ALCALA
03490 Abel Arebalo Oxnard #2 –6/18/94
03522 Jaime Avina* (worked first day in Crew #1)
03571 Arturo Betancourt*
03573 Jesus Betancourt
03584 Daniel Bravo*
03587 Martin Bravo*
03734 ILARIO CASTRO
03769 Luis Rodriquez Oxnard #2-_6/18/94_
03817 Guadalupe Fernandez*
03858 Juan Perez*
03894 Constantino (?) Cornelo(?)*
03987 Antonio Cruz*
03996 Graviel Cruz*
04151 Jose Mendoza*
04157 Juan Mendoza*
04159 Paulo Quiros*
04181 Arturo Ramirez*
04242 Manuel Ramirez Oxnard #2 - 6/18/94
04366 Miguel Espinosa*
04374 Jorge Gonzales*
04496 Anastacio Flores Oxnard #l- 6/18/94
04526 Jesus Rivera*
04730 RAMON GARCIA
05073 Javier Rubalcaba* (worked first day in crew # 1
05177 MAXIMO SORIA
05329 Gilberto Morales*
05428 SAMUEL MORALES
05457 Joel Sanchez*
05520 Mario Moreno*
05565 Salvador Munguia* (worked first day in crew # 1)
05746 Edaardo Nabarette Oxnard #2 - 6/18/94
05910 Alfredo Macias*
05912 Salvador Sanchez*
05916 Sercrio Sanchez* (worked first day in Crew # 1)Oxnard # 2
05920 Victor Sanchez*

APPENDICES (cont.)
B. (cont.)

06063	Antonio Torralba*		
06270	Fidencio Vasquez*		
06276	Ramon Pamatz*		
06313	Jose Vega*		
09056	Servando Perez*		
10369	Panfilo Perez	Oxnard #3	6/18/94
10373	Jesus Sanchez	Oxnard #3	6/18/94
10502	Jose Melgoza	Oxnard #3	6/18/94
10503	JESUS MANUEL FERNANDEZ		
10584	Gonzalo Sanchez	Oxnard #3 - 6/18/94	
10615	Victor Viveros	Oxnard #3 - 6/18/94	

APPENDICES (cont.)
C.
List of Crew #1 Employees
Who Finished Salinas Season

02906 Angel Lopez
03505 Lionel Arreguin
03514 Claudio Asuncion
03541 Roberto Bravo
03559 Victor Vecerra
03571 Arturo Betancourt
03581 Crisanto Bravo
03583 Daniel Bravo
03718 Fidel Castillo
03724 Roberto Castillo
03734 Hilario Castro
03749 Martin Cazares
03808 Isidoro Pena
04044 Alfonso Mendoza
04122 Jaime Mendoza
04126 Javier mendoza
04144 Manuel Quinteros
04162 Martin Mendoza
04215 Gonzalo Ramirez
04253 Martin Ramirez
04279 Rafael Mendoza
04359 Armando Renteria
04433 Jose M. Farias
04437 Rigoberto Farias
04613 Aquino Rodriguez
04678 Jorge Garcia
04692 Jose Garcia
04803 Emiliano Mendoza
04905 Emidio Rodriguez Jimenez
04935 Rogelio Mendoza
05055 Jose Moreno
05087 Miguel Gonzales
05143 Sergio Gonzales
05238 Gonzalo Mora
05277 Miguel Gerra
05323 Alfredo Salmeron
05354 Arnulfo Sanchez
OSS^S Benjamin Sanchez
05400 Maximilian Morales
05413 Raul Morales
05463 Jorge Sanchez
05482 Juan Sanchez
05555 Martin Sanchez
05754 Hector Navarette
06015 Rogelio Oros
06142 Jose Torres
06288 Roberto Vasquez
06305 Gerardo Vega

06361 Samuel Ysarraras
09055 Roberto Bravo
09182 Santiago Barrera
09195 Jose Fuentes
09196 Jose Saravia
09199 Adonay Diaz-Ascencio
09207 Nicolas Raul
09224 Jose Zamora
09226 Criseido Barrera
09589 Samuel Castillo

APPENDICES (cont.)
D.
List of Employees in Salinas Crew #2
Who finished the Season

01373	Jesus Acevedo
02021	Pascual Arreguin
02040	Jose Alcala
03522	Jaime Avina
03573	Jesus Betancourt
03584	Daniel Bravo
03587	Martin L Bravo
03588	Martin B Bravo
03817	Guadalupe Perez
03858	Juan Perez
03894	Constantino Cornello
03902	Baldomero Coronel
03987	Antonio Cruz
03996	Gabriel Cruz
04050	Angel Mendoza
04151	Jose Mendoza
04157	Juan Mendoza
04159	Paulo Quiroz
04181	Arturo Ramirez
04284	Jose Ramos
04366	Miguel Espinosa
04370	Ramon Garcia
04374	Jorge Renteria
04526	Jesus Rivera
05073	Javier Rubalcaba Martinez
05329	Gilberto Morales
05386	Daniel Sanchez
05457	Joel Sanchez
05520	Mario Moreno
05565	Salvador Munquia
05746	Edgardo Navarrete
05777	Maximo Soria
05910	Alfredo Macias
05912	Salvador Sanchez
05916	Sergio Sanchez
05920	Victor Sanchez
06063	Antonio Torralvo
06270	Fidencio Vasquez
06276	Ramon Pamatz
06313	Jose Vega
09056	Servando Perez
09196	Juvenal Saravia
09228	Efrain Mendoza