Indio, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GREWAL ENTERPRISES, INC.,	)	Case Nos. 97-CE-1-EC
Respondent,	)	97-CE-19-EC
	)	97-CE-19-1-EC
and	)	97-CE-23-EC
	)	97-CE-31-EC
	)	97-CE-32-EC
UNITED FARM WORKERS OF AMERICA, AFL-CIO, and DAVID VALLES,	)	24 ALRB No. 7
	)	(December 17, 1998)
Charging Parties.	)	

DECISION AND ORDER[1]

On August 28, 1998, Administrative Law Judge (ALJ) Douglas Gallop issued the attached decision in which he recommended that the allegations contained in the complaint issued herein regarding charges that Grewal Enterprises, Inc. (Respondent) unlawfully refused to recognize and bargain with the United Farm Workers of America, AFL-CIO (UFW), in violation of Labor Code section 1153 (e), be dismissed pursuant to a private party settlement agreement entered into by Respondent and the UFW. The ALJ also recommended that Respondent be found to have violated section 1153 (c) and (a) by refusing to hire employees of Respondent's predecessor, David Freedman Co. Exceptions, briefs and replies were timely filed by Respondent, General Counsel, and the UFW.

[1] All decisions of the Agricultural Labor Relations Board, in their entirety, are issued as precedent for future cases. (Gov. Code § 11425.60.)

The Agricultural Labor Relations Board has considered the record and the ALJ's decision in light of the exceptions and briefs submitted by the parties and affirms the ALJ's findings of fact and conclusions of law and adopts his recommended decision and order.

ORDER

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

1. Cease and desist from:

(a) Refusing to hire or otherwise retaliating against any agricultural employee, because the employee has exercised rights guaranteed under section 1152 of the Act.

(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) To the extent it has not already done so, offer jobs to all of the former agricultural employees of David Freedman & Company who applied for positions with Respondent commencing November 13, 1996, to the position for which they applied, or to substantially equivalent positions, replacing, if necessary, any employee first hired on or after that date;

(b) Make whole the above-mentioned former employees of David Freedman & Company, Inc. for all wages and

other economic losses they suffered as a result of the unlawful refusals to hire them. The award shall reflect any wage increase, increase in hours or bonus given by Respondent since the unlawful refusals to hire. The award shall also include interest to be determined in the manner set forth in *E. W. Merritt Farms* (1988) 14 ALRB No. 8;

(c) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records relevant to a determination of the backpay and/or makewhole amounts due to those employees under the terms of the remedial order as determined by the Regional Director;

(d) Upon request of the Regional Director, sign the attached Notice to Employees embodying the remedies ordered. After its translation by a Board agent into all appropriate languages, as determined by the Regional Director, Respondent shall reproduce sufficient copies of the Notice in each language for all purposes set forth in the remedial order;

(e) Mail copies of the Notice, in all appropriate languages, within 30 days after the issuance of a final remedial order, to all agricultural employees employed by Respondent at any time from November 13, 1996, until the date of mailing the Notice.

(f) Post copies of the Notice, in all appropriate languages, in conspicuous places on Respondent's property for sixty (60) days, the period (s) and place(s) to be determined by

the Regional Director, and exercise due care to replace any Notice which may be altered, defaced, covered or removed;

(g) Arrange for a Board agent to distribute and read the Notice in all appropriate languages to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent, to all non-hourly wage employees in order to compensate them for lost time at this reading and during the question-and-answer period;

(h) Provide a copy of the Notice to each agricultural employee hired to work for Respondent for one year following the issuance of a final order in this matter;

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

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

It is further ordered that all other allegations in the Second Amended Complaint are hereby dismissed.

DATED: December 17, 1998

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Board Member

GRACE TRUJILLO DANIEL, Board Member

MARY E. MCDONALD, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that alleged we, Grewal Enterprises, 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 hire former employees of David Freedman & Company, Inc., because they were represented by the United Farm Workers of America, AFL-CIO.

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;
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 ALRB;
5. To act together with other workers to help and protect one another;
6. To decide not to do any of these things.

Because this is true, we promise you that:

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

WE WILL NOT refuse to hire or otherwise discriminate against any agricultural employee because he or she exercised any of these rights.

WE WILL, to the extent that we have not already done so, offer those former employees of David Freedman & Company, Inc., who applied, or attempted to apply for work commencing November 13, 1996, positions with us, and made them whole for any losses they suffered as the result of our unlawful acts.

DATED: GREWAL ENTERPRISES, 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 319 South Waterman Avenue, El Centro, California 92243. The telephone number is (760) 353-2130.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

GREWAL ENTERPRISES, INC. (UFW)

24 ALRB No. 7
Case No. 97-CE-1-EC, et al.

ALJ Decision

GC's complaint alleged that the ER had refused to recognize and bargain with the UFW as a successor to a certified unit of the agricultural workers of David Freedman & Co., Inc. The complaint also alleged that the ER had unlawfully refused to hire the predecessor's employees based on their union affiliation. During the hearing, the ER and the UFW reached a settlement of the bargaining allegations and the UFW requested withdrawal of the section 1153 (e) charges. The ALJ recommended that the Board approve the settlement. The ALJ also concluded that the ER had violated sections 1153 (c) and (a) by refusing to hire the predecessor's employees based on their union affiliation. The ALJ concluded that even absent the ER's discrimination, it "probably would have first hired employees who had previously cultivated its grapes. However, the ALJ found, the ER violated 1153 (c) and (a) by hiring new employees, while refusing to consider the applications of the former Freedman employees. Therefore, the ALJ ordered the ER to hire all of the former agricultural employees of Freedman who timely applied for positions, replacing, if necessary, any employee first hired on or after that date.

Board Decision

The Board summarily affirmed the ALJ's recommended decision and order.

* * *

This case summary is furnished for information only and is not an official statement of the case, or of the Agricultural Labor Relations Board.

* * *

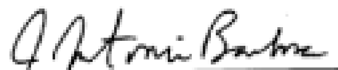
STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: GREWAL ENTERPRISES, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO and DAVID VALLES, Charging Parties.	Case Nos. 97-CE-1-EC 97-CE-19-EC 97-CE-19-1-EC 97-CE-23-EC 97-CE-31-EC 97-CE-32-EC DECISION OF TEE ADMINISTRATIVE LAW JUDGE; ORDER TRANSFERRING DECISION TO THE BOARD

The above-named decision is hereby ordered transferred to the Board. The parties are hereby given twenty (20) days in which to take exception to the decision of the Administrative Law Judge attached hereto and served within. All parties must file said exceptions with the Executive Secretary by September 17, 1998. Reply briefs are due October 1, 1998.

DATED: August 24, 1998



J. ANTONIO BARBOSA
Executive Secretary, ALRB

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	Case Nos. 97-CE-1-EC
GREWAL ENTERPRISES, INC.,	97-CE-19-EC
Respondent,	97-CE-19-1-EC
and	97-CE-23-EC
UNITED FARM WORKERS OF AMERICA, AFL-CIO and DAVID VALLES,	97-CE-31-EC
Charging Parties.	97-CE-32-EC

Appearances:

Kristine Rabago
ALRB El CentrO Regional Office
For General Counsel

Thomas E. Campagne
Sarah A. Wolfe
Fresno, California
For Respondent

Thomas Patrick Lynch
Marcos Camacho, A Law Corporation
Keene, California
For Intervenor

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DOUGLAS GALLOP: A hearing in this matter was conducted before me on June 11, 12 and 13, 1998, at Indio, California. The case arises from charges filed by the United Farm Workers of America, AFL-CIO, which later intervened in the proceedings (hereinafter Intervenor) and David Valles, the latter not participating in the hearing.[1] The charges allege that, Grewal Enterprises, Inc. (hereinafter Respondent) violated sections 1153(a), (c) and (e) of the Agricultural Labor Relations Act (hereinafter Act). Thereafter, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board), issued a complaint, which has been twice amended, alleging that Respondent unlawfully refused to recognize and bargain with Intervenor as a successor to a Board-certified unit, and refused to hire the predecessor's employees, based on union considerations.[2] Respondent filed answers to the complaints, denying the commission of unfair labor practices, and asserting affirmative defenses.

Shortly prior to the hearing, General Counsel and Respondent entered into a stipulation which, inter-alia, provided that General Counsel, rather than contending Respondent was a

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[1]Valles is sometimes incorrectly referred to as "Viaz" in the transcript. References to the transcript are cited as TR ___. References to exhibits are cited as G.C. Exh.___ for General Counsel's, R. Exh.___ for Respondent's, Int. Exh. ___ for Intervenor's and Jt. Exh.___ for the Joint Exhibits.

[2]General Counsel initially named Ranjit Singh Grewal, Respondent's President, as an individual respondent, but later dropped him as a named party. At the hearing, General Counsel dropped Rafael Amparano from the complaint's list of alleged discriminatees, as a non-existent person.

successor for all of its operations, held this status only for properties purchased or sub-leased from the predecessor, David Freedman & Company, Inc. (DFI) At the hearing, Respondent and Intervenor arrived at a settlement of this allegation, and the Intervenor requested withdrawal of its §1153(e) allegations. Over objection to the settlement by General Counsel, the undersigned recommended approval of the settlement.

The Board, by an Order dated July 9, 1998, held that procedurally, the correct manner of accomplishing approval of the settlement was to dismiss the section 1153(e) allegations, and construed the undersigned's recommendation as such, subject to exceptions which may be filed by General Counsel. Accordingly, the §1153(e) allegations in the Second Amended Complaint will be dismissed.[3] The only remaining issue to be decided herein is the unlawful refusal to hire allegation.

Upon the entire record, including my observations of the witnesses, and after careful consideration of the briefs filed by the parties, and the arguments made at the hearing, I make the following findings of fact and conclusions of law.

[3] In her brief, the Assistant General Counsel urges that the successorship allegation not be dismissed, but rather, a violation found. Based on the settlement agreement, it is concluded that it will effectuate the purposes of the Act to dismiss those allegations. It is noted that even if the section 1153 (e) allegations were not dismissed, the record would have to be reopened in order to permit General Counsel, if desired, to present the rest of the prima facie case concerning these allegations, and for Respondent to present its evidence in defense.

FINDINGS OF FACT[4]

1. Jurisdiction

Respondent admits the filing and service of the charges, and that it is an agricultural employer within the meaning of §1140.4 (c) of the Act. Respondent also admits that the alleged discriminatees were, at all material times, agricultural employees under §1140.4(b). Respondent stipulated that Ranjit Singh Grewal, attorney J. John Anderholt, supervisor Manual Martinez Aguilar, Jr. and four named forepersons were its agents and/or supervisors at all or specified times. Respondent admits that Intervenor is a statutory labor organization.

2. The Refusal to Hire

Intervenor and DFI had a collective bargaining relationship which preceded passage of the Act, and Intervenor was certified as the representative of DFI's agricultural employees in 1977, continuing in that capacity until DFI ceased doing business in mid-1996. Commencing during the summer of 1996,[5] Respondent and DFI negotiated several agreements, which were not finalized until November and thereafter, under which

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[4]Many of the facts herein are based on the stipulation between General Counsel and Respondent (Jt. Exh. 13), which includes admissions by Respondent to some of the complaint allegations, and other stipulations reached during the course of the hearing. Unless otherwise indicated, the facts cited in this Decision are based on stipulations. Facts which are only relevant to the successorship issue are not set forth.

[5]All dates hereinafter refer to 1996 unless otherwise indicated.

Grewal purchased about 80 acres of land, and Respondent subleased about another 40 acres, most of which was used for the cultivation of table grapes. Grewal leased the acres he purchased to Respondent, which began cultivating the same grape vines existing when DFI owned/leased the 120 acres. Prior to commencing operations, Respondent, which first hired agricultural employees in 1994, the year of its incorporation, had cultivated table grapes on about 120 other acres of land, and continued to do so after the DFI agreements took effect, subsequently acquiring an additional 80 or 90 acres from sources other than DFI. All of the land cultivated by Respondent is located within a six mile radius within the Coachella Valley. Thus, at the time the DFI agreements took effect, Respondent was involved in grape cultivation on about 240 acres of land, and currently cultivates about 320 acres.

The alleged discriminatees were former DFI employees who had worked on the 120 acres prior to the sale and sub-lease agreements. The work to be performed under Respondent's operation was essentially the same as it had been under DFI, and involved the same skills as the DFI and Respondent's employees had been required to possess. At the hearing, Respondent denied that lack of experience was a motivating factor in its refusal to hire the former DFI employees.[6]

Respondent was aware, as of the summer of 1996, that

[6]Aguilar gave speculative, unconvincing and irrelevant testimony concerning the ultimate plans Respondent might have for the 120 acres at issue, and the relative quantities of work performed by former DFI employees, compared with those employed by Respondent. Said testimony has nothing to do with Respondent's stated reasons for its conduct.

Intervenor represented the DFI employees working on the 120 acres that was being purchased and sub-leased. Indeed, attorney Anderholt, who represented both Respondent and DFI in labor relations and these real estate transactions, had been negotiating, on behalf of DFI, with Intervenor for a collective bargaining agreement, since the last agreement had expired, by its terms on July 1, 1995. (Int. Exh. 3) The agreement contained a successorship clause which provided, in pertinent part:

> This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Successors and assigns for the purposes of the Article applies to a sale or other transfer of the business and ownership of the Company. If there is a sale of assets, either in whole or in part which does not provide for a continuation of the workers of the Company to operate such sold or transferred business of [sic] assets, the Successor Clause shall not apply to the assets sold or transferred.

In a letter to Grewal dated August 12 (Int. Exh. 13), Anderholt, acting on behalf of DFI, cited the latter portion of the above clause, and stated:

> Your purchase agreement with David Freedman & Co., Inc., contained such a provision. Enclosed is a copy of the list of employees that are Union members employed by David Freedman & Co., Inc. Under the terms of the successor clause it is important these persons not be employed by you.

In his testimony, Grewal acknowledged he had seen the letter and the employee list, in early November, but could not remember whether he received it in the mail, or was personally given it to sign, as part of the escrow papers in the land sale deal with DFI. Grewal further testified he could not remember whether he was given a copy to keep, and if so, whether

he kept it. According to Grewal, when he searched his records, pursuant to subpoena requests, he did not locate the letter.

Grewal further testified he did not rely on Anderholt's advice, because Anderholt is a real estate attorney. Rather, he purportedly called a major labor law firm, on an unstated date, and spoke with an unnamed attorney or attorneys, who advised him (whether at that time, or subsequently not being made clear) that he had nothing to worry about. Grewal could hire anyone he wanted, because Respondent was not a successor.

Grewal's testimony concerning his disregard of Anderholt's letter is not credited. Aside from generally not being an impressive witness from the standpoint of his demeanor, and the vague nature of his testimony, the scenario presented by Grewal is highly unlikely, given the law on successorship, and the standard of care anyone from the named law firm would likely exercise. Furthermore, it appears that Respondent followed Anderholt's advice in all other matters connected with this case, and retained him to represent it in the instant unfair labor practice proceedings until at least March 30, 1997, when Anderholt sent Respondent's position letter to the ALRB's El Centro regional office. (G.C. Exh. 21)[7]

By letter dated September 18, Intervenor contended Respondent was the successor to DFI, and requested negotiations for a new collective bargaining agreement. Intervenor mailed or delivered a similar letter to Respondent dated November 14. Anderholt responded in a letter dated November 14, declining

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[7]Respondent's current attorneys filed its answer to the original complaint.

negotiations on the basis that Respondent was not a successor to DFI. Anderholt further stated Respondent was not hiring and had its own employees. The latter contention may have been sparked by the incidents of November 13 and 14, set forth below.

General Counsel and Respondent stipulated that on November 13, five former DFI employees went to Respondent's office seeking work and spoke with Grewal. One of the employees wore a union button. When they asked for work, Grewal responded he had his own workers, about 400 people. One of the employees said they were from DFI, and Grewal responded he had nothing to do with them.

Respondent further stipulated that on November 14, two pairs of former DFI employees visited Respondent's office seeking work. In each case, one of the two employees wore a union button. In both instances, they spoke with Grewal, who told them he had his own employees to perform the work. When one employee stated they were former DFI employees, Grewal responded, "Shit," and forcefully closed the door. None of these employees was hired.

On November 18, a group of employees, accompanied by Intervenor's representatives Gustavo Romero and Gustavo Aguirre, went to Respondent's office to seek work. They first spoke with Yazmina Olmeda Sauceda, then a clerical employee who, inter-alia, registered employees to work for Respondent. In her testimony, Sauceda indicated this was the first time any former DFI employees attempted to seek work, although she eventually acknowledged there were occasions employees sought work unaccompanied by Intervenor's representatives. To the extent her

testimony concerning the order of the visits conflicts with the stipulation, the stipulation takes precedence. At any rate, it is clear from Sauceda's testimony that she had some difficulty distinguishing one incident from another.

According to Sauceda, the employees stated they were there to be registered. She told them Respondent was not registering employees at that time, but took their names and telephone numbers, stating she would get back to them when registration commenced. This apparently did not satisfy the employees, who voiced their disapproval. One employee began shouting and used foul language. Romero spoke to Sauceda, telling her "a lot of things." The parties stipulated that Romero asked Sauceda to speak with Grewal, but according to her, she called him because of the demands, which she interpreted as being impolite.[8]

Grewal, apparently referring to the same incident, initially contended that Aguirre spoke for Intervenor, and shouted at him. Aguirre was present in the hearing room when Grewal testified, but Romero, who did not testify, was not. When recalled as a witness, Grewal acknowledged it was Romero who spoke, and Aguirre spoke to him on later occasions. Aguirre testified that the only person who shouted during the incident

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[8]Sauceda also cited an incident where a female representative entered her office, without permission and initially refused to leave. During the incident, the representative also demanded Sauceda show her driver's license or social security card. Respondent has not contended any improper conduct by the representatives, or the employee who shouted at Sauceda was a reason it did not hire the former DFI employees.

was Grewal.[9]

The parties stipulated that Romero identified himself as Intervenor's representative, and identified the group with him, most of whom were wearing union buttons, as former DFI employees seeking work with Respondent for the upcoming pruning season. Romero stated that the pruning work should be done by these, and all the other former DFI employees. Grewal responded that he had his own crews and did not need anyone else. Romero told Grewal Respondent had to recognize Intervenor as the collective bargaining representative, and hire all of the DFI employees. In their testimony, Grewal, Sauceda and Aguirre agreed that Romero, and on subsequent visits Aguirre and other representatives, stated that Respondent was obligated to hire the DFI employees on the basis of the DFI/Intervenor seniority list, established under the expired collective bargaining agreement.

Romero handed Grewal a letter, dated November 18, which stated the following:

> Dear Mr. Grewal:
>
> The Union advised you on November 14, 1996 that we would be considering you as the successor to David Freedman. The Union also requested immediate negotiations. At this time the Union has any day during the week of November 25, 1996. If you have any prior commitments, please suggest other date(s).
>
> Enclosed please find bargaining unit workers who normally would start the season by doing the pruning. The Union will provide you with their addresses later on this week. The Union is insisting that you recall these workers for

[9]Aguirre appeared to be a soft-spoken, somewhat reticent individual, as opposed to Grewal, who demonstrated a propensity to become rather emotional. Accordingly, it is found that Aguirre did not raise his voice, but Grewal did.

pruning this year. The remainder of the seniority list for the harvest, etc., will be forth coming [sic] . If you will need additional workers, [the] Union has the hiring hall, and therefore, ask's [sic] that you seek these workers through the Union.

If you have any questions, please call at the above number (s). Thank you.

Sincerely,

Gustavo Romero
Union representative

Attached to the letter was a seniority list of 76 former DFI employees, in order of seniority, with DFI employee and social security numbers. A representative of Intervenor shortly thereafter provided Grewal with most of the employees' addresses. (G.C. Exh. 16)

Aguirre and Grewal testified that in response to Romero's contentions, Grewal obtained a copy of the successorship clause and showed it to Romero, stating this proved he was not obligated to hire any DFI employees. Grewal stated he had over 500 of his own employees to perform the work but, according to Grewal, he said he would call if he needed additional employees. Respondent hired none of the employees on the seniority list.

The stipulation recites numerous occasions, from November 18, 1996 to May 1, 1997, where employees identifiable as having previously worked for DFI, either on their own or accompanied by representatives of the Intervenor, attempted to apply for work with Respondent. The employees were not permitted to complete applications until November 30. Sauceda testified she gave employees applications on that date to appease them; however, in evidence are numerous applications from employees who

do not list either DFI or Respondent as a previous employer, dated November 30, and in early December.

The employees' requests to be hired were consistently rebuffed in statements by Grewal[10] and Sauceda, that no work was available. Several stipulated incidents and the documentary evidence seriously undercut that contention. On November 30, after three former DFI employees completed applications, Sauceda made a telephone call, holding the applications, and apparently referred to them while speaking. Sauceda then told the employees they would be called if needed. The employees observed Sauceda, on the same date, accept applications from other employees, and call them into the office to be photographed.

Sauceda did not directly explain this incident in her testimony. She, along with Grewal and Aguilar, generally testified that no, or virtually no new non-supervisory employees were hired during Sauceda's tenure with Respondent, which ended in late March 1997. Respondent's witnesses contended that although the cultivated acreage had doubled, it was able to use the same number of employees by moving them around.

According to Sauceda, all former employees of Respondent were required to come in for photographing before they began the pruning work, because this was the first year Respondent used photo-ID cards. This still does not explain what appear to be approximately 90 new employees in Respondent's

[10]The Stipulations and testimony show that Grewal progressively increased the alleged number of Respondent's employees as time went by, jumping from 400 to 500 to 600. At one point, Grewal told the employees there would be no work for them until at least March.

payroll records (Jt. Exh. 3} showing hire dates of November 30 and during the month of December. The applications for many of these employees are in evidence, and they do not list Respondent as a prior employer. (G.C. Exhs. 17 and 18) Furthermore, in his position statement of March 20, 1997, Anderholt concluded by stating:

> My client continues to hire from the pool of qualified applicants and we believe that the evidence that he has hired several former employee [sic] of David Freedman & Co., is the best evidence of his clear intention not to discriminate in any way against those persons formerly employed by David Freedman & Co.[11]

Finally, stipulation 74, referring to an incident on November 30, states:

> Respondent did not hire Edgar Gonzalez, Eva Gonzalez or Lilia Gil. Respondent did continue to hire applicants after the date Edgar Gonzalez, Eva Gonzalez and Lilia Gill submitted applications. The Respondent's payroll records, previously identified as Joint Exhibit "3" reflects the identity of Respondent's employees and their hire dates.

After the pruning, the next crew work performed was thinning. The parties stipulated that on March 4, 1997, four former DFI employees spoke with foreman and admitted supervisor Vicente Romero, telling him they had heard he needed workers. Romero stated he did, and sent them to Respondent's office to register. At the office, Sauceda contended the computer was not "accepting" any of the employees' social security numbers and refused to register them. Sauceda, in her testimony, did not

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[11]Although Respondent has repeatedly contended it knowingly hired some former DFI agricultural employees by March 1997, this is not apparent from the records, and Respondent failed to name any such employee at the hearing or in its brief.

explain what took place during this incident, which would have been appropriate, since these workers had been employed by DFI in the past, thus at least suggesting they possessed valid social security cards.

Similarly, Manuel De La O Machuca testified that he was first hired by Respondent to perform thinning work, and then returned for the harvest. Although Machuca guessed this was about a year before his testimony, the evidence shows that thinning was performed in early March 1997. Machuca was employed by DFI many, many years ago, but it is unclear whether Respondent knew this. Shortly after he began working for Respondent, Romero asked him if he could find additional workers, and Machuca said he could.

The next day, he brought four or five "old-time" DFI workers with him, and Romero sent them to the office to be registered. When Machuca did not see them working, he asked Romero what had happened. Romero told him the computer had not "accepted" their social security cards, and the "old man" did not want them there because they were from the Union. Machuca further testified that additional employees were hired after this incident. Romero did not testify and again, no explanation was given as to why so many employees were found to have unacceptable social security cards. Although Machuca's testimony was somewhat fragmented, it is credited in the absence of conflicting evidence. It is also noted that irrespective of the employability of the individuals who sought work at the time, Respondent failed to explain why it reneged on its promise to contact Intervenor and/or the applicants when positions became available.

It was stipulated that on March 5, six former DFI employees were told by foreman and admitted supervisor Jose Lara that he needed them to work, and could also use an additional eight employees. Minutes later, the six workers arrived at Respondent's office, accompanied by Aguirre. They informed Sauceda that they had been sent by the foreman. Although Sauceda permitted them to complete applications, she told them, after speaking over a radio, that the "boss" had told her Respondent did not need any more workers.

When Aguirre asked why the group was being discriminated against, Grewal came out of his office and said they had already been told no workers were needed. Aguirre asked if the reason the employees were not needed was because they had worked for DFI and were Union workers, Grewal angrily responded, "I don't have anything to do with the (expletive) Union," and forcefully closed the office door. Grewal and Sauceda did not respond to this stipulated incident in their testimony.

On March 14, 1997, foreman and stipulated supervisor Jose Bibriesca invited two former DFI employees to work on his crew with Respondent. The employees expressed concern for being hired, due to their DFI experience, but he brought them to Respondent's office to apply. That night, Bibriesca told the employees he was sorry, but Respondent did not want to employ DFI workers. On the following day, the employees found Bibriesca in a field, and asked him for work. Bibriesca told them Respondent did not want to hire them, and he would be in danger of being fired if he let them work without permission. Bibriesca did not testify, and. Respondent gave no explanation for why these

employees were not hired, other than its general defenses.

Similarly, forelady and stipulated supervisor Lourdes Robledo had her husband call Charging Party David Valles on April 29, 1997 to tell him he could work for Respondent. Valles was a former DFI employee and had also worked for Respondent. Valles went to Respondent's office on April 30, 1997 and told Socorro Gallegos, who occupied Sauceda's position when she ceased working for Respondent, that the forelady's husband had told him to register for work. Although Gallegos had Valles complete an application for employment, she refused to register him, stating she could not "place" him in the computer. Valles spoke with Lourdes Robledo later that day, and asked why he had not been hired. Robledo responded that the secretary had told her his application was not being accepted because he had "worked" with Intervenor while employed at DFI. Robledo further told Valles the secretary had asked her not to repeat what she had said. General Counsel called Gallegos as a witness, and asked her about this conversation. Gallegos purportedly did not recall "the extent" of the what was said. (TR 127) Respondent's witnesses gave no explanation for this incident.

In support of Respondent's defenses, Grewal testified that he preferred to use his own employees to work on the land acquired from DFI. Although Grewal's credibility is suspect, this contention is logical and was stated as a reason for not hiring the former DFI employees from the outset. Accordingly, that testimony is credited.

Grewal further testified that he had nothing against

the former DFI employees. Grewal contended (contrary to Anderholt's position statement) that he did, in fact, refuse to consider former DFI employees for hire due to the conditions attached by the Intervenor, namely, recognition and hiring former DFI employees first in order of seniority. The above testimony is not credited. The evidence rather overwhelmingly establishes that Respondent had considerable animus toward the former DFI employees, because it wished to avoid being considered a successor employer. As to the conditions purportedly imposed by Intervenor, there is no evidence that Grewal ever indicated he would hire the employees absent those conditions. Indeed, these contentions very much appear to be desperate, ex post facto justifications for Respondent's conduct.

In this regard, Anderholt, as Respondent's counsel, at no time alleged the purported conditions as a reason for the refusal to hire. The prehearing conference order in this matter, dated March 26, 1998, reflects that the only justification raised by Respondent's current attorneys was the unavailability of work.[12] Furthermore, judicial notice is taken of a letter from Respondent's current attorneys to Chief Administrative Law Judge Thomas Sobel, dated May 8, 1998, opposing a request for sanctions by General Counsel, in which again, only this defense was raised. In short, Grewal's additional justifications should be, and are, rejected as pro-forma recitations of what Respondent now sees as its best chance to succeed in this case.

[12]Respondent's answer to the Second Amended Complaint, dated April 6, 1998, raises additional defenses, but does not allege the employees' applications were conditional.

3. The Offers to Hire Former DFI Employees

On November 25, 1997, Respondent mailed offers of employment to 68 of the alleged discriminatees. Respondent contends these were the only employees for whom it was able to find any address. (Although Intervenor contended it was providing the addresses of 75 former DFI employees on November 22, 1996, G.C. Exh. 16 only contains 64 names, with some addresses cut off. It will be presumed that Respondent received a more legible copy.) The following day, Respondent sent copies of these offers to the ALRB and Intervenor, together with a letter requesting that if the addresses were incorrect, they be re-served. In addition, Respondent offered reinstatement to the 38 alleged discriminatees for whom Respondent had no address, and requested that General Counsel and Intervenor serve these employees at their current addresses.

Due to the number of employees involved, Respondent offered those with last names beginning with letters in the first half of the alphabet employment beginning December 8, 1997, and . the remainder employment commencing December 15, 1997. The letters offered each employee the same or substantially similar positions for which they had applied. The letters set deadlines of December 8 and 15, 1997 for the employees to personally report to work. Failure to meet the deadline meant the employee had rejected the offer.

The letters stated that by accepting the offer to work, the employees were not waiving their "lawsuit" against Respondent. They also stated Respondent not only did not admit

any wrongdoing, but that the employees' allegations were false, and Respondent would continue to litigate against their monetary claims. The letters informed the employees their employment applications were not being opposed, because Respondent wished to "toll and limit" their claims for money. Respondent further informed the employees that even though they were still adversaries in litigation, this would not interfere with or affect how they would be treated while working. Finally, Respondent reserved the right to introduce the letters at the trial of the "lawsuit," as well as evidence as to whether the offer was accepted.

Respondent essentially repeated this process in February 1998. It prepared similar letters to the employees (although the letters contended that backpay had already been tolled) with copies to the ALRB and Intervenor, and again requested that General Counsel and Intervenor serve any letter addressed incorrectly and those for whom Respondent had no address. The letters were sent to the employees for whom Respondent had addresses on February 25, 1998, with copies to General Counsel and Intervenor on February 26, and set a deadline of March 9, 1998 to report to work.

According to Respondent, some employees have accepted the offers, some have rejected them and many others have not responded. Both General Counsel and Intervenor have informed Respondent they are not accepting service of the offers on them as constituting service on the employees. The record does not show what assistance, if any, they have provided in locating these employees.

ANALYSIS AND CONCLUSIONS OF LAW

It is well established that although a successor is entitled to hire its own workforce, and set its own initial terms and conditions of employment, it may not refuse to consider a predecessor's employees for hire in order to avoid successor Status. Rivcom Corporation, et al. v, ALRB (1983) 34 Cal.3d 743 [195 Cal.Rptr 651], affirming Rivcom Corporation, et al. (1979) 5 ALRB No. 55; Babbitt Engineering & Machinery v. ALRB (1984) 152 Cal.App. 3d 310, affirming Babbitt Engineering & Machinery (1982) 8 ALRB No. 10; San Clemente Ranch. Ltd. v. ALRB (1981) 29 Cal.3d 874. Where, as is the case here, General Counsel alleges that an employer has unlawfully refused to hire employees, the prima facie case is established by showing that anti-union considerations were a motivating factor in the refusal to hire employees who timely filed applications for employment. Direct or circumstantial evidence of animus includes overt or inferential expressions of anger by a supervisor toward the protected activity, disparate treatment of the alleged discriminatees, and shifting or false reasons given for the conduct. Miranda Mushroom Farm. Inc., et al. (1980) 6 ALRB No. 22. Once the prima facie case is established, Respondent must preponderantly establish that it would still have not hired the employees, in the absence of those prohibited considerations. Wright Line, a Division of Wright Line. Inc. (1980) 251 NLRB 1083 [105 LRRM 1169].[13]

[13]The refusal to consider for hire, in itself, may constitute a violation. Alexander Dawson, Inc. v. NLRB (CA 9, 1978) 586 F.2d 1300, affirming Alexander Dawson, Inc. (1977) 228

Respondent concedes that it was aware the former DFI employees were represented by Intervenor, and of the successorship clause in the expired collective bargaining agreement, at the time agricultural work began on the land formerly cultivated by DFI. Respondent also concedes that Intervenor made timely applications for employment on behalf of the former bargaining unit members. The evidence also . establishes that a substantial number of employees timely made their own applications, or attempted to do so.[14]

Respondent's main defense to the prima facie case is that the offers were conditioned upon recognition of Intervenor

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NLRB 165 [95 LRRM 1365]; M.P.C. Plating, Inc. (1991) 301 NLRB 785, at page 787 [137 LRRM 1335] . The California Supreme Court, in Rivcom Corporation, et al., supra, stated that the violation arguably is inherently destructive of employee rights, thus requiring a different analysis. Subsequent cases, however, have consistently applied the Wright-Line approach in refusal-to-hire cases. Laro Maintenance Corp. v. NLRB (CA DC, 1995) 56 F.3d 224 [149 LRRM 2530]; NLRB v. Horizons Hotel Corp. (CA 1, 1995) 49 F.3d 795 [148 LRRM 2641]; Pace Industries (1996) 320 NLRB 661, at page 662, fn. 7 [153 LRRM 1261].

[14]Many cases refer to a requirement that the application be made at a time when work is available. In most instances, however, if the application is made prior and reasonably close to the availability of work, the application will be treated as ongoing. If it would be futile to apply, because it is clear the employer is not going to hire on the basis of prohibited considerations, the application need not be filed. Matsui Nursery. Inc. (1985) 14 ALRB No. 10; Golden Valley Farming (1980) 6 ALRB No. 8; Rivcom Corporation, et al. v. ALRB, supra. In this case, given the many times Intervenor and employees applied, or attempted to apply for work, the active concealment of when work would be performed, broken promises to contact Intervenor and employees when work became available and overt expressions of animus connected with some of the refusals to hire, any of the alleged discriminatees who personally applied, or attempted to apply, or for whom the Union acted, will be deemed to have applied as of the date of first application, or attempted application. On the other hand, if no attempt at application was made, subsequent proceedings may determine if the employee had good reason not to apply, or attempt to do so.

and the hiring of all former DFI employees first, and by seniority. These conditions, according to Respondent, invalidated the applications. It is noted that similar demands by unions facing a recalcitrant alleged successor (or seeking to reinstate strikers) have often been made, and rejected as nullifying applications for employment or reinstatement. Rivcom Corporation, et al. v. ALRB, supra; Babbitt Engineering & Machinery v. ALRB, supra; Packing House & Industrial Services, Inc. v. NLRB (CA 8, 1978) 590 F.2d 688, at page 696.

This is not to say that an offer which is clearly conditioned on a term the employer is not obligated to follow will not negate the employment demand. Thus, in Kyutoku Nursery, Inc. (1977) 3 ALRB No. 30, a striker reinstatement case, the Board held that since it was clear the employees would not return to work unless the employer agreed to bargain concerning wages, the offer was conditional. (See also I. Bahcall Steel & Pipe, A Division of I, Bahcall Industries, Inc. (1988) 287 NLRB 1257 [130 LRRM 1476].) On the other hand, where it is not clear that employees would refuse to work, absent compliance with the demands, the applications are not considered conditional. Rivcom Corporation, et al., supra, Packing House & Industrial Services. Inc. v. NLRB, supra. This is particularly true if the employees sought work before the demands were made. Macomb Block and Supply. Inc. (1976) 223 NLRB 1285, at page 1286 [92 LRRM 1124], enforcement denied on other grounds, Macomb Block and Supply. Inc. v. NLRB (CA 6, 1978). 570 F.2d 1304. If there exists an ambiguity as to whether the application for work or reinstatement is conditional, the employer is obligated to seek a

clarification. I. Bahcall Steel & Pipe, A Division of I. Bahcall Industries Inc., supra; SKS Die Casting & Manufacturing, Inc. v. NLRB (CA 9, 1991) 941 F.2d 984 [138 LRRM 2246].[15]

Intervenor may or may not have been correct in its assertion that Respondent was a successor to DFI and was thus obligated to bargain with it. It is reasonably clear that even if Respondent was a successor to DFI, it was not obligated to hire the former DFI employees first and by seniority, absent discriminatory motive. It is noted that Intervenor's initial bargaining demands did not reference the hiring of former DFI employees, and at no time were the hiring demands explicitly or implicitly contingent on recognition. Even where bargaining demands were contained in the same letters from or conversations involving Intervenor's representatives, there is no evidence showing a reasonable linkage between those demands and the demand to hire former DFI employees. There is certainly no evidence that employees, some of whom attempted to apply before Intervenor demanded employment for them, were conditioning their willingness to work on union recognition and bargaining. Therefore, the evidence fails to show that the applications were invalidated by

[15]Respondent's brief cites two very old National Labor Relations Board (NLRB) cases which apparently placed the burden on the employees to show their offers to return to work were clearly unconditional, and resolved ambiguities in favor of the employers. Texas Foundaries, Inc. (1952) 101 NLRB 1642, at pages 1678-1680 [31 LRRM 1224]; Southeastern Motor Truck Lines (1955) 113 NLRB 1122 [36 LRRM 1463]. In Sawyer Stores, Inc. (1971) 190 NLRB 651, at fn. 1 [77 LRRM 1434], also cited by Respondent, two of the three NLRB members affirmed the administrative law judge's finding that the offers to return to work were conditional, only on the basis that it was clear the employees would not return to work unless at least one of the conditions was met. This is the current test employed by the NLRB, ALRB and the courts.

Intervenor's recognitional demands.

Similarly, while Intervenor was insisting on preferential hiring by seniority, there is insufficient evidence showing the Intervenor would only permit the employees to work on that basis. -The employees' conduct, if anything, refutes such an inference as to their intentions. Before Intervenor interceded on their behalf, employees had attempted to obtain work, and there is no evidence showing any of them expressed Intervenor's demands. It is noteworthy that even after Respondent disregarded the demands, using its own, and probably also new employees for the pruning,[16] the former DFI employees continued to seek work. In the absence of a clear refusal to accept employment unless the conditions were met, it was Respondent's obligation to clarify any perceived ambiguity as to whether, in fact, the demands constituted conditions. Therefore, it is concluded that the applications and attempted applications for work were valid.

As found above, the stipulated and credited facts, along with the documentary evidence clearly show that a motivating factor in the refusal to hire, or consider for hire the former DFI employees was Respondent's desire to avoid being considered a successor and thus, obligated to recognize Intervenor as the collective bargaining representative of its employees. Anderholt instructed Respondent to not hire the employees and the evidence shows that those instructions were

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[16]The Stipulation states that dates of hire may be determined from Respondent's payroll records which, as noted above, appear to show about 90 new hires for the pruning work. It is difficult to reconcile this with the testimony of Respondent's witnesses, that no new employees were hired in November or December.

carried out. If a few former DFI employees were, in fact, hired by Respondent, this does not mean that the others were not discriminated against. Laro Maintenance Corp. v. NLRB, supra; Duke Wilson Co. (1986) 12 ALRB No. 19, at ALJD, page 25. General Counsel has, therefore, established a prima facie case.

Grewal's testimony, that he would have preferred to use his own employees to cultivate the grapes formerly owned or leased by DFI has been credited. In order to rebut the prima facie case, however, Respondent must show that even in the absence of discriminatory intent, it still would have used its own workers. Said analysis frequently asks a hypothetical question, not easy to answer. Would Respondent have used its own employees in every case? Would it have hired a few of the most qualified DFI employees? If it had seriously reviewed their applications, would it have changed its mind and hired most of them? In this case, fortunately, the answer will only somewhat, if at all, affect the remedy, since many new employees were hired, at least by March 1997. Accordingly, Respondent will be given the benefit of a doubt, and it is concluded that even absent the discrimination, it probably would have first hired employees who had previously cultivated its grapes.

The above conclusion does not apply to newly hired employees. Grewal's testimony concerning why he. refused to consider the applications of former DFI employees, eg. the demands made by Intervenor, has been discredited. In the absence of valid reasons for its conduct, Respondent violated section 1153 (a) and (c) of the Act, once it began hiring new employees. The evidence establishes that at least as of

March 1997, Respondent hired new employees. The undersigned is far from satisfied that no new employees were hired for the December 1996 pruning work, and unless General Counsel accepts this representation, the issue may be left to compliance. Furthermore, and contrary to Respondent's position in its brief, although Intervenor claimed the former DFI employees were entitled to work on fields they had previously cultivated, this does not establish that their applications were limited to work available in those fields. The applications and attempts to apply were for work with Respondent, and any agricultural employment denied due to union considerations constituted unlawful discrimination. Therefore, irrespective of which fields they were assigned to work, Respondent violated section 1353(a) and (c) of the Act by hiring new employees, while refusing to consider the applications of the former DFI employees.[17]

THE REMEDY

Having found that Respondent violated §1153(a) and (c) of the Act by refusing to hire former DFI employees, I shall recommend that it be ordered to cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

In fashioning the affirmative relief delineated in the following Order, I have taken into account the entire record of these proceedings, the character of the violations found, the nature of Respondent's operations, and the conditions among farm

[17]The payroll records do not show which fields Respondent's employees worked on any given day. There was testimony that Respondent's employees move from field to field as they work.

workers in the agricultural industry at large, as set forth in Tex-Cal Land Management, Inc. (1977) 3 ALRB No. 14.

The normal remedy for an unlawful refusal to hire or consider employees for hire is to offer jobs for the position(s) applied for, and backpay. Rivcom Corporation, et al., supra; Ultrasystems Western Constructors, Inc. (1993) 310 NLRB 545 [144 LRRM 1092]. Therefore, for the purposes of backpay, Respondent shall pay to the discriminatees an amount equal to the total wages paid for all new hires for crew work at any location operated by Respondent in the Coachella Valley, commencing November 30, 1996. General Counsel and Respondent shall negotiate the manner of distributing the backpay award and, absent agreement, this issue will be resolved in compliance proceedings.

With respect to the offers of work sent by Respondent, the NLRB requires that an employer show a good faith effort to notify employees of an unconditional offer of employment. Sending letters offering work to the last known address will toll backpay, but not the duty to offer employment, if the employee did not receive the letter. Burnup & Sims, Inc. (1981) 256 NLRB 965 [107 LRRM 1402]; Bodolay Packaging Machinery, Inc. (1982) 263 NLRB 320 [111 LRRM 1180]. It is found that Respondent acted reasonably in serving General Counsel and in particular Intervenor, who had assumed representation of the employees in their efforts to be hired, for those employees for whom no addresses were supplied.[18]

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[18]If Respondent negligently failed to send letters to particular employees for whom it did have addresses, or sent offers to the wrong addresses, this issue may be resolved in compliance. Similarly, the issue of whether individual employees received the letters may be resolved in the same manner.

The contents of the letters do raise some concerns. With respect to employment rights, the 13 and 20-day periods to report in the first batch of letters appear reasonable for employees receiving the offers directly from Respondent, although if any employee contacted Respondent requesting additional time to report for good cause, and Respondent refused, this will be subject to compliance proceedings.[19] Although somewhat arbitrary, Respondent's use of alphabetical order in recalling the employees will be accepted, although those receiving offers starting on the latter date should be entitled to proportionally more backpay. As to the offers for employees with unknown addresses, through the ALRB and Intervenor, the time limitations may have been insufficient, given the use of intermediaries. Accordingly, should the issue arise that an employee was unable to comply with the time limitation because of a delay in being notified of the offer by General Counsel or Intervenor, this shall be resolved in compliance proceedings.

Employees are to be accorded their statutory rights in an atmosphere free of coercion, and an offer of employment made under coercive circumstances is invalid. United Garment Workers of America, AFL-CIO (1990) 300 NLRB 507 [136 LRRM 1235]; Tubori, Inc., et al. (1988) 287 NLRB 1273, at pages 1286-1287 [129 LRRM 1138]. Respondent's first set of letters unnecessarily and

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[19]The NLRB currently permits employers to set virtually any date for employees to report to work, so long as the offer does not expire on that date. If the employee wishes to be employed, the employee must still attempt to report for work even if the deadline has passed. Nuclear Automation Division of Esterline Electronics Corp. (1988) 290 NLRB 834 [131 LRRM 1067]. Respondent's offers, however, expired by their terms on the reporting dates.

inaccurately personalized the adversary nature of its relationship with the former DFI employees, particularly since it appears only one of them had filed a charge. It was also unnecessary and inaccurate for Respondent not only to include a non-admissions clause, but to tell the employees, "Your allegations are false!" In addition, by stating that the only reason for offering reinstatement was to toll backpay, Respondent reasonably created concerns that if employees accepted the offers, they would not be treated fairly. The second set of letters were only slightly less defiant in tone. Nevertheless, the letters repeatedly stated that employees would be treated fairly, despite the ongoing litigation, and the offers should be accepted irrespective of the dispute. It is concluded, although with some hesitation, that the letters, although objectionable, were not so coercive as to invalidate the offers. With respect to employees not yet receiving offers of work, who may be located in the future, Respondent shall simply make the offer, and set a reporting deadline, if any, of no less than two weeks from the date of the offer.

On 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

Pursuant to Labor Code §1160.3, Respondent Grewal Enterprises, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to hire or otherwise retaliating against any agricultural employee, because the employee has exercised rights guaranteed under section 1152 of the Act.

(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) To the extent it has not already done so, offer jobs to all of the former agricultural employees of David Freedman & Company, Inc. who applied for positions with Respondent commencing November 13, 1996, to the positions for which they applied, or to substantially equivalent positions, replacing, if necessary, any employee first hired on or after that date;

(b) Make whole the above-mentioned former employees of David Freedman & Company, Inc. for all wages and other economic losses they suffered as a result of the unlawful refusals to hire them. The award shall reflect any wage increase, increase in hours or bonus given by Respondent since the unlawful refusals to hire. The award shall also include interest to be determined in the manner set forth in E.W. Merritt Farms (1988) 14 ALRB NO. 8;

(c) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records

relevant to a determination of the backpay and/or makewhole amounts due to those employees under the terms of the remedial order as determined by the Regional Director;

(d) Upon request of the Regional Director, sign the attached Notice to Employees embodying the remedies ordered. After its translation by a Board agent into all appropriate languages, as determined by the Regional Director, Respondent shall reproduce sufficient copies of the Notice in each language for all purposes set forth in the remedial order;

(e) Mail copies of the Notice, in all appropriate languages, within 30 days after the issuance of a final remedial order, to all agricultural employees employed by Respondent at any time from November 13, 1996, until the date of mailing the Notice.

(f) Post copies of the Notice, in all appropriate languages, in conspicuous places on Respondent's property for 60 days, the period(s) and place(s) to be determined by the Regional Director, and exercise due care to replace any Notice which may be altered, defaced, covered or removed;

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

Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent, to all non-hourly wage employees in order to compensate them for lost time at this reading and during the question-and-answer period;

(h) Provide a copy of the Notice to each agricultural employee hired to work for Respondent for one year following the issuance of a final order in this matter;

(i) 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.

It is further ordered that all other allegations in the Second Amended Complaint are hereby dismissed.

Dated: August 24, 1998

Douglas Gallop
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB)., the General Counsel of the ALRB issued a complaint that alleged we, Grewal Enterprises, Inc., had violated the law. After a hearing at which all parries had an opportunity to present evidence, the Board found that we did violate the law by refusing to hire former employees of David Freedman & Company, Inc., because they were represented by the United Farm Workers of America, AFL-CIO.

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;
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 ALRB.
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because this is true, we promise you that:

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

WE WILL NOT refuse to hire or otherwise discriminate against any agricultural employee because he or she exercised any of these rights.

WE WILL, to the extent that we have not already done so, offer those former employees of David Freedman fit Company, Inc. who applied, or attempted to apply for work commencing November 13, 1996, positions with us, and make them whole for any losses they suffered as the result of our unlawful acts.

DATED:

GREWAL ENTERPRISES, 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 319 Waterman Avenue, El Centro, California 92243. Telephone: (760) 353-2130.

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

DO NOT REMOVE OR MUTILATE