Oxnard, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

RIVCOM CORPORATION and RIVERBEND FARMS, INC., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 79-CE-l-OX 79-CE-4-OX 5 ALRB No. 55

DECISION AND ORDER

On June 12, 1979, Administrative Law Officer (ALO) Joel Gomberg issued the attached Decision in this proceeding. Respondents and the General Counsel each filed exceptions,[1/] a supporting brief, and a reply brief. The Charging Party also filed a reply brief.

The Board has considered the record and the ALO's Decision in light of the exceptions and briefs, and has decided

[1/] In his exceptions, the General Counsel contends that Newport Beach Development Company (Newport) is engaged in a joint venture with Rivcom Corporation. At the hearing, after the General Counsel completed his case-in-chief, the ALO dismissed Newport as a Respondent, finding that it was neither an agricultural employer nor a joint employer with Rivcom. At that point, the General Counsel first raised the issue of a possible joint venture between Newport and Rivcom. The General Counsel and Newport's counsel, who served also as Rivcom's counsel, agreed that if the General Counsel raised the joint venture issue at a subsequent compliance proceeding in this matter, Respondents would not raise due-process objections that they were precluded from putting on a case during the unfair-labor-practice hearing. Accordingly, we shall not consider or decide the merits of the joint venture issue at this time, but we note that the issue may be raised in the event of a future compliance proceeding.

to affirm the rulings, findings, and conclusions of the ALO to the extent they are consistent with this Decision, and to adopt his recommended Order as modified herein.

Agricultural Employer Status of Riverbend Farms, Inc.

Respondents except to the ALO's conclusion that Riverbend Farms, Inc. (Riverbend), is an agricultural employer. We find no merit in this exception. Both Riverbend, as the harvesting and packing operation, and Rivcom Corporation (Rivcom), as the farming operation, contracted with a company called Triple M to perform work on the Rancho Sespe property. Triple M harvests and hauls the fruit for Riverbend to the Riverbend packing house. Benny Martinez, owner of Triple M, supplies the labor, sets the wages for the crews, and provides the harvesting equipment and the vehicles for hauling the fruit to Riverbend's packing house. Respondents contend that Triple M functions as a custom harvester, rather than merely as a labor contractor for Riverbend, and that it should be considered the employer of the persons on its payroll.

We affirm the ALO's conclusion that Riverbend, rather than Triple M, is the agricultural employer of the harvest employees. All management decisions as to the agricultural operations at the Rancho Sespe property are made by Larry Harris, manager of both Rivcom and Riverbend. Riverbend personnel exercise their own initiative and judgment in overseeing the day-to-day harvest operations. They instruct Martinez and his crews as to where and when to pick the fruit and the number of boxes to be filled. In contrast, Martinez possesses

no independent or managerial control over the agricultural operations. See, e.g., Jack Stowells, Jr., 3 ALRB No. 93 (1977); Napa Valley Vineyards Co., 3 ALRB No. 22 (1977). Although there was no evidence that Riverbend personnel exercise any authority to discipline or discharge the Triple M harvest workers, Riverbend field department employees are in the fields daily, checking for quality control, whereas Martinez, Triple M's only supervisor, visits the property only once to three times a week.

Rivcom/Riverbend manager Larry Harris exercised a great deal of control over the selection and work of the Triple M crew members employed on the Rancho Sespe property. He assembled crews from employees who had previously performed work for Riverbend as Triple M employees, and he used Martinez to aid him in selecting the best workers. Harris transferred workers from the Triple M payroll at Riverbend to the Rivcom payroll. He also transferred Rivcom employees performing cultivation work to the Triple M payrolls to do harvest work for Riverbend. Respondents' assertion that Harris[1] actions in making these transfers came only at the direction of and with the authorization of Martinez is not borne out by the testimony.

The record clearly establishes that Riverbend, rather than Triple M, has the substantial, long-term interest in the ongoing agricultural operation. Upon consideration of the above factors and the total activity of both entities, we conclude that Riverbend is the agricultural employer of employees working at the Rancho Sespe property on the Triple M payroll.

Joe Maggio, Inc., 5 ALRB No. 26 (1979); Corona College Heights Orange and Lemon Association, 5 ALRB No. 15 (1979).

Single Employer Status of Riverbend and Rivcom

Respondents except to the ALO's conclusion that Riverbend and Rivcom are joint employers.[2/] We find no merit in this exception. We conclude that Rivcom and Riverbend constitute a single, integrated enterprise at the Rancho Sespe property. Factors to be considered in establishing such status are the interrelation of the operations, common management of business operations, centralized control of labor relations, and common ownership. No single factor is determinative and we will not mechanically apply a given rule in making this determination. See., e.g., Abatti Farms, Inc., 3 ALRB No. 83 (1977); Louis Pelfino Co., 3 ALRB No. 2 (1977); NLRB v. Triumph Curing Center, 571 F. 2d 462 (9th Cir. 1978); Sakrete of Northern California, Inc., 137 NLRB 1220, 50 LRRM 1343 (1962), affirmed, 332 F. 2d 902 (9th Cir. 1964), cert., denied 379 U.S. 961 (1965).

The record shows that Larry Harris is president and

[2/] Respondents assert that Riverbend was not a respondent throughout the course of the hearing. At the start of the hearing, the ALO dismissed Riverbend as a respondent and the complaint was amended to allege, as a respondent, "Rivcom Corporation, a wholly owned subsidiary of Riverbend Farms, Inc." The ALO noted that his action did not go to the issue of what liability, if any, Riverbend might have incurred for unfair labor practices committed by Rivcom. During the General Counsel's case-in-chief, the ALO noted that the testimony had raised the possibility of Riverbend's having separate agricultural-employer status. At the end of Riverbend's case, the complaint was amended to allege that Rivcom and Riverbend are joint employers and that, as joint employers, they violated certain sections of the ALRA. We find that Riverbend was-, properly joined as a party herein.

manager of both corporations. Riverbend owns all of the Rivcom stock and has an exclusive contract with Rivcom for its fruit, signed by Harris on behalf of both companies. Rivcom performs the pre-harvest activity at the Rancho Sespe property, while Riverbend harvests and packs the fruit. As in Abatti Farms, Inc., supra, there is an integration of two functionally different parts. Larry Harris makes the day-to-day management decisions for both companies. Further, Harris obtained Rivcom[1]s lease to farm Rancho Sespe in order to create new marketing opportunities for Riverbend, and he geared the timing of, cultivation activities at Rivcom, such as lemon pruning, to provide Biverbend a marketing advantage.

Harris also has actual control over all the Riverbend and Rivcom employees. Harris has transferred Riverbend managerial employees and Triple M field workers harvesting for Riverbend to the Rivcom payroll. He has also transferred Rivcom employees to the Riverbend payroll. Harris repeatedly asserted his concern for, and his efforts towards, developing a unified, stable, year-round work force,which would necessarily entail the interchange of Rivcom pre-harvest employees and Riverbend harvest employees.

Respondents assert that Harris has no control over the wages, hours and working conditions of the Triple M crews employed by Riverbend, and that Harris therefore does not possess centralized control of labor relations. Respondent further claims that the absence of centralized control precludes a finding that Riverbend and Rivcom are a single employer.

We find no merit in Respondents' contentions. First, it has already been pointed out that Riverbend does exert daily control over the working conditions of the Triple M crews and over the selection of the employees, and that Harris transfers employees between the Riverbend and Rivcom payrolls. While it is true that Martinez sets the wage scale for the Triple M employees, Harris does exercise some control over the terms and conditions of employment for these workers. Under NLRA precedent, a finding of single-employer status does not require a showing of control over labor relations at the local level, but may instead be based upon evidence of control and a centralized labor relations policy at the top-management level. See Sakrete of Northern California v. NLRB, 332 F. 2d 902 (9th Cir. 1964), cert, denied 379 U.S. 961 (1965).

Second, although the NLRB considers common control of labor relations to be an important factor in determining whether certain entities operate as a single, integrated enterprise, Gerace Construction, Inc., 193 NLRB 645, 78 LRRM 1367 (1971), the absence of a common labor-relations policy does not preclude finding single employer status. Abatti Farms, Inc., supra; Canton, Carp's , Inc. , 125 NLRB 483, 483-484, 45 LRRM 1147 (1959). This is especially true in cases arising under the ALRA. Labor contractors who supply agricultural labor may exert a substantial amount of direct control over the wages

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and working conditions of the employees,[3/] and yet are excluded from the statutory definition of an agricultural employer. Labor Code Section 1140.4(c). The result is that in agriculture the statutory employer may not exercise direct control over wages and working conditions of the employees. In view of the unique role of the farm labor contractor in agricultural employment, less weight is accorded to the factor of direct control over labor relations than in the industrial setting.

Respondents also except to the ALO's finding that Rivcom is operated exclusively for Riverbend's benefit, asserting that Rivcom functions as would any other outside grower in relation to Riverbend. While there is evidence that Harris plans to institute limited operations at Rivcom which would not directly benefit Riverbend, such as planting geraniums and vegetables, the evidence viewed as a whole establishes that the two companies are so integrated as to constitute a single enterprise. Harris' control over both corporations, the interchange of employees between Riverbend and Rivcom payrolls, Riverbend's ownership of all the Rivcom common stock, the use of a. centralized computer system for payrolls, and Harris[1] assertion that he intends to use Rivcom to further Riverbend's foreign-export marketing activities, all indicate that Rivcom is not simply an outside grower.

[3/] The definition of a farm labor contractor, as set forth in Labor Code Section 1682(b), includes "any person who... supervises, times, checks, counts, weighs, or otherwise directs or measures [agricultural employees'] work."

Section 1153(c) and (a) Violations - Respondents' Refusal to Hire

Respondents except to the ALO's conclusion that they violated Labor Code Section 1153(c) and (a) by their refusal to hire any former employees of National Property Management Systems (NPMS) at Rancho Sespe. Respondents claim they acted lawfully in refusing to hire the former NPMS employees and in hiring employees who had formerly worked for Riverbend. For the reasons discussed below, we find that Respondents violated the Act by discriminatorily refusing to consider or hire any former NPMS employees.

We start with the principle that the Act must-rBe enforced in such a way as to acknowledge and give appropriate weight both to the right of employers to structure their businesses in the manner which they desire and to the policies of protecting employees and stabilizing labor relations.

> The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship. John Wiley & Sons v. Livingston, 376 U.S. 543,549 (1964)(emphasis added).

While a new employer is generally entitled to restructure a business, and in fact is encouraged to do so by our competitive economic system, we are mandated to insure that even where a business changes hands, the rights of the former employees and the goals of the labor laws are not obliterated. As Judge Leventhal said in his concurrence in Internation Association of Machinists, Dist. Lodge 94 v.

NLRB:

> The purchaser of a business does not take title unencumbered by the labor relations obligations of his predecessor. He is well advised to analyze labor title as much as real title. Rooted in our competitive enterprise system is a strong policy in favor of free transfer of assets and flexibility of new management attuned to economic efficiency. This is not, however, an absolute value. It must be balanced against the policies of protection for labor and stability of labor relations that are embodied in the federal labor statutes. Under the policies of these laws the new owner does not start with a completely blank slate. International Association of Machinists, Dist. Lodge 94 v. NLRB, 414 F. 2d 1135, 1139 (D.C. Cir. 1969) (footnote omitted).

The right of a new employer to restructure its business includes the right to select its own employees. It is not bound by the law to hire the employees of its predecessor. In Howard Johnson Co. v. Hotel Employees, the United States Supreme Court, quoted from its opinion in NLRB v. Burns Security Services, 406 U.S. 272 (1972):

> We found [in Burns] that nothing in the federal labor laws "requires that an employer...who purchases the assets of a business be obligated to hire all of the employees of the predecessor though it is possible that such an obligation might be assumed by the employer." 406 U.S., at 280 n. 5....Burns emphasized that "[a] potential employer may be willing to take over a moribund business only if he can make changes in corporate structure, composition of the labor force,... and nature of supervision." 406 U.S. at 287-288.
> Howard Johnson Co. v. Hotel Employees, 417 U.S. 249, 261(1974).

The new employer may not, however, refuse to hire the employees of its predecessor for discriminatory reasons. The Court in Howard Johnson went on to say:

> Of course, it is an unfair labor practice for an employer to discriminate in hiring or retention of employees on the basis of union membership or activity under Section 8 (a) (3) of the [NLRA, the equivalent of Section 1153 (c)

> of the ALRA]. Thus, a new owner could not refuse to hire the employees of his predecessor solely because they were union members or to avoid having to recognize the union. See NLRB y. Burns Security Services, 406 U.S. 272, at 280-281, n. 5; K. B. & J. Young's Super Markets v. NLRB, 377 F. 2d 463 (9th Cir.), cert, denied, 389 U.S. 841(1967); Tri State Maintenance Corp. v. NLRB, 132 U.S. App. D.C. 368, 408 F. 2d 171 (1968). Howard Johnson Co. v. Hotel Employees, supra, at 262, n.8.

It is now our task to apply these principles to the facts of the instant case and, specifically, to determine whether Respondents' failure to hire any of the former NPMS employees constituted unlawful discriminatory conduct or was simply part of a reorganization of the newly-acquired business enterprise. We find, however, that the task is not so simple as it first appears, and that rather than finding one clear statement of Respondents' purpose, we must sift through all the facts, and draw inferences from the available evidence. As Judge Frank wrote:

> But courts and other triers of facts, in a multitude of cases, must rely upon such evidence, i.e., inferences from testimony as to attitudes, acts and deeds; where such matters as purpose, plans, designs, motives, intent, or similar matters, are involved, the use of such inferences is often indispensable. Persons engaged in unlawful conduct seldom write letters or make public pronouncements explicitly stating their attitudes or objectives; such facts must usually be discovered by inference; the evidence does not come in packages labelled, "Use me," like the cake, bearing the words "Eat me," which Alice found helpful in Wonderland. F. W. Woolworth Co. v. NLRB, 121 F. 2d 658, 660 (2d Cir. 1941) (footnote omitted).

The United Farm Workers of America, AFL-CIO (UFW), was certified as the collective bargaining representative of the NPMS employees at Rancho Sespe on May 17, 1978. The UFW and NPMS had participated in negotiations but had not yet

reached a collective bargaining agreement by January 16, 1979, the date when the property was transferred to Newport Beach Development Company (Newport) and was leased by Rivcom. Larry Harris testified that he had become aware through trade sources of the organizing activities and the election results at Rancho Sespe in late spring or early summer of 1978.

The NPMS employees were experienced year-round employees. Approximately thirty to forty percent of these employees had been working at Rancho Sespe for more than ten years, and about ten percent had been working at the ranch for over twenty years. There was no question raised regarding their qualifications as citrus employees. In fact, Harris made no inquiries at all as to the abilities of the workers, and steadfastly refused even to consider these employees for hire. Despite repeated requests for employment by the former employees, Harris refused to meet with them, and rejected outright their offers to work.[4/]

Immediately upon taking over the operations at Rancho Sespe, Harris distributed eviction notices to the employee-residents, rejected the UFW's request to bargain and its request that Harris hire the workers, and brought in Triple M employees who had previously worked for Riverbend.

Respondents set forth several explanations for their

[4/] The only exception to Harris' refusal to meet with the workers was a secret meeting he held with nine former NPMS employees on the night of April 5, 1979, the date that Respondent began to present its defense at the hearing in. this case.

refusal to consider or hire any of the former NPMS employees. Harris claims that he needed a skilled, competent crew familiar with his mode of operations, and that he was going to change the methods of operating Rancho Sespe so dramatically that the former NPMS employees would not be able to adapt. Harris also stressed his wish to award his employees' previous service with year-round employment, and to fulfill a promise he had made to his employees to hire them if he obtained the ranch. Respondents claimed that here, as in previous takeover situations, they followed the management principle which opposes hiring employees of the predecessor. Respondents further claim that the-«former NPMS employees insisted that all or none be hired, and that Harris could not meet this condition since he intended to make the ranch less labor intensive. Another reason advanced for hiring former Riverbend/Triple M employees, rather than the former NPMS employees was that Harris needed to start the agricultural operations immediately in order to meet the heavy rental obligations Rivcom had, undertaken.

Close examination of the record has brought to the surface the superficial and inconsistent quality of Respondents' claims, and convinces us of their discriminatory motives.

Respondents claim that by hiring their own former employees rather than the NPMS employees, they were guaranteeing a skilled, competent work force familiar with Respondents' methods. A close look at records submitted at the hearing shows, however, that Respondents' employees did not have the long service claimed. None of the employees had been working

for Riverbend for more than two years, and several had been working for only three months before Riverbend started business at Rancho Sespe. Over half the former Riverbend eimployees hired to work at the ranch had worked for Riverbend less than one year. Even as to those who were hired two years before, most had worked only as seasonal employees for Riverbend.

In addition, the evidence shows that approximately thirteen people who had never worked for Riverbend before were employed by Respondents. The explanation proffered by Respondents for hiring these employees is that temporary employees were hired to help with frost protection and ..other matters. Even in hiring temporary help, Respondents did not consider the large pool of former employees seeking work.

Respondents claim that the radical operational changes they plan to make in the agricultural operations necessitate reliance on their own employees, rather than on the former NPMS employees, who are experienced in different techniques. A review of the planned changes, however, reveals that most are in the area of pre-harvest, cultivation techniques, rather than in harvesting techniques. For instance, Respondents plan to change the methods of irrigation, frost protection, and weed eradication. Respondents' argument is weakened since Riverbend apparently previously performed only harvest and packing operations, and performed no pre-harvest work. In fact, Harris testified in detail that he never intended to farm Rancho Sespe, that he was only interested in obtaining the fruit, and that he formed Rivcom only after it was apparent

that in order to harvest and market the fruit, he would have to take over a lease of the ranch. Harris further explained that Triple M performs pruning work for Rivcom, "just like any outside grower."

Respondents rely in part on a promise which was allegedly made by Harris to the former Riverbend employees that he would hire them at the ranch. First, it is unlikely that Harris would have made any promise to the employees as claimed, given his lack of any personal relationship with them. Harris did not know the workers individually, and did not even know whether, among the group with whom he spoke, any had worked for Riverbend before. Second, the conversation as described by Harris falls short of being a real commitment to the Riverbend employees. Harris claims that he spoke with one crew of between forty and forty-five people whom he considered to be good workers and loyal employees, and told them that they would have the first opportunity of any employment in Ventura County. At the time of this conversation, Harris could not have considered his eventually obtaining any interest in Rancho Sespe as more than a remote possibility, and the "promise" is likewise vaguely stated. In addition, Harris testified that he spoke to only one crew comprising forty or forty-five of Riverbend's 500 employees. At the time of the hearing, seventy-three people had been hired by Respondents, approximately sixty of them former Riverbend employees.

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There is no evidence of any promise or commitment[5/] to many of the people hired by Respondents.

Respondents claim that here, as in prior situations where Harris took over farms, he followed a management practice of not hiring the employees of the failing business. While Respondents may certainly endeavor to improve the financial situation of the ranch by instituting new techniques and operations, as they have indicated they plan to do, the record is devoid of any indication that the NPMS employees were responsible for the financial status of their former employer. As, has been indicated, Harris never even considered any-«of these workers for employment, although he never questioned their skills and abilities. Harris' concerns do not adequately explain his wholesale rejection of nonmanagerial employees.[6/] We note further that Harris' prior experience in taking over enterprises was limited to one non-farming enterprise - a packing house with eighty employees - and three citrus ranches, all much smaller than Rancho Sespe. There was little evidence concerning these other enterprises. We further note that such a management practice may conflict with the Act's policy of encouraging stable labor relations, and will frequently result in the refusal to hire former employees who are represented

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[5/] Harris' claimed attachment to his former employees appears disingenuous in light of his claim that it is Triple M rather than Riverbend which is the employer of the employees.

[6/] Moreover, only two individuals previously employed by NPMS were retained by Harris, as consultants; both had been supervisors for NPMS.

by a union.

Respondents claim that the NPMS employees demanded that all or none of them be hired, and that because Respondents were planning to hire fewer employees than NPMS had, they could not meet this demand. A close review of the testimony shows, however, that while the employees demanded that they all be hired, they never imposed the all-or-none condition.[7/] The record further discloses that Respondents never offered to hire any of the former employees but, rather, refused even to consider them for employment. When DFW representative Emilio Huerta demanded that Rivcom negotiate with the UFW on January 18, 1979, Rivcom answered that it refused to negotiate because recognition of the UFW would violate Section 1153(f) of the Act. On January 31 and February 1, the employees and the Union requested employment for all of the workers. No "all or none" condition was attached. Harris refused to meet with the employees. While Respondents claim that no jobs were available on January 18, the record shows that many employees were hired soon after that date and throughout January.

[7/] Although Respondents, in their brief, repeatedly refer to the employees' demand for employment as "all or none," not a single witness described the demand in those terms. Respondents correctly quote Sheriff's deputy Mendez as testifying that employee representative Jaime Zepeda told him, "that he wasn't going to accept just a couple of people being hired, that it was a fight for all the people," and that the employees' demand never changed. Respondents claim that Mendez testified that he always understood the employees' demand to be "to hire all of them as a unit or none of them." Unlike the Respondents, we can easily distinguish between a demand to hire all of the former employees and a condition that none of the former employees would accept employment unless all are hired.

Although Respondents claim that their heavy rental obligation forced them to begin operations immediately with employees they knew to be good workers, the evidence shows that in fact Respondents did not change many of the former ranch operations quickly, and were still in the planning stages three months after the takeover. Harris testified that for a period of time after he took over the ranch operations, there was little farm work to be done due to the heavy rains and the absence of harvest. And in mid-March, three months after the sale, Harris indicated that he was still basically planning, and that within a few more months the new operations would be underway.

After reviewing all of the evidence in detail, and keeping in mind the Respondents' right to order their business as they see fit, we are persuaded that the lack of consideration given the former employees was based upon Respondents' desire to avoid dealing with the union. While there was no direct evidence of anti-union animus on Respondents' part, close examination of Respondents' many explanations for refusing even to consider this large pool of available, experienced employees discloses merely superficial, unfounded and contradictory excuses, leaving only the explanation that Respondents sought to avoid hiring employees who had already chosen the UFW as their collective bargaining representative. Section 1153(c) and (a) Violations - Respondents' Eviction Action

Respondents except to the ALO's conclusion that Respondent violated Section 1153(c) and (a) of the Act by

evicting the former NPMS employees. We find no merit in this exception. When an employee is evicted from company housing following a discriminatory discharge, it may be inferred that the eviction stemmed from the same discriminatory motives as the discharge. W. T. Carter and Brother, 90 NLRB 2020, 26 LRRM 1427 (1950); Cleveland Veneer Company, 89 NLRB 617, 26 LRRM 1005 (1950); Filice Estate Vineyards, 4 ALRB No. 81 (1978). The same legal principle applies here. The facts here demonstrate the interrelation between the discriminatory refusal to hire and the evictions. Immediately upon takeover, Harris distributed eviction notices to all former NPMS employees, refused to consider them for employment, and refused to meet with the union representatives.

The justifications presented by Respondents do not explain the haste with which the eviction process was begun. We note that while Harris claims that, prior to January 16, he gave no thought to the labor camp which contains over two hundred dwellings and did not realize that employees of the ranch lived there, Harris took action to evict these employees immediately upon takeover.

As we find that the distribution of eviction notices was part and parcel of Respondents' discriminatory refusal to consider or hire the former NPMS employees, we conclude that Respondents violated Section 1153(c) and (a) by the evictions.

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Section 1153(e) Violations

Respondents except to the ALO's conclusion that Respondents have a duty to bargain with the UPW as the successor to NPMS._ We find no merit in this exception.

Respondents argue that because there is no continuity of the work force[8/] between the NPMS employees and those employees hired by Respondents, an essential element of successorship is lacking. It was Respondents' illegal refusal to consider or hire any of the former NPMS employees which resulted in a lack of continuity of the work force. Where the successor employer's discriminatory refusal to hire the predecessor's employees has caused the absence of work force continuity, the continuity will be presumed. NLRB v. Foodway of El Paso, 496 F.2d 117 (5th Cir. 1974); K. B. & J. Young's Super Markets, Inc., v. NLRB, 377 F.2d 463 (9th Cir.) cert, denied, 389 U.S. 841 (1967).

Respondents further argue that, even if they had hired the NPMS employees, continuity of the work force would still be lacking. Respondents claim that there are twenty-five employees on the Rivcom payroll as opposed to the 140 employees in the bargaining unit of the predecessor, and that such a reduction in size renders the present unit unrepresentative. We disagree.

[8/] Under the NLRA, continuity of the work force is present if the majority of the successor's employees were employees of the predecessor. Howard Johnson Co. v. Hotel Employees, supra; NLRB v. Burns Security Services, supra. In Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54 (1979), we found that the concept of work force continuity must be applied more flexibly in the agricultural setting, due to the high turnover in seasonal employment. In this case, however, the former NPMS employees were a year-round, permanent labor force, many of whom had more than ten years service.

The record shows that the work force under the new management is much larger than twenty-five people. A summary, introduced into evidence, shows more than seventy people on Respondents' payroll. We also note that major harvesting activities, particularly the summer harvest of 700 acres of Valencia oranges, had not yet begun as of the date of the hearing.

We note also that'a reduction in the size of the bargaining unit does not necessarily render the unit inappropriate. NLRB v. Middleboro Fire Apparatus, Inc., 590 F. 2d 4 (1st Cir. 1978); NLRB v. Band-Age, Inc., 534 F.2dl(lst Cir.) cert., denied, 429 U.S. 921 (1976). We must look to the totality of the circumstances to determine whether the change in ownership has affected the essential nature of the business. NLRB v. Boston Needham Indus. Cleaning Co., 526 F.2d 74, (1st Cir. 1975); Tom-A-Hawk Transit, Inc., v. NLRB, 419 F.2d 1025 (7th Cir. 1969).

Respondents contend that they are not a successor to NPMS because of a lack of continuity of operations. We disagree. The business, before and after the transfer, was a citrus and avocado ranch of substantial acreage. Respondents have continued to grow, cultivate and harvest the same basic crops.

Harris plans to institute certain changes in cultivation practices and methods of production intended to increase crop productivity as well as to make the operation less labor-intensive. Nevertheless, based on the record before us, we find that the essential nature of the business has remained the same under the new management and that Respondents, as the employer of the agricultural employees working on the Rancho Sespe property, are

the successors of NPMS for purposes of collective bargaining. See NLRB v. Middleboro Fire Apparatus, Inc., supra; see also NLRB v. Zayre Corp., 424 F.2d 1159 (5th Cir. 1970).

We find that Respondents violated Section 1153(e) and (a) of the Act by failing and refusing to recognize and bargain with the UFW as the collective bargaining representative of the agricultural employees.[9/]

Accordingly, we shall order Respondents to offer employment to each and every former NPMS employee listed in Appendix A of the complaint[10/] at the Rancho Sespe property. If there are not sufficient positions available at the ranctx-for agricultural employees on the Rivcom, Riverbend, or Triple M

[9/] Respondents contend that Section 1153 (f) precludes the use of the successorship doctrine under the ALRA, because that section forbids an employer from bargaining with an uncertified union and, Respondents argue, a union is certified only in relation to the predecessor employer. We reject this argument. As the Supreme Court said, in NLRB v. Burns Security Services, 406 U.S. 272, 279 (1972) :

> It has been consistently held that a mere change of employers or of ownership in the employing industry is not such an 'unusual circumstance[1] as to affect the force of the Board's certification within the normal operative period if a majority of employees after the change of ownership or management were employed by the preceding employer.

The concept of successorship is also applicable under the ALRA. See Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54 1979.

[10/] General Counsel requests that the names Mario Adame and Antonio Becerra be added to the list of names of former NPMS employees in Appendix A. In unlawful detainer complaints which were introduced into evidence, Respondents admitted that Adame and Becerra were former NPMS employees discharged on January 16, 1978. We hereby include Adame and Becerra in the list of .employees entitled to relief.

payrolls to hire each of the aforesaid persons immediately, their names shall be placed on a preferential hiring list and they shall be hired as soon as jobs become available. We shall also order Respondents to meet, upon request, with the UFW and bargain in good faith, arid to make whole the aforesaid former NPMS employees for the loss of wages and other economic losses incurred as a result of Respondents' discriminatory refusal to hire them and the refusal to bargain with the UFW, plus interest thereon computed at seven percent per annum.

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ORDER

Pursuant to Labor Code Section 1160.3, Respondents Rivcom Corporation and Riverbend Farms, Inc., their officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of employees in the UFW or any other labor organization by unlawfully refusing to hire the former employees of National Property Management Systems, dba Rancho Sespe CNPMS), by attempting to evict, or evicting, those employees from housing at Rivcom Ranch provided them as a condition of their employment by NPMS, or in any other mannea** discriminating against employees in regard to their hire, tenure, or terms and conditions of employment, except as authorized by Labor Code Section 1153(c) of the Act.

(b) Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1155.2(a), with the UFW, as the certified exclusive collective bargaining representative of Respondents' agricultural employees at Rivcom Ranch, in violation of Labor Code Section 1153(e) and (a).

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective

bargaining representative of their agricultural employees at Rivcom Ranch, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole their agricultural employees, including those persons named in Appendix A of the First Amended Complaint, for all losses of pay and other economic losses sustained by them as the result of Respondents' refusal to bargain, as such losses have been defined in Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1978), for the period from January 18, 1979, until such time as Respondents commence to bargain in good faith with the UFW and thereafter bargain to contract or impasse.

(c) Offer to the employees named in Appendix A to the First Amended Consolidated Complaint, and to Mario Adame and Antonio Becerra, immediate employment in their former or substantially equivalent jobs, replacing if necessary anyone presently occupying those positions. If there are not sufficient positions available at Rivcom Ranch to hire each of the aforesaid employees immediately, Respondent shall place their names on a preferential hiring list and hire them as soon as jobs become available. The order of employees' names on the preferential list shall be determined pursuant to a non-discriminatory method approved by the Regional Director.

(d) Make whole each of the employees referred to in paragraph 2Cc), above, for any losses he or she has suffered as a result of his or her failure to be hired, by payment to each of them of a sum of money equal to the wages they lost plus the expenses they incurred as a result of Respondents' unlawful

refusal to hire them, less their respective net earnings, together with interest thereon at the rate of seven percent per annum. Back pay shall be computed in accordance with the formula established by the Board in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

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

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

(g) Post at Rivcom Ranch copies of the attached Notice for 90 consecutive days at times and places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(h) Provide a copy of the attached Notice to each employee hired during the 12-month period following the date of issuance of this order.

(i) Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order to all employees referred to in paragraph 2(c) above.

(j) Arrange for a representative of Respondents or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondents

on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading(s), the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondents to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

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

Dated: August 17, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a hearing where each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act, and has ordered us to post this Notice. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;

2. To form, join, or help any union;

3. To bargain as a group and to choose anyone they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect each other; and

5. To decide not to do any of these things,

Because this is true, we promise you that:

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

WE WILL offer jobs to all the agricultural employees of Rancho Sespe who were on the payroll on January 15, 1979, replacing if necessary any present employees, and we will pay each of them any money they lost because we refused to hire them. If we do not have enough jobs available to hire all of those employees immediately, we will put their names on a list to be hired as soon as positions become available.

WE WILL meet and bargain in good faith with the UFW about a contract because it is the representative chosen by our employees.

WE WILL NOT take any steps to evict any former Rancho Sespe employees from their homes on the ranch without first bargaining in good faith w.ith the UFW in an effort to come to an agreement about the future of the housing.

Dated: RIVCOM CORPORATION

By: _____
Representative Title

RIVERBEND FARMS, INC.

By: _____
Representative Title

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

Rivcom Corporation and Riverbend Farms, Inc.	5 ALRB No. 55 Case Nos. 79-CE-l-OX 79-CE-4-OX

ALO DECISION

The ALO concluded that Respondents, Riverbend Farms, Inc., a harvesting operation, and its subsidiary, Rivcom Corporation, a farming operation, were joint agricultural employers and that Triple M Co. was a labor contractor.

The ALO found that Respondents did not cause NPMS, the predecessor employer, to discharge its employees on January 16, 1979, noting the lack of communication or collusion, or of an agency relationship, between NPMS and Respondents, and therefore concluded there was no Section 1153(a) violation.

The ALO concluded that Respondents violated Section 1153(c) and (a) by failing and refusing to hire, or even consider hiring, the former NPMS employees, rejecting Respondents' defense that the onerous conditions of the lease forced them to make*3rastic changes in operations, and to hire their own employees, finding that the conditions of the lease were not onerous, that River-bend's employees were more skilled and were able to adapt to the changes, and that the changes were not instituted.

The ALO concluded that Respondents attempted eviction of the former NPMS employees from their labor camp homes violated Section 1153(c) and (a). The ALO rejected Respondents' proffered business justifications that they planned to plant crops on the site and that they could not conform the housing to legal requirements.

The ALO concluded that Respondent did not violate Section 1153(c) and (a) by contracting work out to Triple M. No exceptions were filed with respect to this conclusion.

The ALO concluded that Respondents' admitted refusal to bargain with the UFW violated Section 1153(e), finding that Respondents were a successor to NPMS despite the fact that continuity in the work force was lacking, as that condition was due to Respondents' discriminatory refusal to hire former NPMS employees. The ALO rejected Respondents' contention that bargaining with the UFW would violate Section 1153(f).

The ALO recommended that Respondent be ordered to cease and desist from its unlawful practices and to offer employment to each of the former NPMS employees. The ALO recommended that if there were not enough jobs on the Riverbend, Rivcom, and Triple M payrolls, Respondents should place the former NPMS employees on a preferential hiring list and hire them as jobs became available. The ALO recommended that the discriminatees be made whole for economic losses resulting from Respondents' failure to hire them and Respondents' refusal to bargain with the union.

BOARD DECISION

The Board concluded that Riverbend and Rivcom were a single, integrated agricultural employer.

Considering both the right of an employer to organize its own business and the Act's policy of protecting employees' rights and stabilizing labor relations, the Board found that Respondents, as a successor, violated Section 1153(c) and (a) by refusing to consider or hire any former employees of NPMS, the predecessor employer. After considering Respondents' asserted justifications, the Board found that the superficial and inconsistent nature of these excuses required it to infer that Respondents' motives were discriminatory.

The Board affirmed the ALO's conclusion that Respondents violated Section 1153(c) and (a) by attempting to evict the former NPMS employees, holding that the discriminatory refusals to hire warranted the inference that the same discriminatory reasons motivated the attempted evictions.

The Board concluded that Respondents violated Section 1153(e) and (a) by their admitted refusal to bargain with the UFW, affirming the ALO's finding that Respondent was the successor to NPMS and noting that the lack of continuity in the work force was due to Respondents' unlawful refusal to consider or hire the former NPMS employees, noting also that the fundamental nature of the business operation remained the same.

REMEDY

The Board ordered Respondents to offer employment to each of the former NPMS employees and, if there are not sufficient jobs for them, to place their names on a preferential hiring list and to hire them as job openings occur. The Board also ordered Respondents to meet and bargain with the UFW and to make former NPMS employees whole for lost wages and other economic losses incurred as a result of Respondents' unlawful behavior.

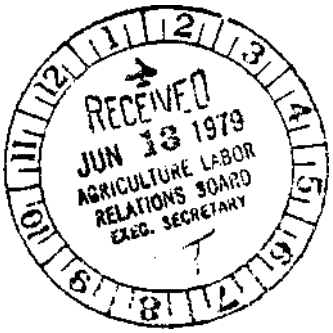
* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD



RIVCOM CORPORATION, a wholly-Owned subsidiary of RIVERBEND FARMS, INC., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party.	CASE NOS. 79-CE-1-OX 79-CE-4-OX DECISION OF ADMINISTRATIVE LAW OFFICER

Robert W. Farnsworth and
Martin Fassler for the
General Counsel

Thomas E. Campagne and
Thomas M. Giovacchini for the
Respondents

Carol Schoenbrunn for the
Charging Party

STATEMENT OF THE CASE

JOEL GOMBERG, Administrative Law Officer: This matter was heard by me on eighteen hearing days from March 1 through April 13, 1979,[1/] in Oxnard, California. The original Complaint (GC Ex. 1-C) issued on February 14. On March 9, prior to the taking of any testimony, I granted the General Counsel's motion to amend the Complaint in the form of a First Amended Consolidated Complaint (GC Ex. 1-D). Several other motions to amend were granted during the course of the hearing. They are embodied in GC Ex. 1-L, 1-N, and 1-0. The Complaint and its amendments are based upon

1/All dates refer to 1979 unless otherwise noted.

charges filed by the United Farm Workers of America, AFL-CIO (hereafter "UFW"). The charge in Case No. 79-CE-l-OX (GC Ex. 1-A) was filed on January 18 and served upon Respondent Rivcom on January 19. The charge in Case No. 79-CE-4-OX (GC Ex. 1-B) was filed on February 1 and served upon Rivcom on February 2.

All parties were given full opportunity to participate in the hearing. The UFW intervened, as a matter of right, pursuant to Section 20268 of the Board's Regulations. The General Counsel and Respondents filed post-hearing briefs pursuant to Section 20278 of the Board's Regulations. The UFW filed a letter supporting the position of the General Counsel.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction.

Respondent Rivcom has admitted in its answer (GC Ex. 1-G) that it is an agricultural employer within the meaning of Section 1140.4(c) of the Agricultural Labor Relations Act (hereafter "the Act"). Respondent Riverbend has denied in its answer (GC Ex. 1-F) that it is an agricultural employer. For the reasons enumerated at pages 27-30 and 33-37, infra, I find that Riverbend is an agricultural employer within the meaning of the Act, and that Riverbend and Rivcom constitute a single, joint employer pursuant to Section 1140.4 (c) of the Act. The Board's certification of the UFW as the exclusive bargaining representative of the agricultural employees

of National Property Management Systems, (hereafter "NPMS") dba Rancho Sespe, in case No. 78-RC-6-V (GC Ex. 1-K), establishes that the UFW is a labor organization within the meaning of Section 1140.4 (f) of the Act.

II. The Alleged Unfair Labor Practices.

The First Amended Consolidated Complaint alleges that Rivcom is the successor to the bargaining obligations of NPMS under the Act and that its admitted refusal to bargain with the UFW is violative of Section 1153 (a) and (e) of the Act. The General Counsel further alleges that those persons named in Appendix A to the Complaint were agricultural employees of NPMS and that Rivcom has caused their discharge by NPMS and has refused to hire them because of their actual or presumed support of the UFW, in violation of Section 1153(a) and (c) of the Act. Finally, the General Counsel has alleged that those persons named in Appendix B to the Complaint were tenants in housing provided to them by NPMS as a condition of employment and that Rivcom's admitted attempt to evict them from the housing is violative of Section 1153(a) and (c) of the Act.

Rivcom denies that it has succeeded to the bargaining obligations of NPMS. It argues that recognition of the UFW would in itself be a violation of Section 1153(f) of the Act. Rivcom denies that its failure to hire any of the former employees of NPMS was based on their union membership. Rather, Rivcom decided to hire employees who had previously been employees of Riverbend or of Triple M Farms, a labor contractor/custom harvester which supplied labor for Riverbend for several years, Rivcom asserted

several additional defenses to the refusal to hire allegations. See pages 20-25, infra.

III. The Facts.

This case involves labor relations issues at a 4,300 acre ranch between Fillmore and Santa Paula, commonly referred to as Rancho Sespe, its Spanish land grant title.[2/] Approximately 1,500 acres of the ranch have been used to grow citrus, including Valencia and navel oranges, grapefruit and lemons, as well as avocados. Until Janaury 16, the ranch had been managed for thirty-five years, under various owners, by T. Alien Lombard. Since 1973, the ranch had been owned by PIC Realty Corporation (hereafter "PIC") a subsidiary of Prudential Insurance Company. NPMS managed the property pursuant to a contract with PIC.

On January 16, PIC sold the ranch to Paraships Builders, a corporation formed by Erik Watts and Joseph Pressutti for the purpose of purchasing the property. Paraships immediately transferred title to Newport Beach Development Co., Inc., a corporation formed by six Fresno area men for the purpose of buying the ranch. When Newport became the owner of Rancho Sespe, a lease it had previously executed with Rivcom, under which Rivcom would farm the ranch, took effect. During the morning of the 16th, Charles McBride, a vice-president of NPMS, addressed the assembled employees at the ranch, informed them that the ranch had been sold and notified them that their jobs had been terminated. Larry Harris, President of Rivcom, arrived at the ranch sometime during the afternoon.

[2/]Rancho Sespe has recently been renamed Rivcom Ranch. I will simply refer to the property as "the ranch" with respect to events occurring after the sale date.

A. The Representation Election and Certification.

The UFW received a majority of the votes cast in a representation election held on May 9, 1978, among the agricultural employees of Rancho Sespe (GC Ex. 21). On May 17, 1978, the Board certified the UFW as the bargaining representative of all the agricultural employees of Rancho Sespe in the State of California (GC Ex. 22). On October 2, 1978, the Board amended the certification, describing the employer as "National Property Management Systems, dba Rancho Sespe," rather than "Rancho Sespe". (GC Ex. 1-K). NPMS and the UFW engaged in bargaining prior to the sale but did not reach agreement on a collective bargaining contract.

B. The Agricultural Enterprise Prior to January 16.

Under Lombard's management, Rancho Sespe produced and harvested Valencia (700 acres) and navel oranges (60 acres), lemons (380 acres), grapefruit (150 acres), avocados (200 acres), and macadamia nuts (1 acre). Virtually all the cultural and harvest work was performed by a permanent, essentially year-round, resident labor force. The workers lived in housing provided by NPMS for a nominal rent of ten dollars a month. According to Lombard, approximately 40% of the work force had been working at Rancho Sespe for ten years or more. With the exception of some mechanical tree-topping equipment which was provided by an outside contractor, the ranch owned all the equipment necessary to run the operation, including a large number of pick-up trucks and other vehicles. A complete inventory of the large equipment was made by Rivcom in January and appears at pp. 40-44 of Respondents' Exhibit C. The

ranch also provided picking tools such as ladders, gloves, scissors, and size rings. Approximately three-quarters of the ranch used chemical, non-cultivation techniques of weed control, while the remainder was cultivated by tractors with discs. According to Lombard, soil conservation dictated the continued use of cultivation on the hillier portions of the ranch in order to minimize erosion.

C. The Negotiations Leading up to the January 16 Transfers.

Joseph E. Pressutti is a Los Angeles certified public accountant who also invests in agricultural property. Early in 1978 Mr. Pressutti purchased a citrus orchard in the southern San Joaquin Valley, known as Sky Valley Ranch, from Prudential or its subsidiary, PIC. He entered into a contract with Riverbend to harvest, pack, and market some of the fruit on the ranch. Riverbend's president, Larry Harris, met Pressutti while they were in college. They have been friends for more than ten years. Pressutti frequently consults with Harris about the advisability of purchasing various agricultural properties.

Sometime in the spring of 1978, a Prudential employee with whom Pressutti had negotiated the purchase of Sky Valley, told Pressutti that Rancho Sespe was for sale and asked him if he might be interested in purchasing it. Pressutti asked for information about Rancho Sespe and was subsequently sent a prospectus. After receiving the prospectus, Pressutti contacted Harris to find out what he knew about the ranch. Pressutti testified that he could not remember if Harris said he was interested in Pressutti's possible purchase of the ranch. When asked if he could remember anything of what Harris had said about Rancho Sespe, Pressutti, after

a long pause, replied: "I really can't think of anything I can tell you." (TR VII, 166). Harris testified that he had been aware that Rancho Sespe was for sale six or seven months before Pressutti contacted him. Harris did not testify about the content of this first "informal" discussion with Pressutti.[3/]

In May, June, or July, 1978, Pressutti met with Lombard at Rancho Sespe. Lombard gave Pressutti a brief tour of the ranch and provided him with crop estimates, revolving fund estimates and accounts receivable estimates. In June or July, 1978, Pressutti began to negotiate with PIC for the purchase of the ranch. During early September, 1978, PIC demanded a $150,000 cash deposit from Pressutti. Because Pressutti did not have the money, he contacted Erik Watts, a developer and investor, in an effort to obtain it. A few days later, Watts put up the $150,000 and Watts and Pressutti made a deposit on the purchase of Rancho Sespe. On November 27, 1978, Watts and Pressutti received a non-assignable option to

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[3/]The facts set forth in this paragraph are undisputed and not crucial to the resolution of the issues in this case. Yet, Respondents' post-hearing brief at pp, 2-3 gives a detailed account of the conversation between Harris and Pressutti about which there is absolutely no record evidence. The account ends with the assertion that Harris first learned that Rancho Sespe was for sale during the conversation, which is directly contrary to Harris's own testimony at TR II, 135. Respondents' brief is riddled with an astounding number of factual errors and an alarming number of references to matters about which there is no record evidence. Because it would be a gargantuan task to refer to every one of these instances of created, distorted, or contradicted assertions, I will only refer to those which bear on significant issues. Respondents' brief, p. 1, notes that it was written prior to the receipt of all transcripts. However, the entire transcript in this matter was sent to the parties no later than twelve days after the hearing closed. Volume II was in the hands of counsel well before the hearing ended. Respondents' brief is unpaginated, I have numbered the pages beginning with the first page of the statement of facts.

purchase the ranch for $11.8 million.[4/] Pressutti testified that it was during the negotiations with PIC in September that he first learned that negotiations between the UFW and NPMS were underway (TR VII, 184).[5/]

Erik Watts testified that Pressutti was one of his accountants and that Watts was using Pressutti as his "pawn" in his plans to purchase Rancho Sespe for development as a multi-faceted development, including condominiums, hotels, and a Heritage Ranch and museum. According to Watts, Pressutti contacted him about the possible purchase of the ranch in March, 1978. Pressutti asked Watts, as a favor, to meet his friend Larry Harris who was interested in securing a contract to pack and market Rancho Sespe's fruit. Watts met Harris, presumably on the tour in July, found him to be impressive, but young and somewhat immature, and decided that he

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[4/]Respondents' brief, p. 2, states that Pressutti talked to Watts shortly after his first conversation with Harris. But Pressutti twice testified that he didn't approach Watts until September. Both Watts and Harris testified that they visited the ranch with Pressutti in July. The brief, p. 4, asserts that Pressutti introduced Watts to Harris during this visit, but Harris testified that he had met Watts earlier, in connection with another real estate transaction with Mr. Pressutti. (TR II, 123). I credit the testimony of Harris and Watts that there was a tour of the ranch in July. This is just one of many instances in which Pressutti's testimony was vague, evasive, or inaccurate. Inexplicably, Respondents' brief, p. 8, refers to an offer Pressutti made to PIC to purchase the ranch through a "land sale contract." The brief goes on to indicate that the offer was rejected by PIC after Pressutti. obtained $150,000. The record is bare of any references to a "land sale contract" or rejected offers.

[5/]Respondents' brief, p. 43, has Pressutti testifying that he could not recall being told by PIC of any union involvement at Rancho Sespe. Again, this is a reference to testimony that does not exist.

would not let Harris pack the fruit.[6/]

Prior to entering into the option, Watts directed Pressutti to check out various financial institutions and other sources of loan money. On August 30, 1978, Pressutti met with Mike Jewett, General Manager of the Federal Land Bank in Ventura. At the meeting, Pressutti told Jewett that he and a more substantial investor were seeking an $8-9 million loan to purchase Rancho Sespe. Pressutti indicated that the property would be continued as a citrus ranch. Jewett expressed skepticism that the ranch was capable of generating enough income to meet the payments on such a large loan. The Land Bank had lent money to the owners of Rancho Sespe in 1973. That loan was smaller and had always been kept current.[7/]

By November, Watts had made a fairly firm decision to finance the purchase of Rancho Sespe through a loan from the Executive Life Insurance Company. Watts testified that he exercised virtual carte blanche authority over the use of the company's assets. However, Pressutti prevailed upon Watts to give Harris another opportunity to meet with him and prove that he was capable of packing and marketing the fruit and, in addition, that Harris

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[6/]Respondents' brief, p. 6, cites non-existent testimony of Watts to the effect that he did not tell Pressutti of his decision not to let Harris pack the fruit because he feared that Pressutti might inform Harris and that Harris would therefore not aid in Watts's efforts to obtain a loan from the Federal Land Bank in Ventura, Actually, Watts testified that he told Pressuttij "Joe, he's too far away. He's too young, I know he's a friend of yours." (TR XI, 42).

[7/]Respondents' brief, pp, 7-8, details an interesting conversation between Pressutti and Jewett concerning Pressutti's intent to have Riverbend pack and market the fruit and Jewett's interest in learning more about Riverfaend, There is no such testimony,

"could put together a group which could make the kind of a deal which I would be interested in accepting which was that I handled totally the development and somebody else handles totally, you know, the unsafe part of the investment which is the fruit." (TR XI, 42).

About November 20, 1978, Harris contacted Mike Jewett and asked him to come to Fresno to discuss the loan further and to tour the Riverbend packing plant. Pursuant to Watts's desire to find a group to handle the farming investment, Harris also invited Monroe Telford, a retired Federal Land Bank official. Telford, who has known the Harris family at least since Larry's childhood, owns a small citrus orchard in the San Joaquin Valley for which Riverbend acts as packer and marketer.

The meeting took place on November 24, three days before Pressutti and Watts entered into the option agreement with PIC. According to Jewett, Watts did most of the talking. He discussed non-agricultural uses for the ranch. Watts and Pressutti asked Jewett a number of questions about the current operations of the ranch, but Jewett got little, if any, information from them. Neither Watts nor Pressutti spoke about farming the property. Telford spoke on Harris's behalf in an effort, according to Telford, to persuade Jewett that Harris would do a good job as packer and marketer of the fruit. Harris testified that Watts and Pressutti came to him seeking help in obtaining financing for the purchase. It was Harris's understanding that they were having difficulty

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[8/] Respondents' brief, p. 9, claims that Pressutti invited Jewett to the meeting.

raising funds. Harris testified that he suggested that Pressutti talk to Mike Jewett. Harris stated that Telford came to the meeting to provide a reference for him to Jewett. According to Harris, Watts attended the meeting but was not introduced to Telford until later, although he did introduce Telford to Pressutti.[9/] I credit Jewett's testimony about the circumstances and content of the November 24 meeting. His testimony was consistently thoughtful, measured, and precise.

Shortly after the option was signed, Watts learned from Lombard about an unusually bad frost at the ranch. This information motivated Watts to put together a deal which would give him development rights over the ranch but leave the farming risk to others. Pressutti sounded out Telford about the possibility of forming a joint venture or partnership. Telford contacted five other men, including Glenn Wilkins, who eventually formed Newport. He also toured the property with Wilkins and Harris. Watts and Pressutti met with the Newport group and negotiations began. Although Watts still preferred to keep the ranch operating as it was, he was willing to let Harris pack and market the fruit as long as there was no risk to him.

Telford and Wilkins barely knew Watts and Pressutti and were not interested in a joint venture or partnership. As the negotiations continued in late December and early January, it was

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[9/]Respondents' brief, pp. 9-10, has Harris attempting to persuade Jewett that Riverbend could receive better returns on the fruit than the current owner. There is no such testimony in the record.

decided that Watts and Pressutti would buy Rancho Sespe and immediately sell it to Newport. Newport and Watts and Pressutti would simultaneously enter into an agreement giving Watts and Pressutti an option to buy approximately 1500 acres of the ranch's pastureland. Newport sought financing from the Bank of America in Fresno and began to think about who would farm the property. Telford and Wilkins decided to approach Harris. He studied the situation and entered into negotiations with Telford to lease the property.

Representatives of Newport (which incorporated on January 12), Paraships (which was also incorporated about this time) and PIC gathered at the law offices of Gibson, Dunn & Crutcher in Los Angeles on January 13, to work out the final details of the sale transactions. The lease between Rivcom and Newport had apparently been signed in Fresno by this time.[10/] The form of the sales and lease agreements had been approved by the Newport board on January 12. (GC Ex. 15). A great deal of haggling between Paraships and Newport immediately preceded the signing of the sales agreements in the early hours of January 16. The last-minute disagreements were, according to Watts, genuine, but part of the game of negotiations. (See TR XI, 49).

During the final day of negotiations, January 15, Richard Strong, an attorney with Gibson, Dunn & Crutcher who was representing PIC, handed Pressutti an envelope containing a letter from George Preonas, the labor attorney for NPMS. He also placed several large

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[10/] Harris testified that the lease was signed at a law office in Fresno. TR II, 126. Respondents' brief, pp. 38-39, states that Harris signed the lease at Gibson, Dunn & Crutcher where he and Telford had a conversation which does not appear in the record,

folders next to Pressutti. The folders contained information about the negotiations between NPMS and the UFW. Strong testified that Pressutti opened the envelope, looked at the letter, but left the folders in the room when he left. Pressutti testified that he looked at the letter and handed it to his attorney, Robert Kopple. Pressutti testified that: "I think he (Kopple) told me that it was notification of union negotiations." (TR VII, 188).[11/] Strong testified that he had advised Ken Manock, an attorney for Newport, on Sunday, January 14, that he had material about union negotiations that he wished to turn over pursuant to PIC's contractual obligations to Paraships, Mr. Manock replied: "I assumed you would." (TR VII, 137), On Tuesday, January 16, Strong told Manock that Pressutti had left the folders behind and that Manock was free to take them, Manock said that he did not want the folders but gave no reasons to Strong.[12/]

[11/] Respondents' brief, p. 46 , has Kopple telling Pressutti not to concern himself with the union because Paraships was about to transfer the ranch to Newport. No such testimony appears in the record.

[12/] Respondents' brief, pp. 46-47, attributes two imaginary statements to Strong which, even by the rather loose standards of the brief, are outrageous: "Mr. Strong stated that as the respresenta-tive of P I C Realty, he was concerned that Paraships might attempt to avoid the transfer on the argument that P.LC . Realty had not fully disclosed their status with the United Farm Workers Union." And, after Strong made the files available to Manock on the 16th, the brief has Manock say: "that Mr. Pressutti was not his client but that Newport was, and that since Newport would not be involved in farming the property it had no interest in reviewing the file..." Brief at p. 47. Mr. Manock did not testify at the hearing and there is nothing in the brief (18 pages) recorded testimony of Strong which bears the remotest resemblance to the brief's attributions. Volume VII of the transcript was distributed less than a week after the close of the hearing.

D. The Sale, Lease and Option Documents

1. Between PIC Realty and Watts and Pressutti or Paraships.

The November 27, 1978, option between PIC and Watts and Pressutti is not in evidence. Testimony indicates that the Agreement of Sale and Escrow Instructions (GC Ex. 23) was drafted on or about the option date, although it is dated January 15, 1979. The Agreement of Sale defines the property and provides that all the real and personal property is to be sold. Section 8(c) of the Agreement refers to labor negotiations and incorporates the contents of Exhibit Z. Exhibit Z is an acknowledgment by Watts and Pressutti that they have received a copy of the ALRB certification (GC Ex. 21) and that they are aware of the legal duty of NPMS to negotiate in good faith with the UFW. Section 26(e) of the Agreement, headed "Litigation", states that with the exception of the labor negotiations there are no proceedings "which would be a material hindrance or disadvantage to Buyer in the future ownership or operation of the Sale Property..." Both Watts and Pressutti initialled Exhibit Z but had no recollection of doing so, Pressutti, as noted earlier, testified that he had been informed that negotiations were taking place. Pressutti, however, testified that he never mentioned this fact to Harris or any of the people associated with Newport. Watts testified that he had no reason to be concerned with labor negotiations because he believed that Lombard would continue to operate the farm. The deed transferring Rancho Sespe from PIC to Paraships is in evidence as GC Ex. 12.

2. Between Paraships Builders and Newport Beach Development Co., Inc.

None of the documents executed between Paraships and Newport mentions the ALRB certification in particular or labor relations in general. In fact, Telford testified that he had never seen Exhibit Z or the Sale Agreement between PIC and Paraships. However, the Escrow, Option & Development Agreement (R Ex. B) between Paraships and Newport, dated January 16, incorporates the Sale Agreement by reference.

The Bill of Sale between Paraships and Newport refers to the Sale Agreement in order to define the personal property being transferred. The Bill of Sale refers specifically to Section 8(f) of the Sale Agreement. Section 8(f) appears one page after the Labor Relations subsection of Section 8.

The "Closing Agreement — Paraships to Newport" (GC Ex. 17) refers to the "PIC Sale Agreement" and states that it was attached to the November 27, 1978, option. The Closing Agreement refers to specific subsections of the Sale Agreement at least a dozen times.

According to the witnesses for Newport and Paraships, attorneys were involved in the drafting of the transfer agreements. While Telford, Pressutti and Watts negotiated, the documents were prepared by the lawyers and then signed. In addition to the transfer documents, Newport also signed three loan agreements relating to the purchase with the Bank of America.- The Bank made loans to Newport totalling $11,600,000.

3. Between Newport and Rivcom.

Telford and Harris negotiated three agreements on behalf of Newport and Rivcom respectively. Rivcom had been incorporated

four to six years earlier as a data processing company. Its only current activity is the operation of the ranch. The lease between Newport and Rivcom is dated January 16 (GC Ex. 3). Paragraph 3 provides for a minimum annual cash rent of $1,675,000, and establishes a profit sharing mechanism requiring payments over and above the minimum rent under certain circumstances. However, the provisions of paragraph 3 have been superseded by a document entitled "Agreement" dated January 15. It provides for no rental payment for any year in which there is a loss, as defined. In a year in which Rivcom makes a profit of less then $1,675,000, the rent is equal to the profit. There is a profit sharing agreement for years in which there is a profit in excess of $1,675,000. There are also provisions requiring Rivcom to pay deficiencies in rent from previous years during years of high profit. Paragraph (f) of the Agreement stipulates that if there is still a net loss at the end of the lease that loss shall be paid to Rivcom by Newport. In sum, the agreement is a rather technical document which clearly provides that Rivcom cannot ever lose money on its ranch operations.[13/]

The third document signed by Telford and Harris is called "Supplemental Agreements Re Lease" (GC Ex. 3-B). In this document, dated January 16, Newport agrees to waive its right to bring claims against the shareholders, directors, officers, agents, and employees of Rivcom by piercing the corporate veil.

Throughout the hearing and in their brief, Respondents have referred to heated negotiations between Rivcom and Newport. (There is no testimony that the negotiations were contentious. The

[13/]The lease also provides that Rivcom will share in any profits realized by Newport if it sells the ranch.

two negotiators, Harris and Telford, were good friends.) Because Harris was desperate to get the opportunity to pack and market the fruit from the ranch, it is suggested, he was forced to agree to an onerous rental payment. According to Wilkins, however, the lawyers determined that $1,675,000 was a* fair rental figure. He could not explain how the figure was arrived at. Nor did Wilkins know why the Agreement and Supplemental Agreements were separate documents. He explained that the Agreement was entered into in order to be fairer to Harris, and to give him an incentive and that the Supplemental Agreements were entered into because Newport wanted to satisfy Harris's concerns. However, no witnesses attempted to explain why the requirement for a minimum cash rent was deleted.

E. Rivcom, the UFW and the Former Employees.

Harris testified that he knew through trade sources, sometime in 1978, that the UFW had won an ALRB election at Rancho Sespe. (TR II, 164).[14/] But, because he intended to be only a packer and not a farmer, at least until early January, he did not consider the UFW's certification to be relevant to him. He asked no questions about the union, either to Newport or Paraships or the ALRB. The subject never came up.

Harris took a tour of Rancho Sespe sometime during the week preceding January 16, and decided that he would have to make drastic changes in the operations of the ranch. He decided that it would be best not to hire any of the former employees so that there would not be resistance to the drastic changes. Harris's

[14/] Respondents' brief, p. 44, claims that Harris didn't know there had been an election or its outcome until January 17 or 18.

business justifications for not considering the former employees for hiring will be considered in detail in Section F, infra.

The first communication between Rivcom and the UFW came in a phone call from Emilio Huerta, of the UFW's Oxnard field office, to Thomas Campagne, Rivcom's labor attorney, Campagne told Harris that Huerta had made several demands including recognition by Rivcom of the UFW, reinstatement of all the former employees, withdrawal of all eviction notices, and bargaining about all changes in conditions of employment. On the same day, Huerta sent a mailgram to Rivcom making essentially the same demands. (GC Ex. 4). Harris received the mailgram on January 19, at the same time as the first charge in this matter. (GC 1-A). Harris testified that he was confused because he couldn't understand why the UFW was filing an unfair labor practice charge at the same time it was making demands. Harris directed Campagne to respond to Huerta in writing. On January 19, Campagne sent Huerta a letter (GC Ex. 5) which responded to the demand for recognition, but did not even mention the hiring and housing issues. In the letter, Campagne stated that it was Rivcom's position that the UFW certification was not binding on it and that any recognition by Rivcom of the UFW would constitute a violation of Section 1153(f) of the Act. Campagne's letter is the only communication of any kind from Rivcom, Riverbend, or Harris to the UFW.[15/]

On January 31, a group of perhaps 60 former Rancho Sespe employees walked to the ranch office. Some carried signs saying

[15/]Harris was, however, willing to discuss job issues with a group of former employees on April 5. No UFW representatives were present, nor were former employees identified with the UFW permitted to join the discussion.

"We want our jobs" and "Mr. Carter, what about our rights?" A delegation of approximately five former employees, headed by Jaime Zepeda, went into the office and asked to speak to Harris. A secretary told Zepeda that Harris would speak to the workers and that they should wait for him. Five or ten minutes later a security officer told the five to leave the office. He said that Harris would speak to them outside. The five went outside and waited in the rain for more than half an hour. At Harris's request, Sergeant Juan Mendez of the Ventura County Sheriff's Department asked the group of workers to leave Rivcom property. The workers complied. Zepeda asked Mendez to relay a message to Harris that the people wanted to talk to him about their jobs. Mendez, experienced in labor relations matters, complied with the request. Harris told Mendez that he didn't want to talk. Mendez relayed the message to Zepeda. The group dispersed.

Mendez testified that the situation on the 31st was potentially volatile and that Harris seemed apprehensive.[16/] Harris said that he had been told by somebody from the Sheriff's Department that it would be dangerous to talk to the workers. Harris did state that he knew the people had come seeking work.

On February 1, Emilio Huerta wrote Harris a letter (GC Ex. 8) seeking employment with Rivcom on behalf of 130 persons whose names were attached to the letter. Harris received this letter on February 5, the same day that the second charge in this matter came

[16/] At one point, Mendez said he was "shocked" when he saw the size of the group of former employees. He later said "surprised" was a more appropriate word than "shock". Mendez testified that there was no unruly behavior or violence during the entire incident.

in his mail. Harris did not respond to the letter.

Harris testified that he has hired none of the former Rancho Sespe employees and that he has not considered their qualifications or experience in making the decision not to employ them. None of the former employees made an individual application for work. While Rivcom has employment applications, they are typically used for clerical and managerial personnel and not for farm workers. Rivcom made no attempt to tell the former employees how they should go about applying for work. Its only communication with the former workers was through the vehicle of eviction notices. None of Rivcom's current employees ever filed an employment application.

F. Rivcom's Business Justifications for Failing to Consider or Hire any of the Former Rancho Sespe Employees.

Larry Harris asserted a number of business reasons for his decision not to consider the former employees for jobs on the ranch after January 16.

According to Respondents' brief, p. 28, the first reason was that: "Mr. Harris's examination of Sespe's operating statements and his tour of the ranch had led him to believe that the stringent 1.7 million annual rental payments could not be met unless rapid and drastic operational changes were implemented." These changes, it is argued, could be achieved more rapidly with members of a crew on the Triple M payroll who had previously been working as pruners and harvesters for Riverbend. Harris also testified that his primary interest in the ranch was in securing the fruit for Riverbend. Operation of the ranch as a farmer was a necessary evil. In fact, Harris had never before managed a farm not owned

by himself or his family. It is clear that making a profit on the pre-harvest operations at the ranch was not a matter of concern for Harris; he would have been happier having nothing to do with farming the property. Harris testified that he signed the lease principally to obtain the fruit. "...(T)his particular arrangement (the lease) was one that was very attractive not so much from a farming standpoint, but from the marketing standpoint." (TR XIV, 70), Harris later stated, after a pause for thought, that he believed that the farming venture could be profitable.

In this context, Harris's first reason appears pretextual because the lease as modified by the agreement provides for no rental payments at all if there is a net loss in operations. If there is a profit of less than $1,675,000, then the rent is equal to the profit. If there are any unrecovered losses at the end of the lease, these must be paid to Harris by Newport. So, there is no possibility of Harris losing money pursuant to the lease. Harris can only realize a profit on the farming operations if the ranch is extremely profitable, because the first $1,675,000 of profit per year goes directly to Newport.

It is true that Rancho Sespe has made an average profit of only $300,000 a year before depreciation and lost an average of $200,000 a year after depreciation over the past 5 years. However, Lombard testified that 1978 was a very profitable year because prices for citrus products rose dramatically. No witness claimed that Rancho Sespe was not a good producing ranch. Several witnesses stated that costs were too high. Even if Harris were able to achieve all the economies he hopes for, perhaps $300 per acre, he would only cut expenses by $450,000 a year. Only higher prices, which are not

related to labor, could raise profits high enough so that Harris could make money from the farming operations.

All the experts, including Jewett, indicated that costs in the pre-harvest operations could be cut substantially. Jewett testified that pre-harvest costs for growing navel and Valencia oranges, avocados, and grapefruit range from $4-600 per acre in Ventura County, prior to depreciation and taxes. Lemons cost $7-900 per acre. Jewett also testified that most ranchers in the county have owned their ranches long enough so that their depreciation is not a major expense. From 1972-76, the ranch spent an average of about $1.5 million per year on pre-harvest operations, excluding taxes and_depreciation, for a per acre average of roughly $1,000. The budget prepared by Harris in early January estimates pre-harvest expenditures of $624 per acre, excluding taxes. Tables produced by the University of California Cooperative Extension, which were considered by Harris, indicate that costs in Ventura County are substantially higher than those estimated by Harris or Jewett. For lemons, the pre-harvest costs are $990 per acre. This figure does not include interest and management costs, as do the ranch figures. Such costs accounted for about $150 per acre on the average over the past five years. According to the University, the average production cost for Valencia oranges is $825 per acre, again excluding management and interest. For avocados, the cost is estimated at $775 per acre, excluding interest. (R Ex. C. pp. 3-5).

The second reason asserted by Harris for not considering the former workers for employment is his long standing adherence to "the management principle that operational difficulties will occur if a new owner initially hires some of the predecessor's employees."

(Respondents' brief, p. 29). By reviewing ranch records and taking a short tour of the ranch, Harris determined that the operation needed to be changed. However, the problems alluded to by Harris in large measure concerned management decisions relating to irrigation, excessive equipment, frost protection, and non-cultivation techniques. Without having spoken to any of the former employees, Harris concluded that they would resist and be resentful of his changes. In support of the non-discriminatory nature of this decision, Harris testified that he had taken over four "failing" businesses in the last ten years where there had been no union activity, and that in each case he retained none of the predecessor's employees. One of the take-overs involved a packing shed with 80 employees. The other three were small citrus ranches with a total of perhaps ten full-time employees. Harris admitted that he was almost totally unfamiliar with the NPMS labor force and knew nothing of its productivity or wage scale. It is difficult to fathom how a prudent businessman could rely on a "management principle" based on a refusal to obtain relevant information about an obvious source of labor. For the legal sufficiency of such a defense, see pp. 45-46, infra.

Harris's third and (according to Respondents' brief) "most important" reason for hiring none of the former workers was that he had made a promise in the summer or fall of 1978 to a crew of Triple M workers that he would give them year-round work at Rancho Sespe if he obtained the packing contract. According to Harris, these were very productive workers who had been loyal to him during the four years that Riverbend had been operating in Ventura County. Harris's uncorroborated testimony about this

promise is very weak. First, at the time he supposedly was speaking to the crew about Rancho Sespe he had no expectation whatever that Riverbend would be permitted by Watts to be the packer. Watts had already met Harris and decided to continue with the then current packing arrangements. Watts had told Pressutti of his decision. Second, Respondents' own records (GC Ex. 36) show that none of Rivcom's current employees began working for Riverbend prior to January 24, 1977, with the exception of two supervisors and a Fresno employee. Harris testified that these employees were working for Riverbend only six or seven months a year and sometimes did not work full weeks. When asked to identify the names of the workers on the list, Harris could name only the members of the Juan Bautista family. He was unable to point to any special skills of these employees except in the area of pruning. These skills, according to Harris, can be explained in 30 minutes. Most of the current Rivcom employees who worked for Riverbend did so for the first time in 1978.[17/]

Finally, the brief claims that Harris decided to put his Riverbend workers to work at the ranch because the severe

[17/]It is curious that fifteen of the Rivcom employees listed their address as 229 California Street, Santa Paula, while another twenty-four of the employees gave as their address either 410, 410-1/2, or 412 Oak Street, Santa Paula. Harris testified that all of those persons with Ventura County addresses had lived there for some time. Yet, Juan Bautista, who lived at 229 California, stated that the men listing that address as their own had only slept in his house for a few nights. Meanwhile, at least twenty of the employees have been living in the basement of the Rivcom office at the ranch, assertedly because of fear of retaliation from UFW supporters, It was not explained why these men chose to live apart from their families for several months, if indeed they were Ventura County residents.

frost of December, 1978, deprived them of much of their work. This is an afterthought. There was no testimony that the frost affected any of the other Ventura County farms where Riverbend was doing harvesting work.

G. Rivcom's Decision to Demolish the Labor Camps.

Larry Harris arrived at the ranch office on the afternoon on January 16.[18/] While reviewing ranch records, Harris learned for the first time that the labor camps which he had previously observed were used primarily for housing the agricultural employees of the ranch. Harris had "certain assumptions" about who lived in the camps, but he didn't know for sure until he was told by Claude Lee, an NPMS office employee. Harris also learned that under the terms of the licensing agreement between NPMS and the former employees, the employees' right to remain in the housing could be terminated on 24 hours' notice. (GC Ex. 34, Exhibit "B"). Harris decided that he would not be needing the housing for his employees and therefore decided to evict the residents, tear down the housing, and use the land for planting citrus and vegetables. Harris telephoned Telford who, on behalf of Newport, gave Harris permission to demolish the housing. Telford and Harris both testified that the subject of housing had not arisen during the negotiations. Apparently, this was the first discussion between the two men about the labor camps. On January 16 or 17, Harris prepared and delivered to each of the residents an informal notice requesting

[18/] The brief, p. 50, states that Harris did not arrive until January 17 or 18.

them to vacate the premises by February 16. (GC Ex. 6).[19] On January 25, Rivcom served formal 30 day notices on the residents of the camps. (GC Ex. 7 & 9). At least two unlawful detainer cases have been filed against the residents and are currently pending in Ventura County Municipal Court. (GC Ex. 34 & 35).

H. The Agricultural Enterprise Since January 16.

Since taking control of ranch operations on January 16, Harris has continued the ranch as a citrus and avocado operation.[20] Harris has, however, made some operational changes and plans more for the future. When testifying about the reasons he was unable to take the time to consider any of the former employees for jobs, Harris testified that the onerous terms of the lease made rapid changes imperative. When testifying about why he had not actually been able to implement many changes between January 16 and early April, Harris testified that he took over the ranch in winter when activities are necessarily curtailed by cold weather and rain and that not much work can be done at that time of year. Besides, many of the Triple M employees were on vacation in January.

1. The Work Force

None of the NPMS agricultural employees working at the ranch on and prior to January 16 has been hired by any of the business entities currently performing agricultural work at the ranch. The present agricultural employees, some employed by Rivcom, and some on the payroll of Triple M, have, with a few possible exceptions, worked in enterprises controlled by Larry

[19] The unlawful detainer complaints filed by Rivcom allege that these notices were delivered "on or about January 16". See GC Ex. 34, paragraph 13.

[20] The one acre of macadamia nut trees has been removed.

Harris prior to their employment at the ranch.

Although Respondents' brief, p. 52, states that "Mr. Harris's entire work force arrived at the ranch on January 17", Rivcom's records demonstrate that only eight non-supervisory employees were hired by Rivcom during its first week of operation. (GC Ex. 36). As Harris testified, "You have to remember January 16th is a period of time when harvest is at one of its low points, and many people were gone on vacation, et cetera . . . . As people came back, we have had work in both locations (apparently the ranch and other Ventura County growers), and we have tried to adequately use our people in all locations as best we can," (TR XVI, 95). And: "it's been my intention to try to put together an orderly work force and have uniform employment." (TR XVI, 93-94).[21/]

2. The Business Relationships Among Rivcom, Riverbend, and Triple M at the Ranch.

Riverbend is a corporation headquartered in Sanger which is engaged in the packing and marketing of citrus. It is under the management and control of Larry Harris, its President, who makes all management decisions. Riverbend, as part of its contractual arrangement with many of the growers it serves, often provides harvesting crews. Riverbend will also provide for the hauling of the fruit to its packing facilities in Sanger. Riverbend typically advances harvesting and hauling costs to the growers; Riverbend is reimbursed for these costs out of the sale of the fruit. When

[21/]Respondents' brief states that: "(e)very one of these Rivcom employees had worked previously for Mr. Harris on an average of approximately two years", when, in fact, not a single employee from Ventura County had worked for Harris that long. Most had worked for Harris for the first time in 1978. (GC Ex. 36).

Riverbend provides harvesting and hauling services, it uses a labor contractor/custom harvester to do the actual work. In the case of the ranch, as well as in many other instances in the past five or six years, Riverbend has contracted with Triple M to perform the harvesting and hauling duties. At the ranch, Triple M also does some pruning work, sharing those tasks with Rivcom employees.

Triple M is a company holding a farm labor contractor's license. It is headquartered in Fresno. Aside from the ranch, it also provides such services under contract with Riverbend at approximately two other locations in Ventura County. Triple M provides nearly all the equipment required to harvest and haul citrus, including some large, heavy, and expensive machinery and trucks. Triple M bills Riverbend for its services in three categories: Harvest,, support services (equipment), and hauling. Triple M's President, Benny Martinez, is the company's only supervisor. He visits Ventura County one to three times a week.

Rivcom is a wholly-owned subsidiary of Riverbend. Its president, Larry Harris, has full management and control of the company. It has no business outside of the ranch. Rivcom is headquartered in the Riverbend office. Both companies use the same computer for their record keeping and bookkeeping. Rivcom has entered into a contract with Riverbend to provide the same kinds of services as Riverbend provides to other growers. The contract was signed, for both corporations, by Harris. Day-to-day activities at the ranch are currently conducted by Harris and Alvin Long, a former Riverbend employee. Harris testified that

Long was one of those who instructed Rivcom employees in pruning techniques and had responsibilities in supervising agricultural work. Harris also stated that Eddie Franco and Danny Martinez, both Rivcom supervisors, oversaw Rivcom employees doing pruning work. Long testified that he had never been involved in pruning work and that Franco and Martinez hadn't either.

On paper, there is a rather neat division of responsibilities among the three entities. But the ranch is not run on paper. In practice, there is a well-integrated enterprise. Harris, for example, has the authority to hire, fire, suspend, lay off, recall, promote, discharge, assign, reward, and discipline agricultural employees on the Triple M payroll while working at the ranch. At least, that is the testimony of Long under questioning by Respondents' counsel. (TR VII, 75-76). Harris, under questioning by Respondents' counsel, denied that he had any such authority over Triple M employees. He did testify, however, that employees of Riverbend's field department direct Triple M employees while they are harvesting. The field department tells the harvesters where to pick and which fruit to pick. Harris testified that this is a common practice in the industry. See also Corona College Heights Orange and Lemon Association, 5 ALRB No. 15 (1979). Harris has also given Martinez authority to hire employees for Rivcom. (TR XVI 90, 92). And, Harris and Martinez have agreed on the importance of providing all the employees working at the ranch with full-time jobs. So, Martinez also has the authority to transfer Rivcom employees to the Triple M payroll CTR XVI, 127-128) . Employees are also transferred from the Triple M payroll to the Rivcom payroll

if such a move is necessary to give all employees sufficient work. These transfers are bookkeeping matters generally handled by Martinez and Long. Harris ran into repeated difficulties during his testimony while attempting to explain how the activities of the three entities are kept formally separate. Finally, he testified that: "They operate in similar fashion, since we're using common people and things ....." (TR XVI, 104). When asked what he meant, Harris replied: "Well, all I was referring to is that there is a relationship which is very obvious between all of those entities..." (TR XVI, 106). Almost all of the members of the crews working at the ranch, regardless of which payroll(s) they are working under, were referred to continually by Harris as "our employees", "Riverbend employees," and as the Ventura County crew which had been doing such a good job for Riverbend.

3. Changes in Operations

Respondents' central contention about management practices under Lombard is that the ranch was run in an outmodeled, labor-intensive, and even extravagant manner. Harris testified about a number of changes he has already made or will soon implement in an effort to save labor and money. Several expert witnesses called by Respondents testified about changes they would advise.

As an example of Lombard's failure to adopt modern farming techniques, Harris repeatedly mentioned Lombard's reliance on mechanical cultivation, as opposed to the use of pre-emergent herbicides which sterilize the soil, for weed control. In coming to this conclusion, Harris relied upon page 45 of Respondents' Exhibit C, which Harris felt accurately represented conditions of the ranch.

Page 45 indicates that only 22.7% of the acreage is still being cultivated. This chart corroborates Lombard's testimony that the majority of the ranch was already using non-cultivation techniques and that cultivation was only practiced on the steepest areas of the ranch for soil conservations reasons.

Another major change, which will take an unspecified amount of time to complete, is conversion of the irrigation system from a high water volume operation using a furrow method, to a low volume system of sprinkler (some equipped with spitters) and drip irrigation. Currently more than 60% of the ranch uses high volume irrigation. Lombard would also have converted the irrigation system if he had had more working capital. He was involved in converting some acreage each year. Low volume irrigation is more economical than is high volume and is less labor intensive.

Frost protection is a requirement each winter. The ranch has used an extensive system of orchard heaters known as smudge pots, in the past. This is an effective method, but it is labor intensive and requires the use of ever more costly oil. During the severe frost in January, Harris used the smudge pots. But, he is now in the process of selling them and, by next winter, will install wind machines. Wind machines are cheaper and require less labor to operate then smudge pots.

Under Harris's direction, some changes will be made in harvest practices. Using the same type of mechanical topping equipment as the predecessor, Harris will cut the trees somewhat lower. He will use fork lifts instead of straddle forks in the harvest, which he claims will make the work more efficient. Harris plans to

pack the avocados in the field, rather than sending them to a packing house.

Harris's pruning techniques differ somewhat from those used by Lombard, in part because Harris wants the trees to produce larger fruit, which is desired in the Japanese market. The amount of pruning may be somewhat greater than under Lombard and different kinds of saws may be used. According to Harris, about 30 minutes of instruction is required to teach a worker the fundamentals of this method of pruning. Harris also plans to remove alternate trees in areas where the trees have become crowded together. Lombard also practiced tree removal. Both use mechanical side hedging equipment.

Harris intends to plant geraniums, vegetable row crops, and Satsuma oranges on the property where no trees are presently planted. One of these areas is 160 acres of river bottom land which was under lease and did not come into Rivcom's possession until May.

Harris also intends to plant crops on the land currently occupied by the labor camps. Respondents' expert witnesses testified that they would also do away with employee housing because farmers should not be in the housing business. Mike Jewett would also phase out the housing, but not immediately. (TR XIII, 177).[22/] Jewett had two reasons for his opinion that the labor camps should be phased out: first, that home ownership is better for employees than renting, and second, that maintenance of the camps is an expense that other growers do not have to bear. Because the ranch is

[22/] Respondents' brief, p. 65, overstates Jewett's testimony, claiming that he said elimination of the labor camps would be one of his first actions.

the largest in the county, Jewett could not compare it with other operations. Lombard stated that the camps were maintained because resident harvest labor is less expensive than harvest labor obtained through a contractor. He cited comparison costs, but no documentary evidence was offered by any party on this issue.

Rivcom has sold, or will sell, most of the equipment it acquired from the predecessor. The experts agreed that the amount of equipment used was excessive. Harris testified that he will no longer use the laboratory or the maintenance shop. Instead, he will contract with other businesses for repair work. He has already con-r tracted for pest control work.

DISCUSSION, ANALYSIS, AND CONCLUSIONS

I. Jurisdictional Issues

A. Riverbend's Status as an Agricultural Employer

Section 1140.4(c) of the Act defines the term "agricultural employer", which:

> shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee ... and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.

The undisputed evidence in this case indicates that both Riverbend and Rivcom have contracted with Triple M, a licensed labor contractor, to supply agricultural employees to perform work at the ranch. Respondents argue that Triple M functions as something more

than a labor contractor, namely as a custom harvester, and as a result Triple M should properly be considered the employer of the persons on its payroll.[23/]

In support of their position, Respondents rely principally on two Board cases, Kotchevar Brothers, 2 ALRB No. 45 (1976), and Napa Valley Vineyards, 3 ALRB No. 22 (1977). In Kotchevar, the Board found that a custom harvester who supplied costly equipment, transported the picked grapes to market, and supplied a complete harvesting service should be considered the agricultural employer even though he was also performing functions traditionally associated with those of a farm labor contractor.

In Napa Valley, the Board elaborated on its reasoning in Kotchevar, and held that the "whole activity" of a labor contractor must be analyzed in determining whether the contractor is the employer of the employees on its payroll. The Board specifically relied on regulations promulgated pursuant to the Fair Labor Standards Act in making this determination.

In Corona College, supra, the Board found that a citrus packing house was the employer of harvesting crews, even though the employees were on a payroll of a different entity, because packing house supervisors directed the work of the crews.

In a very recent case, Joe Maggio, Inc., 5 ALRB No. 26, (1979), the Board held that a harvester who supplied expensive equipment and set the wages of his crew members was nonetheless not the agricultural employer of those employees under the Act. The

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[23/] Respondents also argue that Riverbend cannot be an agricultural employer because it has no agricultural employees. The circular nature of this reasoning is too clear to require comment.

III!!!

Board again looked to the whole activity of the employer and refused to regard the supply of equipment, the setting of wages, or any other single factor as determinative of the issue.

Turning to the facts of this case, it is apparent that while Triple M is something more than a mere labor contractor, it is also something less. Triple M's only supervisor, Benny Martinez, works primarily in the San Joaquin Valley. He visits the ranch one to three times a week. As in Corona College, the actual work of the harvesting crew is supervised by members of Riverbend's Field Department. Riverbend is vitally concerned with the quality of picking. But Riverbend's relationship to the employees is much -stronger than that existing between the packing house and the employees in Corona College. Alvin Long, Rivcom's second-in-command, testified that Larry Harris had the authority to act, in effect, as a Triple M supervisor. Further, Harris selected the Triple M crew which he wanted to come to work at the ranch and many workers on the Triple M payroll also work at times on the Rivcom payroll where Harris's authority is unquestioned. In practice, Martinez supplies his crews with harvesting equipment, provides for transporting the fruit from Harris's farm to Harris's packing house, and leaves the day-to-day supervision to Harris. Triple M's billing categories recognize the distinct aspects of its services. Harris consistently testified that he wanted a unified work force at the ranch. To achieve this end he and Martinez arranged for transfers from one payroll to another. As a result, Harris has and exercises the authority to place Rivcom workers on the Triple M payroll when harvesting needs to be done and the reverse when it is time to prune.

Considering the "whole activity" of Triple M at the ranch, it is clear that, despite Martinez's ability to supply expensive equipment and the fact that he sets the wages of Triple M employees, it is Harris, acting as Riverbend, who controls the work of the Triple M crews. I conclude that Riverbend is an agricultural employer within the meaning of Section 1140.4 (c) in relation to agricultural employees working on the ranch on the Triple M payroll.

B. Riverbend and Rivcom as Joint Employers

In determining whether two nominally separate entities should be treated as a single employer, the NLRB and the Board have looked to the following factors: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations and (4) common ownership and control. See NLRB v. Transcontinental Theaters, Inc., 568 F. 2d 125 (9th Cir., 1978); Abatti Farms, Inc., 3 ALRB No. 83 (1977).

Harris originally wanted to limit his relationship with the ranch to that of a packer and marketer of its citrus. He would have been able to carry out that function through Riverbend alone. Newport's founders wanted Harris to farm the ranch as well. He agreed and decided to sign the lease as President of Rivcom, a corporation founded for non-agricultural purposes. Harris is President of both corporations. All of Rivcom's stock is owned by Riverbend. Harris is responsible for all management decisions of both corporations.

Riverbend supervises the work of the Triple M crews. Respondents point out that this practice is no different from Riverbend's relationship with its other "outside" growers. But

Rivcom is not an "outside" grower. It is simply a legal entity under Harris's control which is operating for Riverbend's benefit. Rivcom's only function is the performance of certain pre-harvest activities for the purpose of supplying fruit to Riverbend. Harris is able to transfer employees from the Riverbend work force to the Rivcom payroll and back at will. This ability is not merely potential; it has been exercised often since January 16. Harris repeatedly emphasized that he wanted a unified work force at the ranch.

Riverbend and Rivcom are located in the same building in Sanger. They utilize the same computer system for accounting, and payroll functions. All that differentiates them is an employer number on the computer's program.

Under applicable precedent, Riverbend and Rivcom must be considered to constitute a single, joint employer. To hold otherwise would give undue weight to mere legalisms. From the employees' point of view, a finding that Riverbend and Rivcom are separate employers would require two representation elections, and the possibility of two bargaining relationships. In effect, contrary to the Act's mandate that there shall be a single bargaining unit for each employer, the workers at the ranch would be divided into a harvesting unit and a pre-harvest unit. Such a result would be contrary to clear legislative intent. I therefore conclude that Riverbend and Rivcom are joint employers in their operations at the ranch.

C. The Section 1153 (c) Issues.

The General Counsel has alleged that Respondents violated Section 1153(c) of the Act by: (1) arranging for NPMS to discharge

the former agricultural employees of the ranch; (2) refusing to hire any of the former employees; (3) attempting to evict the former employees from their ranch housing; and (4) contracting out work previously performed by the former employees.

1. The Discharges of January 16.

It is undisputed that NPMS, through a vice-president, Charles McBride, discharged all of its employees on the morning of January 16, the day PIC sold the ranch to Paraships. There is no evidence of any communeiation between NPMS and Respondents prior to the discharges. Nor is the fact that NPMS terminated its employment relationship suggestive of any collusion with Respondents. Since NPMS was no longer farming the ranch, it had no work for its employees. The General Counsel's argument that McBride was acting as Respondents' agent under Section 1165.4 of the Act is presented without any serious analysis. Merely because it is possible for a person to act as an agent of another even if he is not the principal's employee does not lead to the conclusion that agency can be established when the principal and putative agent have never met. The allegation that Respondents are responsible for the discharges shall be dismissed.

2. The Refusals to Hire.

Larry Harris decided, for reasons which will be examined later, not to hire any of the former employees of the ranch. He reached this decision shortly before becoming Newport's lessee, and without giving any consideration to the skills and experience of the former employees. As early as January 18, Respondents were on notice that the former employees desired to continue working at the

ranch. A formal written demand was made by the UFW and was received by Respondents on January 19. Rivcom's own records (GC Ex. 36) establish, contrary to Harris's testimony, that only twelve non-supervisory employees had been hired by January 19. Of these, five had been brought from the Fresno area by Earl Hall, a business associate of Harris's. Rivcom hired approximately sixty employees after January 20, yet it never responded to the UFW's request that the former employees be hired. Respondents' only direct communication to the UFW (GC Ex. 5) merely refused to recognize it as the bargaining agent of Rivcom's employees. It made no reference to the hiring issue.

The most definitive interpretation of the evidentiary burden which the General Counsel must meet to establish a violation of Section 8(a)(3) of the NLRA,.which is virtually identical to Section 1153(c), can be found in NLRB v. Great Dane Trailers, Inc., 388 U.S. 26, 34 (1967):

> First, if it can reasonably be concluded that the employer's discriminatory conduct was "inherently destructive" of important employee rights, no proof of an antiunion motivation is needed and the Board can find an unfair labor practice even if the employer introduces evidence that the conduct was motivated by business considerations. Second, if the adverse effect of the discriminatory conduct on employee rights is "comparatively slight," an antiunion motivation must be proved to sustain the charge if the employer has come forward with evidence of legitimate and substantial business justifications for the conduct. Thus, in either situation, once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that he was motivated by legitimate objectives since proof of motivation is most accessible to him.

In adopting this formula the Supreme Court did not eliminate the elements of anti-union motivation and intent to encourage or discourage union membership as requisites of a Section 1153(c) violation, but rather held that 'feome conduct ... may be deemed proscribed without need for proof of an underlying motive. That is, some conduct carries with it 'unavoidable consequences which the employer not only foresaw but which he must have intended' and thus bears 'its own indicia of intent'," 388 U.S. at 33.

It is clear that Respondents were under no obligation to hire any of the NPMS employees, NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1972), but "it is well settled that (the NPMS) employees were entitled to be considered for employment with (Respondents) on a non-discriminatory basis." Tri-State Maintenance Corporation v. NLRB, 408 F. 2d 171, 174 (D,C. Cir., 1968). In Columbus Janitor Service, 191 NLRB 902 (1971), the NLRB held that an employer who had taken over a business enterprise violated Section 8(a)(3) "for refusing to consider and employ the former" employees. (emphasis added). In Columbus Janitor, the new employer interviewed applicants at the State Employment Service without informing the former employees or their bargaining representative. The Trial Examiner found this conduct to be "inherently destructive of important employee rights" and also discounted the Respondent's defense that it preferred to bring in a new work force because the former employees would be resistant to different work methods. "The apocryphal character of such claim is self-evident for the Respondent did not interview a single Allied employee." 191 NLRB at 911.

Respondents cite Southline System Services, Inc., 198 NLRB 449 (1972), and Industrial Catering Company, 224 NLRB 972 (1976) for the proposition that it is not unlawful for an employer who takes over a business to prefer his own employees to those of his predecessor. To the extent that the new employer had substantial business reasons for such a preference, Respondents' contention is accurate and unexceptionable. But in both cases cited by Respondents the new employer informed the predecessor's employees that they were welcome to apply for jobs and would be considered. Respondents seem to understand that they were under a duty to consider the NPMS employees for jobs when they argue, incorrectly, that there were no positions available by the time the UFW first requested that the former employees be hired.

I find that Respondents' refusal to consider the NPMS employees for jobs was inherently destructive of their rights under the Act. Respondents' refusal to interview any of the former employees or to even respond to communications made on their behalf by the UFW must have had the effect of discouraging union membership, especially since Respondents had no difficulties in communicating quickly with the former employees through the medium of eviction notices.

Because Respondents have treated all the former employees as a group, I find that it is not necessary for the General Counsel to establish that each alleged discriminatee made a proper application. See Kawano, Inc., 4 ALRB No. 104 (1978), and cases cited therein. This finding is also dictated by the fact that Respondents did not use application forms for hiring agricultural employees and

that, in any event, the existence of such application forms was not made known to the former employees by the Respondents. As far as Respondents' knowledge of the former employees' union affiliation is concerned, Harris conceded that he was aware during 1978 that the UFW had won a Board representation election at the ranch. The transfer documents between PIC and Paraships and Paraships and Newport demonstrate unequivocally that there was knowledge on the part of all parties that the UFW had been certified as a result of the election. Respondents' studied insistence throughout the hearing and in the brief that they had no "official knowledge" of the UFW certification, that such certification was in any event irrelevant to Harris, and that Harris never thought to ask Pressutti or Telford or anyone else about his informal knowledge of the representation election is simply not credible. Surely Newport's attorneys read the transfer documents entered into by PIC and Paraships. And surely they passed the information on to their clients.[24/] Richard Strong's testimony establishes that Ken Manock, Newport's attorney, was aware of the certification.

The failure of Respondents' witnesses to admit their knowledge of the certification tends to weaken generally the credibility of their testimony. It also tends to establish the opposite of the testimony, that is, that Newport and Respondents deliberately denied knowledge of the certification in an effort to camouflage their anti-union motivations. Hemet Wholesale, 3 ALRB No. 47 (1977), ALO Decision, pp. 19-20.

[24/] As Judge Leventhal noted in IAM v. NLRB, 414 F. 2d 1135, 1139 (B.C. Cir./ 1969), "The purchaser of a business does not take title unencumbered by the labor relations obligations of his predecessor. He is well advised to analyze labor title as much as real title."

As noted earlier, Respondents have asserted various business justifications for their refusal to consider or hire any of the former employees. Respondents' major contention, namely that it was necessary, because of the onerous conditions of the lease to make rapid and drastic changes in operations at the ranch, therefore making it impossible to look into the possibility of hiring the former employees, is refuted both by the lease and by Harris's testimony. The lease, as modified, cannot properly be characterized as onerous. It is drafted in such a manner that Harris is protected against any and all losses. Rental payments may never exceed profits and if there are no profits there is no required rental payment. Respondents' own witnesses, Macklin and Jewett, testified that a reasonable person would not have leased the ranch with a minimum rental of $1.7 million annually. Macklin said that a person would be "off his gourd" (TR XI, 204) to buy the ranch with a $1 million annual mortgage, Jewett said he would not sign such a lease because historically earnings would not support it, but that Harris might be in a different position because of his ability to market the fruit. Presumably Jewett took his proposed hypothetical operating changes into effect in coming to his expert opinion. Even a $300 per acre cut in costs would only result in a $450,000 savings.

Even if the lease agreement could be considered onerous, there is no indication that Harris was in a hurry to make changes. He testified that it was impossible to do everything in a year and, more significantly, that little could be done except for planning during the cold, winter months. Indeed, the inability to make quick

changes is one of the major reasons cited by Respondents in arguing that proposed changes should be taken into account for purposes of the successorship issue in determing whether there has been a substantial change in the agricultural enterprise.

Two of Respondents' business justifications, that Harris followed a management practice of not hiring former employees because they would resist new ways of doing things, and that Harris therefore decided to hire his own long-time loyal employees whom he could trust and who he had promised full-time employment, are opposite sides of the same coin. The first contention is, by its nature, irrefutable. But it must be rejected as a defense to an unfair labor practice charge. If it were to be accepted, Section 1153(c) would lose much of its force. Any employer could then decide that it, too, believed in the practice and therefore had no obligation to consider former employees because their very status as former employees would be an absolute bar to employment. Such a defense is simply not substantial enough to overcome the well-established labor law principle that all applicants for employment must be considered in a non-discriminatory manner. Phelps Dodge v. NLRB, 313 U.S. 1,77 (1941). It would indeed be ironic if experience, rather than being an asset to an applicant, were to disqualify him from further consideration. A similar defense was summarily rejected in NLRB v. Foodway of El Paso, 496 F. 2d 117 (5th Cir., 1974) The new employer argued that it refused to hire any of the predecessor's employees because the business had been losing money. The

court stated:

> We give little credence to the reason assigned - the loss of money - for the refusal to hire any of the non-supervisory employees. Reason dictates that the managerial employees, who were retained, not the rank-and-file employees who were fired, should be responsible. 496 F. 2d at 119. 25/

In another case involving a successor employer's discriminatory refusal to hire the predecessor's employees, NLRB v. Houston Distribution Service, Inc., 573 F. 2d 260 (1978), the Fifth Circuit found that the successor's behavior toward the work force of the predecessor gave the NLRB reason enough to conclude that the successor failed to hire the employees as part of a plan to avoid bargaining with the union representing them. The Court noted that the successor "... never inquired about the quality of the workers, even though such inquiry could easily have been made." 573 F. 2d at 264.

Respondents were, of course, free to favor their employees provided there were non-discriminatory and substantial business reasons for doing so. Harris's testimony on the reasons for his preference was even weaker and less convincing than his reliance on the burdensome lease requirements. Harris testified that he promised a group of his employees work at the ranch if he were to secure the right to pack the fruit. This conversation assertedly took place in the fall of 1978, a time when Harris had no reason to believe that he would eventually be permitted to be the packer

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25/ Harris has retained two of the NPMS supervisors as consultants on certain issues, but not as supervisors of agricultural employees.

of the fruit. Not one member of the crew to whom the promise was supposedly made was called to corroborate Harris's testimony. Over and over again Harris referred to the crew as his best, with long time, loyal employees, and as one with special skills. Yet, despite the fact that Harris testified that Riverbend had been harvesting fruit in Ventura County for four years, none of the Rivcom employees had worked for Riverbend for more than two years. A majority of the crew had worked for Riverbend for a single season. Respondents attempted through cross-examination of several NPMS employees to establish that they lacked skills which the Riverbend employees possessed, such as the ability to pick two-handed. Yet, Juan Bautista, the one Rivcom employee who did testify said that he had never seen harvesters pick two-handed. His testimony established that the NPMS employees and the Rivcom employees were involved in the same general practices, even if the style of pruning and picking differed in details. Finally, although Harris was lavish in praise of the crew, he could identify only a handful of its members by name and was clearly unfamiliar with their individual skills. In sum, the record does not substantiate the claim that Harris was motivated to favor this crew over the former employees because of their skills, their long-time service, or a promise made to give them work at the ranch.

There was testimony by Lombard on the final day of the hearing ranking last winter's frosts among the worst of the century. Respondents now assert that Harris gave work at the ranch to Riverbend harvesting employees because the frost reduced the amount of work available to them elsewhere in the county. There is no

evidence whatever to support this contention. Its inclusion in the list of business justifications appears to be pretextual.

In addition to these reasons for preferring their own employees, Respondents claim that they did not respond to the UFW demand that they hire the former employees because the demand was couched in all or nothing terms. Since the UPW was seeking employment for 130 people, and Respondents had far fewer available jobs, Respondents reason that there would be no point in considering the former workers. It is true that the UFW asked for the reinstatement of all the workers. It would have been rather unusual for a union to have asked that only half or a quarter of the employees be hired. It is certainly not unusual for a party to any negotiation to start by asking for everything. Whether the UFW and the former employees would have refused anything less than jobs for everybody is an untested hypothesis. The fact that reinstatement was initially sought for all the former employees cannot justify Respondents' refusals to consider them for employment on an individual basis, especially since Respondents made no effort to try to clarify the UFW's position. Harris also testified that he saw no reason to respond to the UFW mailgram because an unfair labor practice charge had already been filed. Certainly, Harris could not have believed that the filing of a charge was a bar to voluntary settlement or a defense to violation of the law.

Taken singly and together, Respondents' asserted business justifications for refusing to consider or hire the former employees do not establish that they were motivated by legitimate and substantial objectives, I conclude that in refusing to hire

the former agricultural employees of NPMS, Respondents violated Sections 1153(a) and (c) of the Act.

3. The Evictions.

The same legal principles discussed in relation to the hiring matters govern resolution of the evictions issue. On or about January 16, in its only direct communication with the former employees, Rivcom served informal eviction notices on all the residents of the labor camp. Harris testified that he only became sure that the residents of the camps had been employees of NPMS when he arrived at the ranch on the 16th. Yet, one of his first orders of business was to start proceedings to have the tenants evicted. It is undisputed that housing was provided to the former employees by NPMS as a condition of employment. Rivcom attached the licensing agreement between the employees and NPMS as an exhibit to its unlawful detainer complaints.

An employer's attempt to evict employees from housing provided as a condition of employment may constitute a violation of Section 1153(c) of the Act if it is carried out discriminatorily to discourage union membership. Kohler Company, 128 NLRB 1062 (I960); McAnally Enterprises, 3 ALRB No. 82 (1977). Clearly, housing is a necessity, one perhaps even more important than employment. The eviction proceedings initiated by Rivcom, taken together with its refusal to consider any of the former employees for jobs, and in the absence of any communication other than the eviction notices themselves, are inherently destructive of important employee rights.

Respondents asserted several business justifications for the eviction attempts. First, Harris wanted to use the sixty or

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seventy acres of land under the housing to plant crops.[26/] Second, Harris and several expert witnesses testified that it was uneconomical to maintain housing for harvest workers when picking crews could be obtained from labor contractors. Third, Harris testified that problems in the water supply system made it virtually impossible to bring the camps up to applicable legal standards.

Harris's testimony about planting crops after removing the camps indicated that his plans were, at most, in a formative stage. By the time of his testimony, which took place in March and April, Harris had not yet sampled the soil or decided exactly what crops would be planted in what areas. He was decidely more specific about plans to grow flowers and vegetables in the river bottom and golf course areas. This unsupported testimony does not explain the haste with which the decision to evict the former tenants was made.

According to ranch records, the housing cost NPMS about $70,000 a year. It is not clear if this figure took into account the rental payments made by the employees. The cost of the housing thus comprised roughly 3% of the ranch costs. It was Lombard's

[26/] Respondents' brief emphasizes that Harris did not even know that he would have control of the camps under the lease until the 16th. The brief considers the so-called "river bottom" land to be the land on which the camps stand. This is far from clear in the record. Watts referred to last-minute negotiations about the river-bottom land but did not mention the labor camps. Telford testified that there was a dispute with Watts about the camps, Harris referred to the river bottomland as 160 acres along the Santa Clara River which would be available for his use sometime in May. (TR XV, 141}. It is clear that Harris considered the river bottomland and the labor camps to be distinct. But, if it were true that the status of the camps was in doubt until the last minute, it would be even more astonishing that Harris would be able to make reasoned business decisions of such magnitude at such a breakneck pace.

contention that the cost was more than compensated for by the lower costs incurred by hiring its own harvest crews rather than contracting for harvest labor. While Respondents introduced a substantial amount of documentary material concerning pre-harvest costs, there is nothing in the record to indicate that they considered whether worker housing might have made economic sense. One of the areas on which Harris and Lombard were in agreement was the desirability of having a permanent, year-round work force. According to Lombard, the housing was an aid in achieving that goal. It is true that labor camp housing is rare in Ventura County. Only one other large citrus ranch provides employees housing. But there is only one other large citrus ranch in the county. Jewett testified that the ranch, because of its size, was in a class by itself.

It is far from clear that Harris considered the difficulty in meeting code requirements in his decision to evict the tenants. It appears that he first became aware of some difficulties in late January, only after he had served the first eviction notices. Nonetheless, his testimony on this issue was generally vague and sometimes untrustworthy. At his most specific, Harris stated that he had received two citations from the Ventura County Department of Environmental Health for water and sewage violations. Robert Gallagher, the sanitarian who investigated the problems, testified that only informal notices, rather than citations, had been issued. One notice required that an over-flowing septic tank be corrected. Rivcom quickly complied. The other notice required that the drinking water supply be separated from the agricultural water supply. When Gallagher telephoned Harris's attorney about a

schedule for compliance, the attorney told him that Rivcom would send a letter stating that it had no intention of complying.

The testimony of Harris and Telford concerning the housing is, taken as a whole, inherently incredible. First, they testified that the subject of the labor camps never came up during their lease negotiations, even though some 150 housing units must have been at least as visible an asset as the ranch's pick-up trucks. Second, Harris testified that he gave little thought to the housing until he arrived at the ranch. Yet, within the space of twenty-four hours, he not only learned for the first time that the housing was occupied by the ranch's agricultural employees, but he also researched the ranch records to learn about the licensing agreement between NPMS and the employees, decided that he wanted to tear down the housing, contacted Telford by phone to get Newport's permission to remove the houses and their occupants, planned to use the land to plant certain crops, and drafted and served the informal eviction notices. Either, contrary to the testimony, Harris had planned his actions in advance, or he had some very important reason to devote his first day to starting the eviction process, even though he was not about to begin planting crops in the immediate future.

While Rivcom may have had business reasons for wanting to raze the housing, none of the reasons asserted explains the speed with which the eviction process was begun. It is clear that the eviction attempts were motivated in substantial part by Harris's desire to remove from the ranch the former workers, whom he did not want as employees because of their union membership and the

impact of their membership on the successorship issue. I conclude that the attempted evictions constitute violations of Sections 1153 (a) and (c) of the Act. There was uncontradicted testimony that several retired employees continued to receive housing as a condition of their former employment. They also have received eviction notices. The effort to evict these former employees constitutes a violation of Section 1153(a) of the Act. Kohler Company, supra.

4. The Contracting Out of Work.

Rivcom has contracted with Riverbend to harvest and pack the fruit of the ranch, as well as to perform some of the pruning work. Riverbend has contracted with Triple M to provide the labor for this work. Because I have already found that Riverbend is the employer of the Triple M agricultural employees and that Riverbend and Rivcom constitute a single employer, this contracting of work does not constitute contracting with an outside entity. The only other contracting of work formerly performed by NPMS employees is a pest control agreement between Rivcom and a Ventura County company. Respondents' witnesses established that it is customary for such work to be done on a contract basis. The amount of labor used in pest control is so small that any possible anti-union motive would clearly be outweighed by Respondents' business justifications of economy and efficiency, I conclude that General Counsel has failed to establish that the contracting out of pest control work is in violation of Section 1153 (c).

D. The Section 1153(e) Issues.

The General Counsel contends that Rivcom has succeeded to the bargaining obligations of NPMS under the Act by virtue of its

taking over the farming operation at the ranch on January 16. Rivcom's admitted refusal to bargain with the UFW and its unilateral changes in certain working conditions, it is argued, are violations of Section 1153(e) of the Act.

NLRB precedent considers an employer who takes over a business to be a "successor" to the previous employer's collective bargaining obligations when there is substantial continuity in the enterprise. The NLRB and the courts have examined numerous factors in determining whether the new employer's operations demonstrate substantial continuity, but foremost among them is continuity in the work force across the change in ownership. NLRB v. Burns international Security Services, 406 U.S. 272 (1972) and Howard Johnson Co. v. Detroit Joint Board, 417 U.S. 249 (1974).

In the present case, there is no continuity between the NPMS work force and the work force hired by Rivcom and Riverbend. It is well settled, however, that if the absence of work force continuity is caused by the new employer's discriminatory refusal to hire the predecessor's employees, then the work force element will be presumed to have been proved, for to hold otherwise would permit an employer to benefit from his own unfair labor practices. NLRB v. Foodway of El Paso, supra; NLRB v. Houston Distribution, supra.

Here, by failing to consider or hire any of the predecessor's employees, Respondents have violated Section 1153 (c) of the Act. NLRB precedent requires that the work force continuity element of successorship be deemed satisfied under these circumstances.

Aside from the requirement that there be substantial continuity in the work force, the Supreme Court has avoided any mechanical tests in deciding whether a successor is bound to the labor relations obligations of his predecessor. As Justice Marshall said in Howard Johnson, supra;

> Particularly in light of the difficulty of the successorship question, the myriad factual circumstances and legal contexts in which it can arise, (and the absence of legislative guidance) ... emphasis on the facts of each case as it arises is especially appropriate ... 417 U.S. at 256.
> The real question in each of these "successorship" cases is, on the particular facts, what are the legal obligations of the new employer to the employees of the former owner or their representative. The answer to this inquiry requires analysis of the interests of the new employer and the employees and of the policies of the labor laws in light of the facts of each case and the particular legal obligation which is at issue ... There is, and can be, no single definition of "successor" which is applicable in every legal context. A new employer, in other words, may be a successor for some purposes and not for others. 417 U.S. at 262, f. 9.

In addition to identity of the work force, the most important factors the NLRB has taken into account in determining successorship issues in the industrial context are identity of product lines, similarity of job functions, and use of the same plant. NLRB v. Burns, supra. Here, Respondents have continued to operate the ranch as a producing citrus and avocado orchard. Rivcom has done more than merely lease some agricultural land; it has acquired the legal right to manage the growth of, and pick the fruit from, the trees on the property. Regardless of certain changes in operating methods in the production of the fruit from

those trees, both those already implemented and those which have not yet been put into effect, Respondents are in the same business as was NPMS.

There have indeed been some changes in the methods of growing the fruit. Most of these involve a shift in emphasis rather than a radical break with past practices. For example, the predecessor used certain frost protection techniques; so does Rivcom. Rivcom will rely much more heavily on wind machines than orchard heaters, but a change of this type does not substantially alter the nature of the agricultural enterprise. Similarly, a greater emphasis on non-cultivation techniques, and low volume irrigation are the kinds of management changes which are routinely made by a new employer.[27/]

Some of the proposed or implemented changes of Respondents may reduce the number of agricultural employee positions available, but they do not change the kinds of work which must be done to grow and pick the fruit. The changes in pruning and picking techniques are differences which are easily learned. Depite Respondents' arguments to the contrary, there is no evidence that a specially trained breed of farm worker is required to do the work in the way desired by Harris. The record indicates that for the most part, the employees, past and present, pruned and picked using similar equipment. Harris simply wants the pruning to shape the trees somewhat differently. I find that the agricultural

[27/]Cf. NLRB v. Foodway of El Paso, supra, where the court noted twenty-four changes which the Respondent argued removed it from the successorship doctrine. The court characterized these changes as routine. They are of the same order as the changes made or planned by Respondents herein.

enterprise at the ranch is substantially the same under Rivcom's management as it was under the predecessor's regime.[28/]

Respondents also argue that, even if they are successors to NPMS's bargaining obligations under NLRB precedent, they are barred from recognizing the UFW by the terms of Section 1153(f) of the Act. Section 1153 (f) provides that it shall be an unfair labor practice for an agricultural employer "to recognize, bargain with, or sign a collective bargaining agreement with any labor organization not certified pursuant to the provisions of" the Act. Respondents reason that the UFW has not been certified as the representative of Rivcom's employees and that the prohibition embodied in Section 1153(f) is therefore applicable.

The Board has been called upon to interpret Section 1153(f) once before, in Kaplan's Fruit and Produce Co., Inc., 3 ALRB No. 28 (1977). In that case, several employers argued that a literal reading of Section 1153 (f) prohibited them from continuing to bargain with labor organizations once their initial 12 month certification had ended. In rejecting this argument the Board noted that such an interpretation would run counter to the "Act's central purpose of bringing certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state, Section 1, ALRA." One of the policy considerations against a restrictive interpretation of Section 1153(f) examined by the Board in Kaplan's

[28/]Respondents do intend to grow crops such as pumpkins, vegetable row crops, and flowers which have not been grown on the ranch previously. The acreage involved, however, is insufficient to affect the overwhelming predominance of citrus.

applies with equal force here:

> "(T)his theory seriously impairs the employees ' right to be represented in their relationship with employers. If, as will often happen, certification lapses when the employer has just passed his peak season, the effect would be to preclude the possibility of any representation for employees until the following peak season, when the entire election process would have to begin again. 3 ALRB No. 28, at 6. (Emphasis in original).

Respondents' interpretation of Section 1153 (f) would prohibit any application of the NLRB successorship doctrine. The legislature could not have intended such a result. As the Board noted in Kaplan's;

> The prohibition against an employer's recognizing an uncertified union is clearly directed, not towards an arbitrary time limit on bargaining, but towards preventing voluntary recognition of labor organizations. The facts in Englund v. Chavez, 8 Cal. 3d 572, are too much a part of the history leading to the enactment of the ALRA for us to consider 1153 (f) as anything but a guarantee of freedom of choice to agricultural employees through the machinery of secret ballot elections. The prohibition against bargaining with an uncertified union does not and should not preclude bargaining with a union that has been chosen through a secret ballot election. 3 ALRB No. 28 at 7.

Here, the employees of the predecessor chose the UFW as their bargaining agent in an election conducted by the Board. Within the twelve month period following the certification, there is an irrebuttable presumption that the union's majority status continues. Section 1156.6 of the Act. If the other requirements for successorship to the predecessor's bargaining obligations are

met, Section 1153(f) is not a bar. In these circumstances the original certification must be deemed to be amended to name the new employer. I conclude that by their admitted refusal and failure to bargain with the UFW Respondents have violated Section 1153(e) of the Act.

The General Counsel also argues that certain unilateral changes in working conditions made by Respondents, namely the contracting out of work to Triple M and the pest control company, and the attempted evictions, without giving the UFW notice and an opportunity to bargain, constitute additional violations of Section 1153 (e). While conceding that the Supreme Court held in Burns, supra, that "a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor ...", the General Counsel argues that this right does not extend to cases in which the successor attempts to evade its bargaining obligation by the unfair labor practice of discriminatorily refusing to hire the predecessor's employees. I agree that Respondents' Section 1153 (c) violations, which were committed to avoid the duty to bargain with the UFW, require that Respondents not be permitted to make unilateral changes in those conditions of employment which are the subject of the Section 1153(c) violations. To hold otherwise would deny the discriminatees any effective remedy.

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices within the meaning of Section 1153(a), (c), and (e) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

Specifically, I shall recommend that Respondents be ordered to offer employment to each of the former NPMS agricultural employees named in Appendix A to the First Amended Consolidated Complaint, If there are not sufficient positions available at the ranch for agricultural employees on the Rivcom, Riverbend, or Triple M payrolls, to hire each of the named persons immediately, their names shall be placed on a preferential hiring list and they shall be hired as soon as jobs become available. The order of names on the preferential list shall be determined pursuant to a non-discriminatory method approved by the Regional Director of the Board's Salinas Regional office.

I further recommend that Respondents make whole each of the persons listed in Appendix A to the First Amended Consolidated Complaint by payment to them of a sum of money equal to the wages they each would have earned but for Respondents' unlawful refusal to hire them, less their respective net earnings, together with interest thereon at the rate of seven per cent per annum. Back pay shall be computed in accordance with the formula established by the Board in Sunnyside Nurseries, Inc., 3 ALRB No, 42 (1977). The UFW sought employment for each of the former workers in a communication to Rivcom dated January 18, 1979, Because Respondents

never responded to this communication, I find that each of the former employees applied for work on January 18. The amount of back pay due each person shall be determined pursuant to the guidelines set forth by the Board in Kawano, Inc., supra.

I shall further order that Respondents notify their employees that they will, upon request, meet and bargain in good faith with their certified collective bargaining representative, the UFW. Pursuant to Board precedent in Adam Dairy, dba Rancho Los Rios, 4 ALRB No. 24 (1978) , and Sunnyside Nurseries, Inc., 5 ALRB No. 23 (1979), I shall order that Respondents bear the costs of the delay which has resulted from their failure and refusal to bargain with the UFW, by making whole their employees for any losses of pay and other economic losses which they may have suffered as a result thereof, for the period from January 18, 1979, until such time as Respondents commence to bargain in good faith and continue so to bargain to the point of a contract or a bona fide impasse. The Regional Director for the Salinas region will determine the amount of the make-whole award in accordance with the formula adopted by the Board in Adam Dairy, supra, as modified in Sunnyside, supra. The General Counsel omitted a request for a make-whole order in the First Amended Consolidated Complaint and did not seek to amend the Prayer to include such a request until the last day of the hearing. Respondents argue that, had they been aware of the possibility of a make-whole order, they would have presented additional evidence to the effect that some of Rivcom's employees had threatened Rivcom with an unfair labor practice charge pursuant to Section 1153 (f) of the Act, if it were to recognize

the UFW. While the request should have been included in the original complaint, the fashioning of remedial orders lies solely within the discretion of the Board. Here, Respondents refused to consider any of the former employees in an effort to avoid their bargaining obligations with the UFW. Even if Respondents believed in good faith that Section 1153(f) barred them from recognizing the UFW, reliance upon an erroneous view of the law does not constitute a defense. Kingsbury Electric Cooperative, Inc. v. NLRB, 319 F. 2d 387 (8th Cir. 1963). Respondents have not established that an exception should be made in this case to the Board's general rule that employers who refuse to bargain in good faith should be required to make their employees whole for any economic losses they have incurred as a result.

In order to insure that there will be an effective remedy for Respondents' discriminatory refusal to hire the former employees and for Respondents' discriminatory efforts to evict the former employees from housing provided to them as a condition of their employment, I shall specifically order that Respondents not make any unilateral changes in the terms and conditions of employment, including any further effort to evict the former employees, until good faith bargaining about these subjects with the UFW has commenced and agreement or a bona fide impasse has been reached.

ORDER

Respondents Rivcom Corporation and Riverbend Farms, Inc., their officers, agents, representatives, successors and assigns shall:

1. Cease and desist from:

a. Discouraging membership of employees in the UFW or any other labor organization by unlawfully refusing to hire the former employees of National Property Management Systems, dba Rancho Sespe, by attempting to evict, or evicting, those employees from housing at Rivcom Ranch provided them as a condition of their employment by NPMS, or in any other manner discriminating against employees in regard to"their hire, tenure, or terms and conditions of employment, except as authorized by Labor Code Section 1153(c);

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

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

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

a. Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of their agricultural employees at Rivcom Ranch, and if an understanding is reached, embody such understanding

in a signed agreement;

b. Make whole their agricultural employees for all losses of pay and other economic losses sustained by them as the result of their refusal to bargain, in the manner set forth in "The Remedy";

c. Immediately offer the persons named in Appendix A to the First Amended Consolidated Complaint employment in their former or substantially equivalent jobs and make each of them whole for any losses he or she may have suffered as a result of his or her failure to be hired, in the manner set forth in "The Remedy";

d. Refrain from unilaterally altering the terms and conditions of employment of their agricultural employees, including any effort to evict any of the former employees of National Property Management Systems, dba Rancho Sespe, from their housing at Rivcom Ranch, without first bargaining in good faith with the UFW about such proposed changes and either reaching agreement with the UFW or arriving at a bona fide impasse;

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

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

g. Post at Rivcom Ranch copies of the attached Notice for 90 consecutive days at times and places to be determined by the Regional Director;

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

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

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

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

IT IS FURTHER ORDERED that allegations contained in the First Amended Consolidated Complaint not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

DATED: June 12, 1979

AGRICULTURAL LABOR RELATIONS BOARD

By _____

JOEL GOMBERG
Administrative Law Officer

NOTICE TO EMPLOYEES

After a trial where each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act, and has ordered us to post this notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. to organize themselves;

2. to form, join, or help any union;

3. to bargain as a group and to choose anyone they want to speak for them;

4. to act together with other workers to try to get a contract or to help or protect each other; and

5. to decide not to do any of these things, Because this is true, we promise you that: WE WILL NOT refuse to hire or otherwise discriminate against any employee because he or she exercised any of these rights.

WE WILL offer jobs, if they want them, to all the agricultural employees of Rancho Sespe who were on the payroll on January 15, 1979, and we will pay each of them any money they lost because we refused to hire them. If we do not have enough jobs available to hire everyone immediately, we will put your name on a list to be hired as soon as positions become available.

WE WILL meet and bargain in good faith with the UFW about a contract because it is the representative chosen by our employees.

WE WILL NOT take any steps to evict any former Rancho Sespe employees from their homes on the ranch without first bargaining in good faith with the UFW in an effort to come to an agreement about the future of the housing.

DATED: RIVCOM CORPORATION

By: _____
(Representative) (Title)

RIVERBEND FARMS, INC.

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

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

DO NOT REMOVE OR MUTILATE