Moorpark, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JULIUS GOLDMAN'S EGG CITY, Respondent, and SAMUEL SALGADO, Charging Party, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor.	Case No. 79-CE-89-OX 6 ALRB No. 61

DECISION AND ORDER

On February 4, 1980, Administrative Law Officer (ALO) Bernard S. Sandow issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions with a supporting brief . The General Counsel filed a brief in reply to Respondent's exceptions.

The Board has considered the record and the ALO's Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO as modified herein, and to adopt his recommended Order as modified herein.

In 1975, Respondent's employees took part in a strike of Respondent's operations. The Board subsequently determined that the strike was a pre-Act strike and concluded that the employees were economic strikers. Julius Goldman’s Egg City (Sept. 27, 1977) 3 ALRB No. 76. On August 31, 1977, the UFW filed a charge against

Respondent, alleging that it had refused to reinstate the strikers. On June 30, 1978, the parties entered into an informal settlement agreement, approved by the Regional Director, to resolve the issues raised by the charge.

In rehiring the returning strikers, Respondent followed a policy of rehiring them as "new employees", thus denying them the seniority rights they had accrued prior to the strike. Respondent continued to follow this rehire policy in 1977, 1978, and 1979, On July 7, 1978, the Board certified the UFW as the exclusive collective bargaining representative of Respondent's employees. During the subsequent negotiations, which resulted in a collective bargaining agreement signed on April 23, 1979, Respondent stood firm on its position that the rehired strikers were not entitled to seniority accruing from their original pre-strike hire dates, and bargained to impasse over the issue. After the UFW filed a grievance over the issue on July 27, 1979, the UFW and Respondent agreed, on August 9, 1979, to place the grievance in abeyance and present the issue to this Board. On August 30, 1979, the UFW filed the instant charge, alleging that Respondent had discriminated against the returning strikers by denying them their seniority rights.

Respondent excepts to the ALO's conclusion that the denial of seniority rights to the returning strikers violated section 1153(c) and (a) of the Act. We find no merit in this exception.

We conclude that Respondent's denial of seniority rights to the returning strikers was a violation of section 1153(c) and (a) of the Act. It is well established that returning economic strikers are entitled to full reinstatement, including seniority

rights, upon their return to work. Laidlaw Corp. (1968) 171 NLRB 1366 [68 LRRM 1252], enf. (7th Cir. 1969) 414 F.2d 99 [71 LRRM 3054], cert. den. (1970) 397 U.S. 920 [73 LRRM 2537]. Respondent's action changed the pre-strike relative seniority standing of the employees to the detriment of the strikers, thus impairing the tenure of their employment and penalizing them for their union activities. Such conduct had the foreseeable consequence of discouraging union activity and was therefore inherently destructive of the employees' organizational rights. See NLRB v. Erie Resistor Corp. (1963) 373 U.S. 221 [53 LRRM 2121].

Respondent's asserted justification for denying seniority rights to the returning strikers was that it did not wish to penalize those employees who worked during the strike. This reason does not constitute a legitimate and substantial business justification for its actions. Furthermore, we note that, when an employer's conduct is inherently destructive of organizational rights, its business justifications may be discounted in light of such conduct, since "whatever the claimed overriding justification may be, [the conduct] carries with it unavoidable consequences which the employer not only foresaw but which he must have intended." NLRB v. Erie Resistor Corp., supra, 373 U.S. at 228. See also NLRB v. Great Dane Trailers, Inc. (1967) 388 U.S. 26 [65 LRRM 2465]. We therefore conclude that Respondent's denial of seniority to the returning strikers violated Labor Code section 1153(c) and (a). NLRB v. Erie Resistor Corp., supra; General Electric Co. (1948) 80 NLRB 510 [23 LRRM 1094].

Respondent excepts to the ALO's conclusion that the

underlying charge was timely filed pursuant to section 1160.2 of the Act. We find no merit in this exception. When Respondent began to rehire returning strikers in the fall of 1977, it informed each employee, either orally or by a written notice, of its policy of treating the rehired strikers as new employees. The UFW filed the instant charge on August 30, 1979. The ALO found that the employees were not, as Respondent contends, put on notice as to the loss of their seniority rights by the statements made to them on the date of their employment application.[1/] The ALO concluded that the employees had notice of the violation, and the six-month limitation period of section 1160.2 began to run on April 23, 1979, when the collective bargaining agreement between the UFW and Respondent was signed and when impasse occurred over the issue of the seniority rights of the strikers, wherein Respondent made clear its intentions to deny them their pre-strike seniority rights. The ALO found that the charge was therefore filed well within the six-month period.

We need not rely on the ALO's conclusion that the employees were not put on notice of Respondent's discriminatory

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1/The written notice stated:

> It has been explained to me, and I understand, that I have been rehired by EGG CITY under the terms of their contract with Teamsters Union, Local #186 and I know that I have returned to work for EGG CITY as though I were a new employee even though I previously signed a statement saying: I "hereby unconditionally request re-instatement." I fully understand that I have not been re-instated, but I have been rehired. (emphasis in original)

The ALO found that the notice was ambiguously worded and found that Respondent had not met its burden of proof that the employees were on notice that their seniority rights had been forfeited.

conduct until April 23, 1979, to find that the charge was timely filed. We conclude that Respondent's conduct in maintaining and giving effect to a discriminatory hiring policy was a continuing violation of the Act which occurred within the six-month period immediately preceding the filing of the charge. The limitations period of section 1160.2 was designed to prevent the litigation of stale claims. In order for the Board to find a violation of the Act, events within the six-month period must in and of themselves constitute an unfair labor practice, although earlier events may be used to shed light on the true character of matters occurring within the limitations period. Local Lodge 1424 v. NLRB (Bryan Mfg. Co.) (1960) 362 U.S. 411 [45 LRRM 3212].

In the instant case, Respondent inaugurated a discriminatory rehire policy in the fall of 1977, when it began to rehire its returning strikers as new employees, thus stripping them of their seniority rights. The fact that Respondent initiated this policy more than six months before the filing of the charge does not mean that the charge was time barred. The issue is not simply whether Respondent committed an unfair labor practice by initiating the policy, but whether it violated the Act by maintaining and giving effect to that policy. We have found that Respondent's policy was inherently destructive of employee rights and was therefore unlawful on its face. Within the six months prior to the filing of the charge and thereafter, Respondent continued to maintain and apply this policy by insisting to impasse during negotiations on its practice of denying pre-strike seniority rights to strikers, and by rehiring three returning strikers under this

policy.[2/] We conclude, therefore, that, although the initiation of the policy occurred before the start of the six-month period, Respondent's conduct in maintaining and giving effect to the discriminatory policy constituted an unfair labor practice within the limitations period. Potlatch Forests, Inc. (1949) 87 NLRB 1193 [25 LRRM 1192], rev'd on other grounds, NLRB v. Potlatch Forests, Inc. (9th Cir. 1951) 189 P.2d 82 [28 LRRM 2128]; Mason & Hanger-Silas Mason Co., Inc. (1967) 167 NLRB 894 [66 LRRM 1200], enf'd in pertinent part (5th Cir. 1968) 405 F.2d 1 [69 LRRM 2948]; Higgins Industries, Inc. (1964) 150 NLRB 106 [58 LRRM 1059].

Respondent excepts to the ALO's conclusion that the June 30, 1978, settlement agreement concerning the charge filed on August 31, 1977, did not dispose of the matters set forth in the complaint in this case. We agree with the ALO's finding that the seniority rights of the strikers were not resolved or decided by the settlement agreement. The agreement, which settled a charge concerning the rehire of the strikers, operated only to provide for their rehire and made no mention of a forfeiture of their seniority rights.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Julius Goldman's Egg City, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

[2/] Respondent hired Heriberto S. Baribay on June 9, 1979, and Maria L. Morales and Maria J. Rodriguez on September 1, 1979.

(a) Failing or refusing to give recalled or rehired economic strikers full seniority rights, or in any like or related manner discriminating against any employee because of his or her membership in or activities on behalf of the United Farm Workers of America, AFL-CIO (UFW) or any other labor organization.

(b) Maintaining or giving effect to any seniority policy which abridges the seniority of, or otherwise discriminates against, any of its employees with regard to any aspect of his or her employment relationship, because he or she engaged in a strike or any other union activity or protected concerted activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Labor Code section 1152.

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

(a) Give all recalled or rehired economic strikers full seniority rights and make them whole for any economic losses they may have suffered since February 28, 1979, because of the deprivation or suspension of their seniority rights.

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

(c) Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order, to all employees employed by Respondent at any time from and including February 28, 1979, until the date of issuance of this

Order,

(d) Post copies of the attached Notice in all appropriate languages in conspicuous places on its property, including places where notices to employees are usually posted, for 60 days, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(e) Arrange for a Board agent or a representative of Respondent to distribute and read the attached Notice in all appropriate languages to its employees assembled on company time and property, at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(f) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him/her periodically

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thereafter in writing what further steps have been taken in compliance with this Order. Dated: December 1, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a charge was filed against us by the United Farm Workers Union and after a hearing was held at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers to help one another as a group. The Board has told us to send out and 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 unions;

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

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

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

Because this is true, we promise that:

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

Especially:

WE WILL NOT fail or refuse to give recalled economic strikers full seniority rights.

WE WILL NOT maintain or give effect to any seniority policy which abridges the seniority of, or otherwise discriminates against any employee, because he or she engaged in a strike or union activity or protected concerted activity.

WE WILL give all recalled economic strikers full seniority rights and make them whole for any economic losses they may have suffered since February 28, 1979.

Dated: JULIUS GOLDMAN'S EGG CITY

By: _____
Representative Title

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 528 South "A" Street, Oxnard, California 93030. The telephone number is (805) 486-4475.

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

Julius Goldman's Egg City (UFW) 6 ALRB No. 61
Case No. 79-CE-89-OX

ALO DECISION

The ALO concluded that Respondent violated section 1153 (c) and (a) of the Act by hiring returning economic strikers as "new employees", thereby denying them full reinstatement rights, including seniority. When Respondent rehired the strikers in the fall of 1977, it informed each employee, either orally or by a written notice, of its policy of treating rehired strikers as new employees. The UFW filed the charge herein on August 30, 1979. The ALO concluded that the charge was timely filed with respect to the six-month limitation period of section 1160.2, reasoning that the employees did not have clear notice of the violation, which began in 1977, until April 23, 1979, the date on which the UFW and Respondent signed a contract and impasse occurred over the issue of the seniority rights of the rehired economic strikers.

BOARD DECISION

The Board affirmed the ALO's Decision, concluding that Respondent's conduct in depriving rehired economic strikers of their seniority rights was inherently destructive of employee rights and therefore violated section 1153(c) and (a). The Board concluded that the charge was timely filed, but only with respect to Respondent's conduct which occurred during the six months preceding the filing of the charge. The Board found that, although Respondent initiated its policy of discriminatory abridgement of employees' seniority well before the commencement of the six-month period prior to the filing of the charge, Respondent violated the Act by continuing to maintain and give effect to this unlawful policy within the six-month period. The Board ordered Respondent to cease and desist from maintaining or giving effect to the discriminatory seniority policy and ordered Respondent to give rehired economic strikers full seniority rights.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	
JULIUS GOLDMAN'S EGG CITY, Respondent,	CASE No. 76-CE-89-OX
and	
SAMEL SALGADO, Charging Party.	

ROBERT W. FARNSWORTH, Esq., appearing for General Counsel, Agricultural Labor Relations Board.

MCLAUGHLIN & IRVIN, by TIMOTHY F. RYAN, Esq., appearing for Respondent.

CURT ULLMAN, Legal worker of the United Farm Workers of America, AFL-CIO, appearing for Charging Party.

That a contested Hearing came on, commencing December 11, 1979, before BERNARD S. SANDOW, Administrative Law Officer, in Oxnard, California.

That the following preliminary matters, motions and stipulations, were entertained and ruled upon accordingly:

1. Motion to Intervene, based upon oral motion, by Curt Ullman, legal worker with the United Farm Workers of America, AFL-

CIO, in behalf of and representing SAMUEL SALGADO the Charging Party; Said Motion is made pursuant to 8 California Administrate Code Section 20258. Upon inquiry, no objection was voiced; therefore, said mot on to Intervene was granted, and the pleadings are now to reflect SAMUEL SALGADO, Charging Party and Intervenor.

2. It was so stipulated that:

(a) As a result of a pre-hearing conference of this matter, an agreement to stipulate to all facts had been entered into between all the parties and that the matter be submitted upon said stipulation, identified as exhibit respondent A in evidence, together with other written documentation of record.

(b) That the parties may properly offer documentation referred to in said agreement to stipulation (exhibit respondent A) and the same were properly presented and received and identified accordingly as Respondent Exhibits C and D.

3. That General Counsel offered their moving/formal papers, with no objections thereto, and they and each of them were so admitted into evidence, as follows:

1A: the unfair labor practice charge, case number 79-CE-89-OX, filed on 8/30/79; IB: the complaint, notice of hearing and notice of pre-hearing conference, case number 79-CE-89-OX; 1C: answer to complaint, case number 79-CE-89-OX.

PLEADINGS: ADMISSIONS

1. That a true and correct copy of the original charge in case number 79-CE-89-OX filed by Samuel Salgado on August 50, 1979, was duly served on respondent Julius Goldman's Egg City or. or about August 28, 1979.

2. That respondent, engaged in agriculture in Ventura

County is and has been at all times material herein, an agricultural employer within the meaning of Section 1140.4 (c) of the Act,

3. Samuel Salgado is now, and at all times relevant herein, has been an agricultural employee within the meaning of Section 1140.4 (b) of the Act.

4. That at all times relevant herein, the United Farm Workers of America, AFL-CIG, has been a labor organization within the meaning of Section 1140.4 (f) of the Act.

5. That at all times relevant herein the people as setforth in paragraph number 5 of the complaint, and each of them, are incorporated by reference herein as if name by name fully setforth and made a part hereof, are agricultural workers.

6. That on July 7, 1978, the Agricultural Labor Relations Board certified the United Farm Workers of America, AFL-CIO, as the exclusive bargaining agent of all agricultural employees of the Respondent in the State of California.

7. That on June 30, 1978, an informal settlement of unfair labor practice charge number 77-CE-14-V was approved by the' Regional Director; that said charge had been filed by the UFW and: designated as case number 77-CE-14-V.

8. That on or about April 23, 1979, the Respondent and the UFW entered into a collective bargaining agreement.

9. That during negotiations which resulted in the collective bargaining agreement, which was entered into on or about April 23, 1979, between Respondent and the UFW, the parties discussed the issue of seniority rights for strikers and reached a bargaining impasse on that issue.

PLEADINGS: ALLEGATIONS, DENIALS, DEFENSES

The complaint alleges that Respondent has violated sections of the Act, and is charged with the following:

1. Interfered with, restrained and coerced, and is interfering with, coercing and restraining its employees in the exercise of the rights guaranteed in Section 1152 of the Act by, on or about the date of the rehire of each agricultural employee setforth in paragraph number 5 of the complaint, and incorporated by reference at this point as if each and every said name was setforth in full, did fail and refuse to recognize the original hire date as the date of seniority for each and every economic striker; by these actions Respondent is treating the economic strikers as new employees, denying them their seniority rights in retaliation for their participation in concerted activity and for their support of the UFW; union

2. Engaging in unfair labor practices affecting agriculture within the meaning of Section 1153 (a), (c) and (d) of the Act, by its acts as setforth above.

The answer denies that Respondent has violated the Act and/or any Sections thereunder, and setsforth the further affirmative defenses:

1. That the action is barred pursuant to the provisions of Section 1160.2 of the Agricultural Labor Relations Act, in that the alleged unfair labor practices occurred more than 6 months prior to the filing of the charge with the Board and service of a copy thereof upon the Respondent;

2. That the case number 77-CE-14-V alleged that the employees named therein were discriminated against by Respondent's application of its rehire policy; that the said charge encompassed

rights affected by that policy, including seniority rights; that the charge was settled and the settlement of that charge extinguished all claims of these alleged illegal acts - inclusive of this one, and the Board therefore is here without jurisdiction;

3. That the settlement entered into in case number 77-CE-14-V, settled all issues arising out of the employer's rehire policy; that this charge is the equivalent of an objection to the terms of the settlement and as such is not made by the proper party and is not timely within the meaning of Section 20298 (b) of the Board's Regulations.

SECTIONS OF THE ACT

LABOR CODE SECTION 1152- RIGHTS OF AGRICULTURAL EMPLOYEES

" Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerned activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities

LABOR CODE SECTION 1153- UNFAIR LABOR PRACTICES

" It shall be an unfair labor practice for an agricultural employer to do any of the following:
(a) To interfere with, restrain or coerce agricultural employees; in the exercise of the rights guaranteed in Section 1152.
(c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.
(d) TO discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this part.

LABOR CODE SECTION 1160.2- COMPLAINT: - - - LIMITATIONS

" Whenever it is charged that any person has engaged in, or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agency or agencies - - - - No complaint shall issue based upon any unfair

labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom such charge is made - - - ".

REGULATIONS OF THE AGRICULTURAL LABOR RELATIONS BOARD SECTION 20298 (b)- SETTLEMENT AGREEMENTS; REVIEW OF OBJECTIONS

" If the regional director enters into an informal settlement agreement, over the objection of the charging party, prior to the issuance of a complaint or after the issuance of a complaint but before the opening of the hearing, the charging party may seek review as follows:

(1) Within 5 days after entering into the settlement agreement the regional director shall serve on the charging party, a copy of the agreement and a brief statement of the reasons for its approval.

(2) Within 5 days after service of the agreement and statement, the charging party may file with the general counsel a request for review and a statement of objections to the agreement."

THE EVIDENCE

I. Formal papers of general counsel containing the unfair labor practice charge, filed August 30, 1979; the complaint; and notices of prehearing and hearing; and, the answer to the complaint - Exhibits, General Counsel 1A, 1B, 1C.

II. Submission of case number 79-CE-69-OX, by full agreement to stipulation of facts - Exhibit, Respondent A (with attached English and Spanish rehire applications).

III. List of rehired strikers, snowing their name, their rehire date and their current status - Exhibit, Respondent B.

IV. The letter dated May 24, 1979, from attorney for respondent, Timothy Ryan, Esq., to Mr. Emilio Huerta of the UFW -(as referred to in paragraph number V of respondent's exhibit A) Exhibit, Respondent C.

V. The letter dated July 13, 1979, from Roberto De La Cruz of the UFW, to Mr. John Sawyer, vice-president of respondent -(as referred to in paragraph number VI of respondent's exhibit A)Exhibit, Respondent D.

VI. The Board decision in 3 ALRB 76, Julius Goldman’s Egg City -(as referred to in paragraph number IX of respondent's exhibit A) Exhibit General Counsel ID.

VII. The charge in unfair labor practice case number 77-CE-14-V - (as referred to in paragraph number IX of respondent's exhibit A) Exhibit General Counsel IE.

VIII. The settlement agreement of unfair labor practice case number 77-CE-14-V - (as referred to in paragraph number IX of respondent's exhibit A) Exhibit General Counsel 1F.

That all parties were given full opportunity to participate in the proceedings. After the close and submission thereof, written briefs were filed by Respondent and General Counsel in support of their positions timely, and which were read and considered by myself.

That based upon the factual stipulations, exhibits, matters of record and moving papers and the entire record, including pertinent Code and Act Sections and Regulations alluded to, I make the following findings, conclusions and recommended decision:

I. TIMELINESS OF THE CHARGE

Vie first address ourself to the issue concerning the timeliness of the filing of this charge as dictated by Section 115C.2 of the Act (referred to supra) to initially determine whether if one be barred to pursue a charge of an unfair labor practice because of the failure to have filed the same within the allotted time of 6 months from the occurrance of the same.

That the charge was duly filed and served on or about August 30, 1979. As to when the time commenced running prior to said filing, the following dates and events have been presented as to have been the inception: (1) June 30, 1978 - the date of the settlement of case number 77-CE-14-V, which settled the issue of the rehiring of the economic strikers and addressed itself solely to the issue contained therein namely, their entitlement to apply for reemployment and to be placed on a preferential list for the same. (2) October, 1977, through December, 1977 and continuing – these are the dates of the signing of the application for employment/rehiring or the dates employed/rehired, per respondent's exhibit A

and B in evidence, which was in accordance with the terms of the settlement entered into of case number 77-CE-14-V.

(3) April 23, 1979 - the date that the collective bargaining agree ment was entered into and during which negotiations discussions were had regarding the rights of the economic strikers and specif-ically seniority rights back to their original and first ever hire date for this employer, but to which an impasse occurred and this issue remained unresolved.

(4) May 24, 1979 - the date of the letter from respondent counsel to the union, which confirmed their position not to confer seniority rights on one economic strikers.

(5) Any future dates, be they July 13, 1979 which was she reply letter from the union so the respondent on the seniority issue, or July 27, 1979, the date that she union filed a grievance on this issue.

It is accordingly found, that the sine commenced running on April 23, 1979, the date of the entering into of the collective bargaining agreement and when the impasse occurred on the issue of seniority rights, and not on any earlier date. That the dates of the employment applications was not a "notice" to the employees of their loss of seniority and therefore didnot commence the time running, for the reasons as setforth later under the discussion of the effect of said applications. The settlement agreement of June 30, 1978 didnot commence the time running for it effected the limited issue before the parties at that time, which was the rights of the economic strikers to be rehired/reemployed accordingly and was not inclusive of the issue of seniority rights and as more fully discussed later under the effects of the settlement of case

number 77-CE-14-V.

It is therefore concluded, that the case before us (79-CE-S9-OX) charges commenced running April 23, 1979 and said charges having beer. filed and served on or about August 30, 1979, that the same was timely filed within the limitations setforth and therefore this action is not barred as to timeliness.

II. EFFECT OF THE SETTLEMENT OF 77-CE-14-V

That the respondent argues, that the settlement of 77-CE-14-V entered into between all parties on or about June 30, 1978 and so approved by the Regional Director on said date, must act as a full and final determination of all issues related to the economic strikers and the charge filed in their behalf.

It must be noted that the said charge directs itself solely to the issue of the rights of said strikers to be reinstated, and rehired and not discriminated against in that regard, because of their guaranteed rights of protected activities under the Act, and particularly in exercising their rights to act in concert; accordingly the settlement could only effect that before it. The action of refusing to offer back the jobs to those strikers who were exercising said guaranteed rights was the unfair labor practice so charged; there was no other charge made, and to contend that & settlement could encompass matters not before the parties is erroneous. If one were to contend otherwise, as respondent's , counsel suggests, then one would need a crystal ball to surmise that acts otherwise discriminatory would be exercised by an employer, after rehiring, not only to a refusal to grant the seniority rights status (back to the original date of hire, prestrike), but conceivably to a change in job classification after rehire, or a

lowering of a pay rate after rehire, and on and on. Should all of these beforementioned example issues have been settled upon when they were not within the charge or such actions of discrimir ation had not yet occurred and therefore could not have been reasonably expected to have been contemplated within the settlement. I think the answer is clear and obvious - no.

It is therefore concluded that (1) the settlement could only have settled and acted upon, based upon the terms of the settlement, that issue before it solely, and that the issue before the parties by the charge filed in 77-CE-14-V was the rights to be issued employment applications for rehiring and employment and that said economic strikers had a right to return to work for this employer, when a job opening became available; (2) that seniority rights of the said economic strikers upon their rehire was not resolved, concluded or decided by the settlement of 77-CE-14-V.

It is further concluded, for the reasoning and rationale above, that this charge is not a mere objection to the settlement terms of 77-CE-14-V, in that the only issue to be resolved in said settlement was the rights of the said strikers in their activities as protected and accordingly not to be penalized for such activities and therefore to have the right to apply for rehire/reemployment thereafter with this employer; therefore, this action which goes to the issue of seniority rights not having been setforth or in issue nor could it have been interpreted as being within the perameters of the issue to have been presented in 77-CE-14-V therefore, accordingly, it is found that this defense by respondent to this action, must fail.

It is further noted herein, that respondent's argument and

contention that to grant the said strikers seniority rights back to their original hire date would then prejudice and interefere with those workers seniority that did not strike and/or remained on their job or were later hired. This is of course without merit and the cases have held to the contrary on this argument in the past, because they would only be so prejudiced if the economic strikers were given an advantage upon returning rather than in actuality only being returned to their status quo, and not being penalized for exercising their protected activities; and, therefore those employees that remained on their job or employees later hired, also remain in their status QUO as to their accumulation of seniority from their hire date. Certainly, those employees remaining at work were likewise guaranteed their right under the Act, not to partake in union activities if they so desired and they certainly are not being adversely effected by the exercise of the said right, and likewise these engaging in concerted activities by striking must not be penalized as this would be destructive of the workers interests. It has been continuously held that striking employees on reinstatement a e to be treated in all masters involving seniority and continuity of employment as if they had not beer absent from work.

III. EFFECT OF THE EMPLOYMENT APPLICATIONS

According to the terms of the settlement of case number 77-CE-14-V and prior thereto, employment applications were submitted to the said economic strikers - said applications being attached to respondent's Exhibit A herein - which were in English and Spanish written up to December 16, 1977i and thereafter the instructions setforth therein were instead orally read to the

applicants basically as setforth in writing and no further explanation. Respondent contends, that the effect of this is, (1) informs the returning worker that he is a new worker and/or (2) that he waives his or her seniority accumulated from his originally first hiring date prestrike (3) that the instructions on the application or read to the person are to be and were understood and that the wordage was interprested to mean that to come back to work for this employer he or she gives up their seniority rights accumulated and therefore by the employee so signing he or she does in fact waive seniority.

It is accordingly found, that the burden of proof of this affirmative defense is on the respondent, to prove by a preponderance o: the evidence that the employees read the instructions that were in writing, understood the instructions they read or that was read to them, and what they meant, and that said instructions were clear and not ambiguous in their wordage and interpretation and what they meant, and likewise if orally read to the employee that it was understood and to its meaning and to its effect upon the employee and not ambiguous. Further, it has been stipulated that the term in the instructions that "it has been explained to me" means that "where a worker could not read, the instructions were read to him/her", and further, "that if a worker asked questions about the instruction, the company representative answered the question"; and after December 16, 1977, when the instructions were not in writing, but substantially the same was orally read to the employee the same informat on pertained - it is found, that these facts do not establish the criteria or do not meet the sufficiency of the evidence necessary to carry respondent's burden of proof on

the issue. Also, the mere fact of certain words underlined in the written instructions does not give added weight to the understanding of the instructions or their meaning, per se, and accordingly does not add to the sufficiency of the evidence. Also to state and underline, that the worker is "not being reinstated" but "being rehired" is ceratainly only a play on words to a lay person and nothing more could reasonably be expected to have been interpreted therefrom: certainly as intending to clarify any ambiguity in their hiring status by the effect of these words and their meaning to be interpreted as effecting seniority rights, this attempt fails The respondent could have easily, with clarity and conciseness, have indicated and stated in their instructions, as regarding seniority, anyone of a number of things, i.e. (1) "you are being hired with no seniority rights" or (2) "you are being hired this date and your seniority with this employer starts (date)_____" or "you are not being rehired, you are not reinstated, you are a NEW employee" or anyother of the numerous clear and obvious ways of indicating "no seniority" or "I waive all seniority".

The respondent also contends that the effect of the employee signing this instruction also acts as a notice of a waiver of seniority and if this be contended an unfair labor practice, then the date of signing of this instruction commences, the time running for the compliance with Section 1160.2 of the Act to file the charge within 6 months thereafter, or to be barred. It is found, as explained supra, that respondent has not carried his burden of proof on this issue of the defense that the employee waived his seniority or understood that he or she would not be entitled to or receiving his seniority if he or she signed the application

and therefore fails as a notice to the employee of the same and therefore fails as the event to commence the running of the said time period. The burden is on the respondent to prove by the requisite degree of evidence that the employees were made aware of their loss of seniority and understood that and only then will the burden of proof have shifted to the charging party.
it is therefore concluded, that the instruction/application for employment, attached to exhibit respondent A, did not act to waive the rights to seniority of the returning economic strikers and further did not, upon its signing by the employee, commence the running of the timeliness in filing provisions.

IV. IS THE RESPONDENT GUILTY OF THE CHARGES IN 79-CE-89-OX

Respondent is charged with denying and refusing seniority rights to the said reinstated economic strikers, in that they refuse and fail to recognize the original (prestrike) hire date as the date commencing seniority for each and every economic striker. That admittedly by respondent the rehire of said economic strikers has been as a new employee with no seniority rights acknowledged.

Striking employees on reinstatement are to be treated in all matters involving seniority and continuity of employment as if they had not been absent from work. Respondent has in effect, by instituting their rehire policy, deprived and penalized the economic strikers of their seniority earned from their original and first date of hire pre-strike, for having exercised their protected activities under the Act.

It is found that respondent has denied the rehired economic strikers their seniority rights in retaliation for their participation in concerted activity and their support of the UFW.

Respondent's arguments as to the effect of the settlement of case number 77-CE-14-V as a waiver of seniority rights, and their argument of the effect of the employment application language as inferring waiver of their seniority rights, and the effect of their posture as to it being a penalizing as to the employees who elected to refrain from engaging in concerted activities and an unfair labor practice to them if the said strikers were grantee back seniority rights upon reinstatement, have each and every beer discussed and concluded supra, and found to have lacked merit.

It is therefore concluded that Respondent, by its rehire policy of denying seniority rights to the reinstated economic strikers, is a penalty and retaliation, and Respondent is guilty of committing an unfair labor practice in violation of Section 1153 (a) of the Act, by interfering with, restraining or coercing agricultural employees in the exercising of their rights guarantee in Section 1152 of the Act; It is further concluded what Respond? by its rehire policy of denying seniority rights to the reinstate: economic strikers, is a penalty and retaliation, and Respondent is guilty of committing an unfair labor practice in violation of Section 1153 (c) of the Act, by discriminating in regard to the hiring, tenure of employment and terms and conditions of employment, to encourage or discourage membership in a labor organization.

That there was no evidence of any conduct or inferences to be made from any conduct, that the Respondent discriminated against an agricultural employee because he has filed charges or given testimony, and therefore the Respondent can not be found guilty of charges filed of violation of Section 1153 (d) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Labor Code Sections 1153 (a and 1153 (c), I shall recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The unfair labor practices committed by Respondent effect the rights guaranteed to employees by Section 1152 of the Labor Code. It will be accordingly recommended that Respondent cease and desist from infringing in any manner upon the rights guarantee in Section 1152 of the Labor Code and to take certain affirmative action.

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

ORDER

That Respondent, JULIUS GOLDMAN'S EGG CITY, shall:

1. Cease and desist from:

(a) treating the economic strikers and each of them as more fully setforth name by name in paragraph 5 of the complain on file herein in case number 79-CE-89-OX, as new employees, thus denying them their seniority rights in retaliation for their participation in the concerted activity beforementioned.

(b) in any manner interfering with, restraining or coercing employees in the exercise of their right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collect

ive or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in Section 1153 (c) of the Act.

(c) discriminating in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) To forthwith restore full seniority rights to each economic striker of April 1C, 1975, and as individually setforth in paragraph 5, and incorporated herein at this point, of the complaint en file herein in case number 79-CE-89-OX, without condition or terms, in accordance with each strikers' date of first hire pre-strike.

(b) Pull economic and employment benefits and including back pay where applicable to the named employees in said paragraph 5 as setforth name by name at this point, to make each said employee whole for the losses suffered by the respondent's refusal to restore full seniority.

(c) A verbal statement and apology to respondents' employees during peak season that the respondent will not engage in the conduct charged of, by a recitation in English and Spanish of Sections 1152, 1153 (a) and 1153 (c) of the Act.

(d) Posting of the terms of the Order in Spanish an< English in conspicuous places, including all places where notices to employees are customarily posted and signed by a respondent

representative. Posting by respondent shall occur immediately upon receipt thereof. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by anyother material. Said notice shall be posted for a period of 30 days and shall be approved by the Regional Director or other authorized representative of the Board.

(e) Notify the Oxnard Office and the Regional Director in the Salinas Regional Office within 20 days from receipt of a copy of this Decision of the steps Respondent has taken to comply therewith, and to continue to report periodically thereafter until full compliance is achieved.

DATED: February 4, 1980.

BERNARD S. SANDOW
Administrative Law Officer