Mendota, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

S & S RANCH, INC., a California Corporation, Respondent, and JAVIER HERNANDEZ, an Individual, Charging Party.	Case No. 94-CE-98-VI 22 ALRB No. 7 (July 18, 1996)

DECISION AND ORDER

On December 11, 1995, Administrative Law Judge (ALJ) Barbara D. Moore issued the attached decision, in which she found that S & S Ranch, Inc., a California Corporation (Respondent or Employer) had violated section 1153 (a) of the Agricultural Labor Relations Act (ALRA or Act) by refusing to reinstate striking employees who had unconditionally offered to return to work after engaging in an economic strike. Respondent timely filed exceptions to the ALJ's decision, along with a supporting brief, and General Counsel timely filed a response.

The Agricultural Labor Relations Board (Board) has considered the record and the ALJ's decision in light of the exceptions and briefs submitted by the parties and, for the reasons explained below, finds that the evidence is insufficient to establish that Respondent violated the Act.

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DISCUSSION

Respondent excepts to the ALJ's finding that the General Counsel proved, by a preponderance of the evidence, that Respondent failed to make an adequate offer of reinstatement to returning economic strikers following their unconditional offer to return to work. We find merit in this exception.

It is undisputed that Respondent's personnel manager, Teresa Blanco, advised three employees, Francisco Godoy Ceja (Godoy), Jose Manuel Villegas Alvaro (Villegas) and Javier Hernandez (Hernandez), that they would have to see their foreman, Gonzalo Soto, about returning to work following a work stoppage that began earlier in the day. What is in dispute is whether Blanco made additional comments to the three employees, which they in turn relayed to other strikers who were waiting outside, indicating that not all of them would be reinstated.[1] According to Blanco, she told them only that she had not hired them, and that they would have to go talk to Soto. Godoy, on the other hand, testified that Blanco told them there were only three vacancies and that the company could not take work from the other

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[1]It is undisputed that the workers engaged in an economic strike which constituted protected concerted activity and that Respondent did not hire permanent replacements. The ALJ was not persuaded that the workers believed they were fired. The ALJ also found that an unconditional offer to return to work was made on behalf of all of the strikers. We affirm these findings. Therefore, we believe, as did the ALJ, that this case turns on whether Respondent, in response to the employees' offer to return to work, made a legally sufficient offer of reinstatement.

workers in order to take the group back. Villegas testified that Blanco said there were only a few vacancies.[2]

Respondent argues that Blanco should be credited and that Blanco's response telling them to "go and talk to Mr. Soto" was an adequate offer of reinstatement, since she was sending them to talk with the one person who could assign work to them.[3] Respondent relies on S & F Enterprises, Inc., d/b/a Lucky 7 Limousine (1993) 312 NLRB 770 [146 LRRM 1044]. In that case, a personnel manager repeatedly told an employee that he would have to contact the company's owner about reinstatement. The National Labor Relations Board (NLRB) found that the manager's response was a sufficient offer of reinstatement.

We agree that S & F Enterprises would be controlling if Blanco's version of the conversation is credited.[4] In that event, Blanco, just as the personnel manager in S & F Enterprises, would have simply referred the returning employees to the proper person to which they should address their offer to return to work. Therefore, we turn to the issue of which version of events should be credited.

The Board will not overturn a demeanor-based credibility determination unless the clear preponderance of all the relevant evidence demonstrates that it is incorrect.

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[2]Hernandez did not testify.

[3]The record indicates that Soto had hiring authority.

[4]There is no indication in the record that Respondent cited to S & F Enterprises in its argument before the ALJ.

(Standard! Dry Wall Products, Inc. (1950) 91 NLRB 544, enf'd (3rd Cir. 1951) 188 F.2d 362; David Freedman & Co., Inc. (1989) 15 ALRB No. 9.) A different standard is applicable when reviewing credibility determinations which are based not on demeanor, but on such things as reasonable inferences, the consistency of witness testimony, plausibility of the testimony in light of other evidence and of common experience, or the presence or absence of corroboration. In such instances, the Board may overrule an ALJ's credibility resolutions where they conflict with well supported inferences from the record considered as a whole. (California Valley Land Company, Inc. (1991) 17 ALRB No. 8; NLRB v. Pyne Molding Corp. (5th Cir. 1955) 226 F.2d 818, 819; Krispy Kreme Donut Corp. v. NLRB (6th Cir. 1984) 732 F.2d 1288, 1290.)

Here, the ALJ credited Godoy and Villegas' testimony that Blanco told them there were only a few vacancies and that others would not be displaced in order to give the strikers their jobs back. Based on these findings, the ALJ concluded that Respondent had not met its legal obligation to offer the employees immediate reinstatement. However, these credibility determinations were not based on the witnesses' demeanor, but on what the ALJ saw as the plausibility of the testimony. It would make no sense, she reasoned, for the three workers who spoke with Blanco to have lied to their coworkers if they had been told that all they had to do to go to work was to contact Soto.

Since the ALJ's credibility determination in favor of Godoy and Villegas is not based on demeanor, but on the plausibility of their version of events in light of other evidence, the Board may make its own judgement as to which version is the most plausible. While the present case presents a close factual question, we find Blanco's version of the critical conversation to be more plausible.

In evaluating the conflicting testimony, it is important to note that there was little consistency among the witnesses as to exactly what was said by Blanco to the three employees. Godoy testified that Blanco said there were only three vacancies and that others would not have their jobs taken away so the strikers could return. Villegas, who was not credited as to other portions of his testimony, recalled only that Blanco said there were a few vacancies. Of the employees among the larger group that testified as to what was reported back to them, one (Julian Sandoval Tamayo) said they were told there were only a few vacancies and others testified that they were just told that they did not have their jobs back.

Thus, there is no corroboration for Godoy's testimony that Blanco spoke of not displacing any replacement workers. The only consistent testimony is that Blanco said there were a few vacancies and that the larger group was told they did not have their jobs back. The latter impression is not inconsistent with Blanco's version of the conversation, since it is undisputed that

she did not say they were reinstated, but that they would have to see Soto about returning to work.

Moreover, we find it significant that several employees made immediate efforts to contact Soto about returning, and the majority of the 27 strikers contacted Soto within a few days and were immediately put back to work. These actions by a majority of the strikers are not consistent with being told that they would not be taken back due to the hiring of replacements, nor is it fully consistent with being told there were only a few vacancies. This, coupled with the lack of consistency in the employees' testimony, casts doubt on Godoy and Villegas' version of Blanco's comments.

More importantly, in light of the record evidence as a whole and, in particular, the Employer's willingness to reinstate every employee who contacted Soto, we find it less plausible that Blanco would have said the things attributed to her by Godoy and Villegas. First, we know that her version was plausible in light of record evidence that Soto had authority to hire and immediately reinstated all those who contacted him.[5] We also know that no replacements, temporary or permanent, were hired on July 20, because Soto, after failing to secure workers through the Employment Development Department, only borrowed members of other foremen's crews at the ranch. Blanco denied knowing how many, if any, additional workers Soto needed at the time of the

[5]The record indicates that as early as that same evening, Soto told a striker who contacted him that he could return the next day.

conversation with the three strikers, and Soto denied having any communications that would have given Blanco such information.

In sum, we find that Blanco's version of the conversation with the three strikers is more plausible. It makes little sense that Blanco would have said there were only a few vacancies and that no one would be displaced in order to take back the strikers, as this would have been contrary to the facts at the time and inconsistent with the Employer's conduct thereafter, which reflected no unwillingness to immediately reinstate the strikers. Nor is there any basis in the record for believing that Blanco intentionally misled the strikers in order to discourage their return.[6] Having found that Blanco's testimony should have been credited based on its greater plausibility, we find that the facts of this case fall squarely under the rubric of 5" & F Enterprises and the case should be dismissed.[7]

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act (Labor Code section 1140 et seq.), the Agricultural

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[6]The fact that some of the strikers may have reasonably believed that they would not be reinstated should be of no import where that belief is not based on the employer's actual words, but instead on an inaccurate conveyance of the employer's message by the employees' representatives.

[7]We note that nothing in this decision prevents those who have not been reinstated because they have not contacted Soto from now perfecting their right to reinstatement, absent evidence that they have otherwise abandoned or waived reinstatement.

Labor Relations Board finds that the complaint in Case No. 94-CE-98-VI should be, and it hereby is, dismissed in its entirety.

DATED: July 18, 1996

MICHAEL B. STOKER, Chairman

LINDA A. FRICK, Member

MEMBER RAMOS RICHARDSON, Dissenting:

I would affirm the ALJ's Decision in this matter because I believe that her findings and conclusions are well supported by the record evidence. I agree with the majority that the Board may overrule an ALJ's non-demeanor-based credibility resolutions where they conflict with well supported inferences from the record considered as a whole. However, I find no basis for overruling the ALJ's credibility resolutions herein. On the contrary, I believe that her construction of the events leading - to Respondent's failure to offer immediate reinstatement to the striking employees is the only construction that logically comports with the three employees' behavior following their conversation with Teresa Blanco.

It is undisputed that earlier in the day, when the strikers first went to the company office seeking Ranch Manger

Tom Stefanopoulos, Blanco told them she was Stefanopoulos' representative and that she could take care of anything they wanted to discuss with him. Since Blanco held herself out as a representative of the Employer with authority to act on its behalf in personnel matters, the employees were entitled to rely on her statements as representing the Employer's point of view. Although Blanco's statements may not have been an accurate conveyance of the Employer's message, the strikers cannot reasonably be charged with knowledge of that fact, under these circumstances.

I believe the evidence strongly supports a finding that Blanco knew the three striking employees were asking for reinstatement of all the returning strikers. Blanco testified that Hernandez said they had been to the EDD office and were told "that you have to give us our jobs back to all of us." (Emphasis added.) (TR: 676.) When asked whether Hernandez indicated there was anyone with him other than Godoy and Villegas, she answered, "Yes, only by saying 'to all of us.'" (Emphasis added.) (Id.)

Although Blanco claimed that she told the three strikers only that they would have to go see Soto about being reinstated, I do not believe that the employees would have subsequently behaved as they did unless Blanco had gone on to make the discouraging remarks attributed to her by the strikers--e.g., that there were only a few vacancies, that she could not say which of them would be hired in those vacancies, and that the company could not take work away from the other workers in order

to take the strikers back. (TR: 68, 111.) As the ALJ properly concluded, it would have made no sense for the three workers to come outside and tell their coworkers there were only a few vacancies if Blanco had told them that all they had to do to go to work was to contact Soto.

Further, I do not find the strikers' version of Blanco's statements to be inconsistent with Respondent's subsequent conduct, which reflected no unwillingness to reinstate the strikers. Blanco was not necessarily representing the Employer's point of view when she expressed her conditional willingness to reinstate a limited number of returning strikers. It may be that if the strikers had gone directly to Stefanopoulos, he would have agreed to reinstate them all immediately. However, because of her earlier representation, there was no way for the strikers to know that Blanco was not speaking for the company itself when she made her limited "offer." Although it became clear to the strikers when they returned later that the Employer intended to reinstate them unconditionally, it was too late by then for the Employer's offer to constitute an immediate unconditional offer.

Moreover, I would not attach any particular significance to the fact that the majority of the 27 strikers contacted Soto within a few days and were immediately put back to work. This behavior is not inconsistent with their being told by Blanco earlier that there were only a few vacancies or that they would not be put in positions held by temporary replacement

employees. No doubt, word got around among the strikers that Respondent was hiring back those strikers who had presented themselves to Soto, and the remaining strikers would reasonably have concluded that if they approached Soto, they also would be reinstated.

I find this case distinguishable from S & F Enterprises, Inc., d/b/a Lucky 7 Limousine, supra, 312 NLRB 770, because Blanco's statements to the three strikers did not consist merely in telling them to go see Soto about reinstatement; rather, her statements expressed a qualified, limited willingness to reinstate only some of the employees. Further, I would find Blanco's version of the facts to be inconsistent with the employees' subsequent behavior. These employees were strikers who wanted to be reinstated, and that was precisely why they presented themselves to Blanco. It is not plausible, if the three strikers had merely been told to go see Soto, that they would have emerged from Blanco's office and told their coworkers that there were only a few positions available. Such behavior would have been totally inconsistent with their obvious desire to be reinstated.

For the above reasons, I would affirm the ALJ's credibility resolutions and uphold her finding of a violation of Labor Code section 1153(a).

DATED: July 18, 1996

IVONNE RAMOS RICHARDSON, Member

CASE SUMMARY

S & S RANCH, INC.
(Javier Hernandez)

22 ALRB No. 7
Case No. 94-CE-98-VI

Background

The complaint alleged that on July 20, 1994, twenty-seven employees of S & S Ranch, Inc. (S & S or Employer) concertedly complained about their wages and working conditions and concertedly engaged in a strike. The complaint further alleged that the Employer discharged the employees and refused to reinstate them immediately upon their unconditional offers to return to work, in violation of section 1153(a) of the Agricultural Labor Relations Act (ALRA). In its answer to the complaint, the Employer contended the employees were not discharged and were reinstated as soon as they offered to return.

ALJ Decision

The ALJ rejected the workers' contention that they had been discharged by the Employer, and concluded that they were economic strikers. However, she found that the Employer had violated section 1153(a) of the ALRA by refusing to reinstate the striking employees when they unconditionally offered to return to work. She found that three of the employees made an unconditional offer to return to work on behalf of all the strikers when they met with Employer representative Teresa Blanco. The ALJ further found that Blanco's response, according to the credited testimony of the employees, i.e., that there were not enough jobs available for all the returning strikers, did not meet the Employer's legal obligation to make an unconditional offer of reinstatement.

Board Decision

The Board affirmed the ALJ's findings that the strikers were not fired, but were economic strikers who were entitled to immediate reinstatement because they had made an unconditional offer to return to work. However, the Board found no violation because it concluded that the evidence was insufficient to show that the Employer failed or refused to reinstate the strikers. Citing the standard whereby it may overrule an ALJ's credibility resolutions which are not demeanor-based where they conflict with well supported inferences from the record considered as a whole, the Board concluded that in light of all the evidence, Blanco's version of the conversation, in which she claims to have merely told the employees that she did not hire them and they would have to go see their foreman about reinstatement, was more plausible. Finding that a nearly identical response to an offer to return to work has been considered legally adequate by the National Labor Relations Board in S & F Enterprises, Inc. (1993) 312 NLRB 770, the Board dismissed the complaint.

Dissent

Member Ramos Richardson would have affirmed the ALJ's finding of a violation, as she believed the ALJ's findings and conclusions to be well supported by the record evidence. She found no basis for overruling the ALJ's credibility resolutions. On the contrary, she would have concluded that the ALJ's construction of the events leading to the Employer's failure to offer immediate reinstatement to the striking employees was the only construction that logically comported with the three employees' behavior following their conversation with Teresa Blanco.

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: S & S RANCH, INC., a California Corporation, Respondent, and JAVIER HERNANDEZ, an Individual, Charging Party	)	Case No. 94-CE-98-VI

Appearances:

For General Counsel:
Stephanie Bullock
Visalia ALRB Regional Office
Visalia, CA

For Respondent:
Ronald H. Barsamian
BARSAMIAN & SAQUI
Fresno, CA

Charging Party:
No appearance

DECISION OF THE ADMINISTRATIVE LAW JUDGE

BARBARA D. MOORE: This case was heard by me on October 10-13, 1995, in Visalia, California. It arose from a charge timely filed with the Agricultural Labor Relations Board ("ALRB" or "Board") on July 26, 1994, by Javier Hernandez against Respondent, S&S Ranch, Inc.,("Respondent," "S&S", or "Company") which had previously been duly served on Respondent on July 22, 1994.[1] Based on the above charge, the ALRB's General Counsel issued a complaint on May 25, 1995, which was subsequently amended on September 14, 1995, and again on September 25, 1995. Respondent timely filed its Answer to the original complaint and its Answer to the First Amended Complaint on June 7, 1995, and September 22, 1995, respectively. Pursuant to section 20232 of the Board's regulations, the allegations of the Second Amended Complaint ("Complaint") are deemed denied.

In the Complaint, General Counsel alleged that on July 20, twenty seven (27) of Respondent's employees concertedly complained to Respondent about their wages and working conditions or, alternatively, that they engaged in a strike over these same matters.[2] Then, in response, Respondent discharged the employees and/or "failed and refused to reinstate or offer to reinstate them immediately" thereby violating §1153(a) of the Agricultural Labor Relations Act[3] ("ALRA" or "Act".)

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[1]All dates hereafter are 1994 unless otherwise specified.

[2]I granted Respondent's motion to dismiss paragraph 12 of the Complaint at the close of General Counsel's case.

[3]A11 section references hereafter are to the California Labor Code unless otherwise specified.

Respondent contends the employees engaged in a strike, and denies it discharged any of them. It further contends it reinstated the employees after they offered to return to work as soon as vacancies were available since it had hired only temporary replacements.[4]

Both General Counsel and Respondent were represented by counsel at the hearing, and both filed post-hearing briefs. The Charging Party did not intervene.

Upon the entire record,[5] including my observations of the witnesses, and after careful consideration of the parties' briefs, I make the following findings of fact and conclusions of law.

I. JURISDICTION

Respondent is a California corporation with its principal place of business and operations in Mendota, California, where it grows and harvests cotton and row crops. It is an agricultural employer within the meaning of section 1140.4(a) and

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[4]It also raised various affirmative defenses. At hearing, it dropped its fourth affirmative defense which contended that personnel in the Board's Visalia regional office and various alleged discriminatees offered financial rewards to individuals if they would testify on behalf of the discriminatees. Respondent indicated it would argue in its brief its third affirmative defense, i.e., that it was denied due process because the General Counsel and regional office staff made "vague and ambiguous allegations" and changed the allegations. It did not do so. The same claim was made in a Request for Sanctions which was denied by Chief Administrative Law Judge Tom Sobel during the Prehearing Conference. The third affirmative defense is similarly without merit.

[5]Citations to the official hearing transcript will be by page number(s) in parentheses. Respondent's and General Counsel's exhibits will be denoted "RX" and "GX" followed by the number.

(c) of the Act.

At all times material herein, Athanasios ("Tom") Stefanopoulos was Respondent's General Manager, Gonzalo Soto was an irrigation foreman and Teresa Blanco was the company personnel manager - all are supervisors within the meaning of section 1140.4(j) of the Act. Respondent stipulated that at all material times Charging Party and the individuals named in paragraph 5 of the Complaint were agricultural employees within the meaning of section 1140.4(b) of the Act.[6] (I:20.)

II. FACTS

Many of the essential facts are not in dispute. On July 20, just before work was to begin, members of foreman Soto's irrigation crew gathered outside the equipment yard where they normally reported to work.[7] They told Soto they wanted a 25 cent per hour raise. Soto did not give them the raise and left.

The group also left and went to the fields to pick up co-

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[6]At the close of General Counsel's case, I granted Respondent's motion to dismiss Jose P. Rodriguez. No one by that name testified or was identified by a witness as part of the group that engaged in the protected activity. Nor was his name on GCX1. GCX1 does contain a name which appears to be Jose Pedrosa, and one of Respondent's witnesses identified him as having participated in the strike. However, there is more than one worker named "Jose," some workers used more than one name, and there was no evidence that person is also known as Jose P. Rodgiguez. I granted General Counsel's motion to amend the name "Adam Ceja" to "Adan Ceja". (I:21.)

[7]At one point, Godoy estimated there were 28 people but later testified it was 26 or 27 people. (28, 99) Mr. Ceja estimated 28 people. (141) Guerra estimated there were "approximately 24. Something like that." (214.) Villegas estimated 28. (270) Respondent's witness Tamayo did not give a number but said it was almost all of Soto's crew. (476.)

workers who were already at work to go to the Company office to see the ranch manager, Tom Stefanopoulos, and ask him for the raise.[8] Tom also refused to grant the raise. Ultimately, the group left and went to the Employment Development Department (EDD) office.[9]

The EDD employee who spoke to them, Ms. Guadalupe Flores, passed around a sign up sheet and told the workers to put their names and social security numbers on it. She told them the list was to identify those who were involved.[10] Later, she told the workers that someone from the Company phoned and said the workers had their jobs back and to return to the Company.[11]

Most of the workers then went back to the Company. Some of them went into the office to speak to Ms. Blanco about returning to work. Nothing was said about the raise. Although the Company had not hired, and, in fact, never did hire, permanent replacements, Ms. Blanco did not tell the workers they would be put back to work. Instead, she told them to speak to Soto.[12]

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[8]Respondent acknowledges that the workers were engaged in protected concerted activity when they asked Soto and Tom for a raise. (Respondent's brief, p. 28.)

[9]The terms EDD and unemployment office were used interchangeably during the hearing. I will use the identification EDD throughout.

[10]None of the workers recalled seeing the first page of the document, so only the second page with the names was admitted as GCX1. One of Respondent's worker witnesses testified Flores described the document as a complaint. (560.)

[11]This statement was admitted only to explain the subsequent conduct of the workers.

[12]villegas testified Blanco did not tell them to talk to Soto, but I do not credit him on this point since others did remember that she did, and she testified she did.

Notwithstanding the foregoing, there are several critical points which are contested. General Counsel contends the workers reasonably believed Soto had fired them, and that later, Stefanapolous fired them after Soto assured Stefanopoulos he had replacement workers. It also contends that when the workers came back to the Company from the EDD, they made an unconditional offer to return to work and that instead of the Company reinstating them, Ms. Blanco said there were only a few vacancies and told them to go talk to Soto about who would fill those vacancies.

Respondent denies the workers were fired, that Soto told Stefanopolous he had found replacements, that the workers unconditionally offered to go back to work when they spoke to Blanco, and that she told them there were only a few vacancies. It contends that as each worker asked to go back to work, the Company put them back on the job.

General Counsel called five worker witnesses: Francisco Godoy Ceja (Godoy),[13] Raul Ceja Botello (Ceja), Felipe Guerra Vasquez (Vasquez), Jose Manuel Villegas Alvaro[14] (Villegas) and Hector Javier Ceja. General Counsel decided not to call another worker, Nicanor Villegas Alvaro (Nicanor), because his testimony would be cumulative. Respondent then called him.

Respondent also called Stephanopoulos, Teresa Blanco, Gonzalo Soto and six worker witnesses: Demetrio Aceves Garcia

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[13]He is also identified as Manuel Trejo in Company records. He signed GCX1 "Manuel Trejo Godoy."

[14]He is also known as Jose Manuel Villegas, Jose Villegas and he signed GCX1 simply Jose Manuel.

(Aceves), Gabino Allan Gastelo (Allan), Antonio Tamayo Maravilla (Tamayo), Demetrio Ramos Gusman (Ramos), Julian Sandoval Tamayo (Sandoval), and Jorge Torres Villegas (Torres).[15]

I turn now to the disputed facts. General Counsel's witnesses testified that after they asked for the raise,[16] Soto responded by asking which of them wanted a raise. One by one Godoy, Ceja and Villegas each said they did. (34.) As each spoke up, Soto instructed them to move to one side. Soto again asked if there were anyone else, and, after a bit, all of the workers moved over to join those three. (35-36.)

Soto said he could not give them a raise and that whoever wanted to go to work should do so. The workers indicated they would go speak to Tom about it. Godoy, Guerra and Villegas testified Soto thanked them for their work and said their checks would be prepared for them.[17] Ceja added that Soto said that they

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[15]All of the worker witnesses were working for Respondent at the time they testified. Aceves and Allan were working in the fields on the morning of July 20 while the other workers were asking Soto for the raise. Both on their own returned to the fields where they had been earlier in the day and resumed work. They are not named in the complaint. Torres, Tamayo, Sandoval, and Ramos are named as discriminatees in the Complaint; the first two were put back to work on July 21 and the latter two on the 22nd.

[16]They had asked Soto for a raise about one month previously, and he had promised if they helped him with the work he would see about getting one. Since he never got back to them, they decided not to work and to demand the raise.

[17]Godoy testified Soto said their checks would be ready later that day whereas the other two testified he said they would be ready in 72 hours which would mean Friday which was the normal payday. (36,263.) Soto and Respondent's worker witnesses denied Soto told them their checks would be ready. (510-511, 532, 543, 576.) For the reasons discussed below, it is not necessary to

had a job up until that moment. (145.) Then, Soto locked up the equipment yard and left.[18] (I:36.)

No one testified Soto told the workers they were fired, but Ceja interpreted the remark about them having a job until then, Soto's other remarks, his taking the shovels and closing the yard as meaning they were being fired. (145.) Guerra testified he interpreted Soto's telling those who wanted a raise to move to one side, asking for the shovels and closing the yard to mean they were fired. (221,225.)

Soto left and went to the EDD office in Mendota to look for replacement workers. (578) He was unsuccessful, so he went elsewhere where he knew he could find some people. (Id.) He went to get replacements because he did not know if his crew was going to return to work, and it was very busy. (577,610) He did not find any replacements and used workers from other foremen's crews for the remainder of the day to do the work.

On cross-examination, Soto initially denied being upset by the events at the yard. On further questioning about how he felt about having to try to get the work done without his regular workers, he became very irritated and evasive, resisting answering legitimate questions posed by General Counsel. He stressed that he was responsible for getting the work done and was not just going to stand around with his arms crossed. (610) His responses showed

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resolve these conflicts.

[18]I do not credit Soto's denial that he did not close the yard. One of Respondent's own witnesses so testified. (554.)

that he was quick to anger, bristled at even the mild challenge of having to answer General Counsel's questions which were posed in a very measured tone, took his responsibilities very seriously and would indeed, contrary to his denial, have been quite upset at his workers refusing to immediately go to work.

The entire group of workers then went to the fields to gather others in the crew who were working to go to the Company office to see Stefanopoulos about the raise. (37,253.) Hector Ochoa Ceja, Nicanor (Jose Villegas' brother), two workers named Juan and Nicolas, Allan, Aceves, and Salvador Avalos joined the others. (42-44, 99, 101-102, 146, 149, 248-249, 263-265, 419-420.)

There was little or no discussion with the newcomers as to what was going on because they already knew of the plan to ask for the raise. No one said anything to them about having been fired by Soto. (147-148, 382-384, 413-415.)

When they arrived at the Company office, Javier Hernandez (Hernandez), Ceja and Villegas went inside and told Teresa Blanco the workers wanted to see the boss, Tom. Ms. Blanco picked up a note pad and walked outside with them where the other workers were.

The request to speak to Tom was repeated. She replied that she was his representative, and if they wanted to speak to him about anything to do with their work, she could handle it.

The workers insisted on speaking to Tom, and he came out soon thereafter. Soto arrived at some point and joined Tom and Blanco in front of the group.

The workers spoke to Tom in Spanish, and he spoke to them

in English. Two people translated. (80,266.) Ms. Blanco speaks both Spanish and English. Additionally, a worker named Juan Luis Gonzalez (Gonzalez)[19] who, according to General Counsel's witnesses, knew English as well as Spanish,[20] translated some of the workers' remarks and at least some of what Tom said, although Ms. Blanco was the main person who translated his remarks. (46, 55-56.) Gonzalez was standing right up front along with Hernandez, Ceja and Villegas almost face to face with Ms. Blanco and just in front of Tom. (165,247.) Hernandez and Gonzalez did most of the talking to Tom. (104.)

The workers told Tom they wanted a 25 cent per hour increase. They did not say anything to indicate Soto had fired them. Tom replied he would not give them a raise at that time, that he was the one who would decide if they got a raise, and asked them one or more times to return to work.[21] (486,585.) Blanco

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[19]Mr. Godoy believed Gonzalez was the last name, the parties stipulated Juan Luis Gonzalez last worked on either July 19 or 20 and returned to work on July 22, and there is no evidence there was a worker named Juan Luis other than Gonzalez who worked in Soto's crew at that time. (89.)

[20]There is no contrary evidence. Initially, the transcript erroneously indicated that in explaining how a comment he made to Ms. Blanco was misunderstood, Ceja twice said that "Juan" did not know how to speak that well. The original tape recording of the hearing reflects he actually said "one" rather than "Juan." (186.) See declarations of the court reporter and a certified interpreter, dated December 6, 1995, which are hereby admitted as Administrative Law Judge Exhibit 1. The official transcript is hereby corrected in conformance with the above declarations.

[21]I am not persuaded the workers believed they were fired. Ceja testified the only reason they went to the office was to see about the raise. No one said anything to Tom about Soto having fired them. No one said anything to the workers that were picked up on the way to meet with Tom. Further, even if Soto had fired

pointed out that some companies paid less than Respondent.[22]

Tom testified the workers said if they did not get a raise, they would not go back to work.[23] Godoy could not remember if they said they would not work unless they got a raise. (106.) Raul Ceja testified they never refused to ever go to work. At some point during the exchange, Villegas told Tom that even if they did not get a raise, they wanted better treatment.[24]

According to General Counsel's witnesses, Gonzalez translated a conversation Tom and Soto had in English wherein Tom asked Soto several times if he had replacement workers and each time Soto replied that he did.[25] (57-58,237,267.) Blanco did not

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them, Tom asked them at least once to go back to work. This was immediately after the episode with Soto, and Tom is Soto's superior at the Company.

[22]Some of the workers did not recall this part of the conversation, but Guerra did even though when he could not remember something he said he was forgetful because he used to have a drinking problem. This occurred after several objections and discussions related thereto which interrupted his testimony. (235.) I did not find his recall generally worse than other witnesses although he did incorrectly place this meeting as occurring after the workers returned from the EDD.

[23]Some of Respondent's worker witnesses, Allan and Torres corroborated that the workers so responded. (439,545.)

[24]There was some confusion as to Villegas' initial testimony, but a subsequent statement clarified this was what he said. (Compare 268-269 with 296.)

[25]Ceja testified that Juan Luis translated this conversation some 10 minutes after Tom and Soto had left the area. I do not credit this testimony since it is in conflict with that of the other witnesses. Respondent objected to admitting this evidence because it came from witnesses' who understood only the translation and not the original statements in English. It contended Gonzalez had to testify in which case the statements would be admissible as admissions. For the reasons set forth in the Analysis section, I find the evidence is admissible.

translate this conversation to the workers.

According to Godoy, Ceja, Guerra, and Villegas, after Tom was assured by Soto that he had replacements, Tom said to the workers in English, "laid off." Guerra and Villegas added that when he said this he made a dismissing motion with his hands and arms as if to shoo them away. (57-58,156,238, 269)

Tom, Blanco, and Soto all testified Tom asked Soto if the workers did not go back to work, could Soto find replacements.[26] (588,643,672.) Soto replied he did not know but he would try and commented that there were a lot of workers on the ranch. (588,643.)

Tom, Blanco and various of Respondent's worker witnesses denied Tom told the workers they were laid off[27] or that he made a gesture such as that described by Guerra and Villegas. Soto testified only that he did not understand the English words, "laid off." It is not credible that a foreman who has seasonal layoffs would not know this expression.

Gonzalez spoke both English and Spanish, he was positioned right up front by Tom, Blanco and the workers who spoke the most, there is no showing he had a motive to translate incorrectly and no evidence he did translate incorrectly. The conflicting testimony of General Counsel's and Respondent's witnesses could just as easily exist if all had been speaking the same language. The mere fact that they differ does not establish Gonzalez translated incorrectly.

[26]Blanco testified that only about half of the group was still there when this occurred. No one else so testified, and it is inconsistent with the testimony of other witnesses that they left and went to the EDD office where 27 of them signed a document. (GCX1.) I do not credit her statement.

[27]Tom underscored his denial by testifying he did not even tell the workers he would replace them because he knew better than to do so.

After the discussion about the replacement workers, the group of workers left and went to the EDD.[28] They gathered outside the office while Hernandez went inside and returned with Ms. Flores, an EDD employee. One or more of the workers told her they had been fired[29] and asked her "[i]f they could help us out as to what had happened to us?" (62,64)

She passed the second page of GCX1 around and told the workers to sign it and to give their social security number so they would be identified in case they did not get their jobs back. (72,274.) It will be recalled that one of Respondent's worker witnesses testified Flores described it as a complaint. (560.) Several workers testified they signed it and saw it passed to the other workers and observed them sign.[30] (72,157-158,272)

Flores told the group she could not help them but there

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[28]Godoy estimated there were about 30 or 31 of them. (75)

[29]Ceja's testimony that Hernandez said to the EDD worker that they were fired was objected to as hearsay and the objection sustained. Godoy's testimony was not specifically objected to, but I do not rely on it to establish they were fired. The workers' statement does tend to corroborate their testimony that Tom fired them. So does the fact that Flores told them that she might not be able to help them but that other offices perhaps could. If it were simply a matter of whether the workers qualified for unemployment insurance benefits, then EDD was the only place to decide that. Blanco's asking Aceves if his foreman had asked him not to work also points in that direction. (See p. 19 below for Aceves' testimony.) However, in view of my conclusions below, it is not necessary to determine if Tom fired the workers.

[30]Nicanor Villegas did not sign because he left right after they got there to get cigarettes. (75) Some workers signed it with somewhat different names than they gave at trial. Tamayo signed it "Jose Antonio Maravilla." Villegas signed it "Jose Manuel." Godoy who is identified in Company records as Manuel Trejo signed it Manuel Trejo Godoy.

might be other offices that could.[31] Sometime later, she told them to go back to the ranch because someone had called from the Company to say they had their jobs back.[32] (275.)

Most of the group then returned to the Company office.[33] (68) Tamayo, who testified on behalf of Respondent, did not go to the office. Instead, he went to the fields and found Soto. He asked to go to work. Soto told him it was too late and to come back another day. (488.) Tamayo estimated it was about 11:00 a.m. or noon. (Id.) This comports with the testimony of other workers that they left EDD around 11 and went back to the Company office and ate their lunch before going to see Blanco at about 12:30 or 1:00 p.m.[34] (128-129.) Work normally continued until 5 or 6 p.m.

Godoy, Javier Hernandez and Villegas went inside to speak to Ms. Blanco. (68, 388,675.) Ms. Blanco testified that Hernandez told her they had been to EDD and said in a demanding tone: " . . .we were told that you have to give us our jobs back to all of us."[35] (676.) In response to a follow up question whether Hernandez

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[31]The hearsay portion of the statement, i.e. that EDD could not help them but other offices perhaps could was admitted only for to explain the workers' subsequent actions.

[32]This is admitted only to show why the workers returned.

[33]Ceja said everyone returned but later indicated he was not sure exactly who was there. He was asked specifically about Gabino Allan and could not recall. (159, 199.) Allan had been part of the protest at first but had gone back to work when the group left the EDD.

[34]Ms. Blanco recalled it was about noon. (675.)

[35]Villegas corroborated they were told this at the EDD office. (276.)

indicated there was anyone with him other than Godoy and Villegas, she answered; "Yes, only by saying 'to all of us.'"[36] (Id.)

Godoy testified that Blanco told them there were only three vacancies and that they could not take the work from the other workers in order to take the group back.[37] (68,111) According to him, she said she could not say who would get the vacancies, and they should talk to Soto.[38] (68,111)

Ms. Blanco denied she told them there were only three or a few vacancies. According to her, all she told them was that she had not hired them and for them to go talk to Soto.[39] (676.) It

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[36]Respondent argues in its brief that Ms. Blanco did not go outside or look outside and so did not know anyone other than the three workers inside were asking to return to work. The workers' testimony establishes they told her everyone wanted to go back to work, and Ms. Blanco's testimony also makes clear that she understood them. I find that "everyone" meant everyone who had protested, not just those who were outside. The workers said nothing to indicate they were excluding anyone.

[37]It will be recalled that Respondent only hired temporary replacements. It hired only a few workers the day after the strike, and none on July 22. By that time, many of the group had returned to work.

[38]Villegas recalled only that Blanco said there were a few vacancies. (276.) He testified that after they went outside, they all saw Soto's helper, Manuel, and had him call Soto on the radio to tell him they wanted their jobs back. According to Villegas, Manuel reached Soto who replied he had all the workers he needed. (277-280.) I do not credit this testimony since not a single other worker mentioned it and it is unlikely they would not remember such an important fact.

[39]Guerra testified that the first time he asked for his job back, on the morning of the 20th, Blanco told him he had brought the situation on himself. (256.) Although he remembered much of what occurred, he did not clearly differentiate the two incidents at the company office. He is the only one who indicated he had gone into the office with 5 or 10 others to speak to Blanco. Given these discrepancies, I do not credit this testimony.

will be recalled that previously she had told the workers that they did not need to see Tom because she was his representative and could help them with any work related matter.

When Godoy, Hernandez and Villegas left Blanco, they told the assembled workers outside that there were jobs only for a few. Respondent's witness Sandoval corroborated this. (536.) Several of Respondent's other witnesses recalled they were told they did not have their jobs back. (521, 548.) Whatever words they used, the message was the same--they could not all go back to work.

Since there were more workers than vacancies, and they did not know where Soto was,[40] some of the workers left to go home while others returned to the EDD office.[41] (68,258) Ceja corroborated that the group did not want to go back to work unless everyone got their jobs back. (200.)

During this second visit to EDD, Hernandez went inside to talk to Ms. Flores. (69) He then came outside and told the workers that Ms. Flores said they should contact the Visalia

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[40]Ms. Blanco did not offer to contact Soto on the radio.

[41]Godoy and Ceja testified that five or six workers left to go find Soto and got their jobs back. They based their testimony on what the workers told them and it is not clear when this occurred. In fact, the only two workers who Godoy named testified they did not go from the office to see Soto at that time. Tamayo had already talked to Soto earlier that day and Soto had told him to come another day and did not testify that he went to see Soto again that day. Jorge Torres testified that he left the office and went home. He telephoned Soto that night, asked for his job back and was allowed to return the next day. Torres testified he called Soto because he did not believe the workers who told him they no longer had their jobs. He did not explain why he left the office rather than talking to Blanco or Soto right then since there were several hours of work left.

regional office of the ALRB and speak with Jenny Diaz. (69)

I credit the workers' testimony that Ms. Blanco told them there were only a few vacancies. There is no reason they would tell their co-workers that there was work for only a few, or that none of them had any work, if Blanco had not indicated some impediment to their returning to work. They all went in order to get their jobs back. It makes no sense for them to have lied to their co-workers and to have left the Company if they had been told that all they had to do to go to work was to contact Soto.

At the hearing, Respondent disputed the identity of the alleged discriminatees, contending that each one had to testify in order to establish he was in the group. That is clearly not necessary. I rely on the testimony of witnesses as to who participated, the parties' stipulations and the names on GCX 1 to identify them.

The parties stipulated as follows. (9-20.) The last day Raul Ceja, Dionicio Garcia, Nicolas Garcia, Filiberto Gomez, Felipe Guerra, Javier Hernandez, Manuel Trego G., and Jose Alvaro Manuel Villegas performed work for Respondent was July 19. Hector Ceja last performed work for Respondent in the morning hours of July 20.

Rodolfo Caballero, Adan Ceja, Salvador Ceja, Camilo Cortez, Francisco Lopez Botello, Rubin Ortega, Antonio Tamayo, Jorge Torres, Jose Cruz Torres and Enrique Villegas did not perform work for Respondent on July 20, but returned to work on July 21.

Javier Murgo, Juan Murgo Amezcua, Demetrio G. Ramos, Jose P. Rodriguez, and Julian Sandoval did not perform work for

Respondent on July 20 or 21 but returned to work on July 22. Salvador Morales worked for Respondent on July 19 and returned to work on February 22, 1995. Nicanor Villegas[42] and Juan Luis Gonzalez last performed work for Respondent on either July 19 or July 20; Gonzalez returned to work on July 22.

The names of all of the workers covered by the parties' stipulations appear on GCX1 except for Nicanor Villegas, Juan Luis Gonzales, and Dionicio Garcia. Nicanor did participate in the protest and did not sign GCX 1 because he left the EDD office to buy cigarettes. Dionicio Garcia also was part of the protest. (305) I have already found that Juan Luis Gonzalez translated for the workers in the meeting with Tom.

The name "Nicolas" appears on GCX l, and Jose Villegas testified that a worker he knew as "Nicolas" participated in the protest. This evidence, coupled with the fact that a Nicolas Garcia last worked at the company on July 19 and the lack of evidence that there was another worker named "Nicolas," establishes that the name on GCX1 refers to Nicolas Garcia. (289-290)

Two names appear on GCX1 that are not named in the Complaint. One appears on the bottom right hand column. The first name is Juan. General Counsel could not identify this person, so he is not part of the class.

Two workers, Aceves and Allan, were already working when the others gathered in the yard to ask Soto for a raise. Aceves

[42]Based on his unrebutted testimony, I find Nicanor Villegas last worked for Respondent in the morning hours of July 20.

did not get to the company office until the other workers had already left. He went inside and spoke to Ms. Blanco. He did not say what, if anything, he said to her, but she asked him if his supervisor had asked him not to work. He replied, "No," and she told him to go back to work. He did not return for about 3 hours because he was afraid "they" would do something to his car--or something. (421.)

Although Allan was present at the meeting with Tom, after he left the EDD, he went directly back to the field he had been working in earlier without talking to Soto or anyone else. There is no evidence Respondent knew he was ever away from his post.

Based on the foregoing, I find that all of the workers named in the Complaint, except Jose P. Rodriguez,[43] are in the class of discriminatees .[44] Allan and Aceves are not because Respondent never denied them work.

ANALYSIS AND CONCLUSIONS

There are two evidentiary issues to be addressed before moving to the alleged unfair labor practices. First, Respondent contends that it was error to allow General Counsel to ask Ms. Blanco if she acted as an interpreter for Respondent's counsel in his speaking to Respondent's worker witnesses who testified at the hearing before they gave their testimony. General

[43]See footnote 6, supra.

[44]Even though Respondent's witness Tamayo testified he just went along with the group when it met with Tom and went to the EDD but did not really want a raise and did not know why he acted as he did, he is properly included in the class. He did nothing to disassociate himself from the others.

Counsel's purpose with this line of questioning was to impeach witnesses who testified they had not talked with anyone about their testimony.

Respondent objected on the grounds of attorney/client privilege and/or protected attorney work product, and it renews its objections in its brief. Neither objection has merit.

There is no attorney/client relationship between Respondent's attorney and Respondent's rank and file workers. The presence of a supervisor acting as a translator does not establish such a relationship. Respondent has not provided any legal authority to support its contention. Nor has it provided any persuasive legal support for its contention that General Counsel's questions improperly intruded into protected work product. [45]

Both cases cited by Respondent in its brief deal with pretrial discovery which is not the situation in the case at bar. Here, General Counsel was not seeking to discover the identity of which percipient witnesses Respondent's counsel intended to call at trial.[46] Their identity was known since they had already

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[45]Code of Civil Procedure section 2018, cited in Respondent's brief, deals with pretrial discovery. Additionally, Hickman v. Taylor (1947) 329 U.S. 495, 67 S.Ct. 385, is inapplicable since it concerns not witnesses' identities but the facts contained in written statements of witnesses and counsel's recollection of witnesses' oral statements or memoranda of such oral statements.

[46]Pretrial discovery of the identity of the witnesses counsel intended to present at trial was refused in City of Long Beach v. Superior Court (1976) 64 CA 3d 65 [134 Cal. Rptr. 468], cited in Respondent's brief. However, the Board's procedures are not governed by the Code of Civil Procedure, and the identity of

testified. The purpose of the work product rule, to protect the attorney's thoughts, impressions, etc., so that she/he may prepare her/his case in private, is not applicable to this situation.

The second matter is the applicability of the hearsay rule in two instances. First, whether it is error to reserve ruling on a hearsay objection until the question is answered. Second, whether out of court statements made through an interpreter, which are otherwise admissible, are inadmissible unless the interpreter testifies to them at trial.

Respondent's arguments shows it misperceives the hearsay rule and proper objections thereto. At trial, Respondent interposed hearsay objections to all questions posed by General Counsel which called for a witness to relate what someone other than the witness had said unless it was clearly an admission. Respondent argued that I should inevitably sustain the objections without considering the response. (See, for example, pp.34-41.) This contention is clearly erroneous as an examination of the hearsay rule and its purpose shows.

Section 1200 of the Evidence Code sets forth the hearsay rule and provides in pertinent part:

> Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Emphasis added.)

A question that calls for an out of court utterance may

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witnesses is discoverable through our prehearing conferences unless they are agricultural workers. As noted, in this instance the workers had already testified so their identity was known.

not be objectionable hearsay for a number of reasons. It may not be a statement. It may be a question or an operative statement which is relevant simply because the words were said. In neither case would the hearsay rule make the utterance inadmissible.

Further, an out of court statement which asserts a truth is not made inadmissible by the hearsay rule if it is not offered to prove the truth of that statement but, for example, to show that the statement occurred (e.g.' to show knowledge) or to show explain subsequent conduct (e.g. to show why the plaintiff did not return to work as soon as she was physically able).[47] The hearsay rule excludes out of court utterances only when they are offered for a special purpose, namely, as assertions to evidence the truth of the matter asserted. (People v. Putty (1967) 251 CA 2d 991 [59 Cal. Rptr 881].

While it is appropriate to interpose an objection at the time a question which may call for hearsay is asked, it is incorrect that the judge must always rule at that time. A proper ruling depends on whether the response is hearsay and, if so, whether it falls within an exception to the hearsay rule. Sometimes the answer called for will clearly be inadmissible hearsay. But in other instances, it is necessary to hear the response in order to rule.[48]

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[47] See, Witkin sections 597 and 600.

[48] In its brief, Respondent cites Witkin, Cal. Evidence (3d ed, 1986),(Witkin), section 2028, pp. 1990-1991) to support its contention that rulings should not be reserved. None of the examples in section 2028 are rulings on hearsay objections. Rather, section 2028 criticizes a court for delaying a ruling on

The second aspect of Respondent's hearsay objections is that it was error to allow witnesses to testify to out of court statements made by the ranch manager and the irrigation foreman when the statements were made in English, then translated into Spanish, and the witnesses did not speak English and so did not understand the original statements.[49]

The prevailing view, which is the rule in California and the Ninth Circuit, is that the interpreter is a medium or language conduit, and the words she or he translates remain the words of the declarant. Thus, there is no double hearsay issue.[50] These cases say that a percipient witness may testify to the interpreter's translation of the declarant's statement. The interpreter need not take the stand. (U.S. v. Nazemian (Nazemian) (9th Cir. 1991) 948 F.2d 522; People v. Torres (Torres) (1989) 213 C.A.3d 1248 [262 Cal.Rptr. 323])

This is true even when the witness and the interpreter

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an objection that it would be prejudicial to exhibit bloody clothing until after the clothing was exhibited to the jury and also criticizes courts for reserving rulings because courts sometimes fail to rule at a later time. None of the examples address the reasons to reserve rulings on hearsay objections in order to determine if the answer is nonhearsay or an exception.

[49]Respondent also interposed a foundational objection that the interpreter was required to testify to establish his competence to interpret. While it is certainly better practice to have the interpreter testify, both to deal with the foundational issue and to eliminate the question of double hearsay, the more recent case law recognizes this is not always possible and structures the requirements accordingly.

[50]The second circuit also takes this view. U.S. v. Lopez (Lopez) (2d Cir. 1991) 937 F2d 716, 734? U.S. v. Da Silva (Da Silva) (2d Cir. 1983) 725 F.2d 828. Some other jurisdictions and older cases consider the witness' testimony hearsay.

have similar interests. In Nazemian, one Drug Enforcement Agency (DBA) agent testified to statements made by a drug seller although the statements were made in a language the Agent did not understand and the interpreter was another DBA agent. In Torres, a police officer testified to admissions made by the defendant while the defendant was in custody even though another police officer translated the defendant's statements and the first officer could not understand the original statements but only the translation.[51] In Lopez, a confidential informant testified to incriminating statements made by two defendants who were talking to one another in a car in which the informant and the informant's niece were also riding. The niece translated the defendants' statements to the informant. In Da Silva, a customs agent used another government agent to interrogate the defendant.

Underlying each of these cases is the analysis that the remarks remain those of the declarant, and, thus, anyone who heard them may testify they were made. The cases also speak of the interpreter as the agent of the people speaking through the interpreter and the declarant's admissions as authorized admissions. The cases speak of a presumption of agency where there is no motive to mislead and no reason to believe the translation is

[51]Torres contains a thorough discussion of the issue and criticized earlier cases which required the interpret to testify. Torres is distinguishable from the instant case in one respect because before the police office testified as to what the defendant said, the interpreter testified that he was competent to translate and that he translated accurately. This factual distinction is applicable only to the foundation question, discussed infra, not to the hearsay question.

inaccurate. (Torres; Da Silva.)

In order to establish an agency relationship, it is not necessary for the interpreter to be selected by each of the participants to a conversation. The relationship exists even if the interpreter was selected by only one of them.

Based on the foregoing, I reject Respondent's motion to strike as hearsay the witnesses' testimony as to Stefanopoulos's remarks to Soto and Soto's responses during the first meeting at the company office. Although most of the cases cited deal with instances where the declarant's statements were made directly to the interpreter who translated them to the witness, and here, the interpreter was listening to a conversation and translated the statements to others, I do not find this difference dispositive.

In Lopez, the court allowed the testimony when the interpreter translated an overheard conversation relying on the same factors in the other cases. Namely, there was no reason for the interpreter to misrepresent, and no evidence the translation was incorrect.

This result makes sense because even in the cases when the interpreter was translating a conversation occurring between two people face to face, neither of the participants could understand what the other was saying. They could not correct the interpreter. The critical factor in all the cases is whether the interpretation is likely to be correct. Thus, even if Respondent did not consent to the use of Juan Luis and did not monitor his translations, absent evidence that he had a motive to translate

incorrectly or was not competent to translate, the statements of Soto and Stefanopoulos are admissible without Juan Luis testifying.

In rejecting the hearsay analysis of earlier cases, the court in Torres noted the impracticability of such a rule in California today with its multitude of languages. This is clearly true in California agriculture where this agency's long experience shows that many workers speak little or no English and rely on those co-workers who do to interpret for them. Experience also shows that agricultural workers are mobile. A rule that a party must produce the interpreter is as impractical in the agricultural setting as in those faced by the courts which caused them to establish the sensible standard set forth above.

I turn now to the alleged unfair labor practices. It is undisputed that the workers engaged in an economic strike which is protected concerted activity and that Respondent did not hire permanent replacements.

It is well established that economic strikers who have not been permanently replaced are entitled to immediate reinstatement once they make an unconditional offer to return to work unless the employer shows a substantial business justification for not doing so.[52] A refusal to reinstate economic strikers as obligated is inherently destructive of their statutory rights, and therefore unlawful, even absent a showing of discriminatory motive. (Laidlaw Corp. (1968) 171 NLRB 1366 [68 LRRM 1252], enf'd. (7th Cir. 1969) 414 F2d. 99 [71 LRRM 3054], cert. den. (1970) 397 US 920

[52]No such justification is asserted here.

[73 LRRM 2537]; NLRB v. Fleetwood Trailer Co. (1967) 389 US 375 [66 LRRM 2737; NLRB v. Great Dane (1967) 388 US 26 [65 LRRM 2465; Vessey & Company. Inc. (1985) 11 ALRB No. 3 (7 ALRB No.44.)

Godoy, Villegas and Hernandez made an unconditional offer to return to work on behalf of all the workers when they met with Ms. Blanco after returning from the EDD office. They clearly expressed, and she clearly understood, that they were not just asking for the three of them to return. They made no mention of the raise and so were clearly not conditioning their return on it. Where workers are unrepresented, a single worker may make the offer on behalf of the others who engaged in the protected activity. (Aubrey Eaton d/b/a Eaton Warehousing Company (1990) 297 NLRB 958 [134 LRRM 1023], enf'd. (6th Cir. 1990) 135 LRRM 3272.)

There are no special words which must be used. Simply appearing at work and asking whether they still have their jobs is sufficient. Frudden Produce, Inc. (1982) 8 ALRB No. 42.)

The workers having unconditionally offered to return, they were entitled to immediate reinstatement, and it became Respondent's obligation to make a specific offer of reinstatement to their former or substantially equivalent positions without prejudice to seniority or other rights and privileges previously enjoyed by the workers.

I have found that Ms. Blanco told the workers there were not jobs available for all of them. Such a statement clearly does not meet Respondent's legal obligation. Even if I credited her testimony that she told them she did not hire them and they would

have to see Soto, that too would be insufficient.

She was Stephanopoulos' representative, empowered to handle any work related matter for them. Her response as she stated it was insufficient. A general statement to a striker by the employer that it would like him to return is more of an offer of reinstatement than she made, and such a statement has been found insufficient. (Coast Engineering Co., Inc. (1982) 282 NLRB 1236.) The fact that over the next two days some of the workers contacted Respondent and were then returned to work does not meet Respondent's obligation which was to have made a valid offer of reinstatement to all those involved in the strike when the workers offered to return mid-day on July 20.

Based on the foregoing, I find Respondent violated section 1153 (a) of the Act.

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

ORDER

Respondent S & S RANCH, INC., a California Corporation, its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to offer to reinstate and refusing to reinstate strikers who have made an unconditional offer to return;

(b) In any like or related manner interfering with, restraining or coercing agricultural employees in the exercise of

the rights guaranteed by section 1152 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer, to the extent Respondent has not already done so, Hector Ceja, Raul Ceja, Dionicio Garcia, Nicolas Garcia, Filiberto Gomez, Felipe Guerra, Javier Hernandez, Adan Ceja, Salvador Ceja, Catnilo Cortez, Juan Luis Gonzalez, Francisco Lopez-Botello, Javier Murgo, Juan Murgo-Amezcua, Salvador Morales, Manuel Trejo a.k.a. Francisco Godoy, Jose Villegas a.k.a. Jose Alvaro Manuel Villegas, Nicanor Villegas, Rodolfo Caballero, Rubin Ortega, Demetrio G. Ramos, Julian Sandoval, Antonio Tamayo, Jorge Torres, Jose Cruz Torres and Enrique Villegas immediate and full reinstatement to their former positions of employment, or if their positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges of employment;

(b) Make whole Hector Ceja, Raul Ceja, Dionicio Garcia, Nicolas Garcia, Filiberto Gomez, Felipe Guerra, Javier Hernandez, Adan Ceja, Salvador Ceja, Camilo Cortez, Juan Luis Gonzalez, Francisco Lopez-Botello, Javier Murgo, Juan Murgo-Amezcua, Salvador Morales, Manuel Trejo a.k.a. Francisco Godoy, Jose Villegas a.k.a. Jose Alvaro Manuel Villegas, Nicanor Villegas, Rodolfo Caballero, Rubin Ortega, Demetrio G. Ramos, Julian Sandoval, Antonio Tamayo, Jorge Torres, Jose Cruz Torres and Enrique Villegas for all wage losses and other economic losses they have suffered as the result of Respondent's unlawful conduct, the

makewhole amount to be computed in accordance with established Board precedents. The award shall reflect any wage increase, increase in hours, or bonus given by Respondent since the unlawful conduct. The award also shall include interest, to be computed in the manner set forth in E.W. Merritt Farms (1988) 14 ALRB No. 5.

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

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

(e) Upon request of the Regional Director or his designated Board agent, provide the Regional Director with the date of Respondent's next peak season. Should Respondent's peak season have begun at the time the Regional Director requests peak season dates, Respondent shall inform the Regional Director when the present peak season began and when it is anticipated to end, in addition to informing the Regional Director of the anticipated dates of the next peak season;

(f) Mail copies of the attached Notice, in all appropriate languages, within thirty days after the date of

issuance of this Order, to all employees employed' by Respondent at any time during the period from July 20, 1994, until July 19, 1995;

(g) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on Respondent's property for sixty (60) days, the periods and places of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which has been altered, defaced, covered, or removed;

(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice in all appropriate languages to all the agricultural employees of Respondent on company time and property at times and places 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 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 time lost at this reading and during the question-and-answer period;

(i) Provide a copy of the attached Notice to each agricultural employee hired to work for Respondent during the twelve (12) month period following the issuance of this Order; and

(j) Notify the Regional Director in writing, within thirty (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 has been achieved.

Dated: December 11, 1995

BARBARA D. MOORE
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Visalia Office of the Agricultural Labor Relations Board (ALRB) , the General Counsel of the ALRB issued a complaint that alleged we, S & S RANCH, INC., a California Corporation 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 timely rehire Hector Ceja, Raul Ceja, Dionicio Garcia, Nicolas Garcia, Filiberto Gomez, Felipe Guerra, Javier Hernandez, Adan Ceja, Salvador Ceja, Camilo Cortez, Juan Luis Gonzalez, Francisco Lopez-Botello, Javier Murgo, Juan Murgo-Amezcua, Salvador Morales, Manuel Trejo a.k.a. Francisco Godoy, Jose Villegas a.k.a. Jose Alvaro Manuel Villegas, Nicanor Villegas, Rodolfo Caballero, Rubin Ortega, Demetrio G. Ramos, Julian Sandoval, Antonio Tamayo, Jorge Torres, Jose Cruz Torres and Enrique Villegas 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 that 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.

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WE WILL make whole the above named employees who were not timely rehired for any economic losses they suffered as the result of our unlawful acts.

DATED:

S & S RANCH, INC.,
a California Corporation

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 711 North Court Street, Suite H, Visalia, CA 93291-3636. The telephone number is (209) 627-0995.

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

DO NOT REMOVE OR MUTILATE