El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VESSEY & COMPANY, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 79-CE-190-EC 7 ALRB No. 44

DECISION AND ORDER

On July 28, 1980, Administrative Law Officer (ALO) William A. Resneck issued the attached Decision in this proceeding. Thereafter Respondent and the Charging Party, the United Farm Workers of America, AFL-CIO (UFW), each timely filed exceptions and a supporting brief. All parties timely filed reply briefs.

Pursuant to the provisions of Labor Code section 1146[1/] of the Agricultural Labor Relations Act (ALRA or Act) the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

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 and to adopt his recommended Order as modified herein.

The parties tried this case and argued the issues herein, and the ALO analyzed the record, based on the mutually agreed upon

1/ All code citations herein will be to the California Labor Code unless otherwise stated.

assumption that the strike of Respondent's employees that began on January 20, 1979,[2/] was an economic strike. In our decision in Admiral Packing Company, et al. (Dec. 14, 1981) 7 ALRB No. 43, we concluded that as of February 21 that strike was converted to unfair-labor-practice strike. That conclusion renders moot all of the Charging Party's and many of Respondent's exceptions. The sole question presented is whether, on December 4, Respondent's employees made a sincere and unconditional offer to return to work.

On January 20, Respondent's employees began striking Respondent's operation. As of February 21, that strike became an unfair-labor-practice strike due to the fact that Respondent's employees then and thereafter are considered to have been striking in protest against Respondent's unlawful refusal to bargain, as well as in support of their economic demands. See, e.g., Manville Jenckes Corp. (1941) 30 NLRB 382 [8 LRRM 55]; NLRB v. Kohler Co. (7th Cir. 1955) 220 F.2d 3 [35 LRRM 2606]; Admiral Packing Company, et al., supra, 7 ALRB No. 43. Under well-settled principles of labor law, and applicable precedents of the National Labor Relations Act (NLRA) 29 USC sections 151-168, which section 1148 of the ALRA requires us to follow, Respondent must, upon receiving an unconditional request for reinstatement from unfair-labor-practice strikers, reinstate them to their former positions and oust any replacement workers, if necessary, to provide employment for the returning strikers. Mastro Plastics Corp. v. NLRB (1956) 350 U.S. 270 [37 LRRM 2537]; Gorman,

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2/ All dates are 1979 unless otherwise stated.

Basic Text on Labor Law (1977) p. 341; Seabreeze Berry Farms (Nov. 16, 1981) 7 ALRB No. 40 at 13.[3/]

Here, the ALO found that the offer tendered on December 4 by Respondent's striking employees was an unconditional offer to return to work. Respondent excepts to this finding and argues, first, that the offer was not unconditional and second that the offer was not sincere.

The offer stated:

> We the undersigned workers of Vessey Company hereby offer to return to work and declare that we are available for work upon recall.
>
> Nosotros los trabajadores de la Vessey Company ofrecemos devolver al trabajo y declaramos que estamos listos para trabajar cuando nos llamen.

This language was followed by the signatures of 61 of Respondent's striking employees.

Respondent argues that the words "upon recall" (and presumably "cuando nos llamen") rendered this offer conditional, pointing to the seniority provisions in the expired collective bargaining agreement between Respondent and the UFW. In Bio-Science Laboratories (1974) 209 NLRB 796 [85 LRRM 1568], the National Labor Relations Board (NLRB) ruled that unless the contract clause in dispute (there mandating recall from layoff in strict seniority) had been specifically negotiated to apply to returning economic strikers,

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3/ At a compliance hearing on this matter, Respondent may demonstrate that certain of the striking employees were permanently replaced prior to the conversion of this strike to an unfair-labor-practice strike on February 21, 1979. Such permanently replaced workers are entitled to reinstatement as of their unconditional offer to return on December 4, unless Respondent also demonstrates that it was necessary to offer permanence to the replacements beyond the first harvesting season. Seabreeze Berry Farms, supra.

the employer was required only to recall the returning economic strikers in a non-discriminatory fashion, without depriving them of previously-acquired seniority and vacation benefits, citing Laidlaw Corp. v. NLRB (7th Cir. 1969) 414 F.2d 99 [71 LRRM 3054, 3059]. The existence of an expired collective bargaining contract does not render an unconditional offer conditional and an employer cannot, by demanding clarification of a not-unclear offer, transform that offer into a conditional offer. American Cyanamid v. NLRB (7th Cir. 1979) 592 F.2d 356 [100 LRRM 2640].

Since the seniority provisions of the expired collective bargaining agreement herein would not have rendered the employees' offer conditional on this record, even had the strike been classified as an economic strike, a fortiori, unfair-labor-practice strikers with their concomitant greater reinstatement rights must be found to have tendered an unconditional offer to return.

Respondent's second exception, that the offer was insincere, depends upon its offer of proof made at the hearing. Had the ALO allowed Respondent's witness Thomas Nassif to testify as an expert on the UFW and its strike tactics, Nassif would have testified that the offer tendered herein was made solely to allow returning union adherents the opportunity to engage in agricultural sabotage and otherwise disrupt Respondent's operations. Further, Respondent noted that the UFW maintained a picket line throughout the relevant period and that picketing was marred with sporadic violence.

Clearly, the mere maintenance of a picket line while tendering an offer to return does not render the offer insincere

or invalid. NLRB v. McQuaid (3d Cir. 1977) 552 F.2d 519 [94 LRRM 2950]; Laidlaw Corp. v. NLRB, supra, 414 F.2d 99; Seminole Asphalt Refining, Inc. (1973) 207 NLRB 167 [85 LRRM 1153]; Murray Products, Inc.(1977) 228 NLRN 268 [94 LRRM 1723]. The ramifications of specific instances of strike misconduct or violence associated with the picketing and strike activity is more appropriately assessed at the compliance stage. Such conduct testified to on this record was not of sufficient magnitude to render this offer conditional or insincere. Seminole Asphalt Refining, supra, 207 NLRB 167.

Further, the testimony of Nassif, even if permitted, would not have established that the employees' offer was insincere. Six of the strikers were eventually rehired and no evidence was introduced (or excluded) that would have demonstrated that the returned strikers engaged in any type of agricultural sabotage or disruption.

Therefore, when Respondent, on and after December 4, failed to reinstate the returning strikers and remove, if necessary, any temporary replacement workers hired in their stead during the strike, it violated section 1153(c) and (a) of the Act. Mastro Plastics Corp. v. NLRB, supra, 350 U.S. 270. Respondent's returning striking employees are entitled to be made whole for all lost wages and other economic losses resulting from Respondent's unfair labor practices. The backpay period will run from December 4, 1979, to the date Respondent offers them reinstatement to their prior or equivalent positions.

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ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Vessey & Company, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to rehire or reinstate, or otherwise discriminating against, any agricultural, employee because of his or her union activities or sympathies.

(b) In any like or related manner interfering with, restraining, or coercing any agricultural, employees, in the exercise of their rights guaranteed by Labor Code section 1153.

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

(a) Offer to the following strikers who offered to return to work on December 4, 1979, full and immediate reinstatement to their former or substantially equivalent jobs without prejudice to their seniority rights or other employment rights and privileges and reimburse them for any loss of pay and other economic losses they have suffered as a result of Respondent's failure or refusal to rehire or reinstate them on and after December 4, 1979, reimbursement to be made in accordance with the formula established by the Board in J & L Farms (Aug. 12, 1980) 6 ALRB No. 43, plus interest at a rate of seven percent per annum:

Maria Ahumado	Ramon Hueso
Maria Elena Beltran	Rodrigo Hueso
Antonio Caudillo	Silviano Mariscal
Enrique Dominguez	Andrea Martinez
Ma. Jesus Espinoza	Celia Palacios
Pedro Espinoza	Maria de Partida
Isabel Estrada	Segundo Partida

Porfirio Aguilar	Vincente Martinez
Jose M. Araujo	Simon Pineda
Librado Barajas	Efrain Reyes
Isidro Bojorquez	Jorge Reynosa
Jesus J. Carrajal	Fidelis Romero
Lazarro Castillo	Ramon L. Santos
Pidel Coronado	Jesus Servin
Rafael Escovar	Francisco Sepulveda, Sr.
Ramiro Garcia	Francisco Sepulveda, Jr.
Carlos Gil	Pablo Testa
Elio Gonzales	Juan Tirado
Armando Guerrero	Jose C. Tirado
Jose Luis Guerrero	Ruben Vallejo
Arturo Guerro M.	Jesus Vega_,
Armando Hernandez	David Velasquez
Jose Hernandez	Juan Velasquez
Acencion Leon	Martin Velasques
Jesus J. Leon	Tranquilino Verdusco
Alejandro Lopez	Guadalupe Zavala
Fidencio M. Lopez	

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

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

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time from December 4, 1979, to the date of issuance of this Order.

(e) Post copies of the attached Notice, in all

appropriate languages, for 60 days in conspicuous places on its premises, the period and places of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

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

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

Dated: December 15, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by refusing to reinstate unfair labor practice strikers who offered to return to work on December 4, 1979.

The Agricultural Labor Relations Board has told us to send out and post this Notice. We will do what the Board has ordered us to do. We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

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 rehire or reinstate, or otherwise discriminate against any employee in regard to his or her employment because he or she has engaged in a lawful strike or otherwise supported the UFW or any other labor organization.

WE WILL offer to reinstate all employees, then on strike, who offered to return to work on December 4, 1979, to their previous jobs, or to substantially equivalent jobs, without loss of seniority or other rights or privileges, and we will reimburse them for any loss of pay and other economic losses they incurred because we discharged or failed to hire or rehire them, plus interest at seven percent per annum.

Dated: VESSEY & COMPANY, INC.

By: _____
(Representative)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California. The telephone number is 714/353-2130.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Vessey & Company, Inc. 7 ALRB No. 44
Case No. 79-CE-190-EC

ALO DECISION

On January 20, 1979, Respondent's employees began an economic strike to pressure Respondent to come to terms on a new contract with their bargaining representative, the UFW. The strike continued through the off-season and Respondent began making efforts to secure a harvesting crew for the upcoming harvest. Solicitations were conducted in Arizona and Mexico, and with a labor contractor. On December 4, 1979, six days before Respondent's harvest, striking employees hand-delivered an offer to return to work. Respondent sought clarification of the offer, based partially on an expired collective bargaining agreement, and simultaneously notified all of the strikers that they had been permanently replaced. The strike continued, with sporadic violence and picketing. Six of the striking employees were rehired in January 1980, pursuant to their December 4 offer to return to work.

The ALO assumed that the strike was an economic strike and determined that the reinstatement rights of the returning strikers outweighed the employment rights of the replacements recruited in Arizona, Mexico, and the contractor's crew. The ALO relied on NLRA precedent to hold that replacements would have had no "reasonable grounds of indignation" had Respondent rehired the strikers, for the replacements had not been hired to work on a specific shift or job in any traditional sense at the time of the strikers' offer to return. The ALO found Respondent's request for clarification to be a sham and that the terms of the collective bargaining agreement did not apply to the strikers' offer to return to work.

BOARD DECISION

The Board, citing Admiral Packing Company, et al. (Dec. 14, 1981) 7 ALRB No. 43, and Seabreeze Berry Farms (Nov. 16, 1981) 7 ALRB No. 40, noted that as the strikers became unfair-labor-practice strikers on February 21, 1979, they had absolute reinstatement rights. The Board therefore found it unnecessary to reach any of the balancing issues vis-a-vis the replacements and the returning strikers. The Board affirmed the ALO's finding that the strikers' offer to return was unconditional and sincere and found that Respondent violated sections 1153(c) and (a) of the Act by not immediately offering reinstatement to the strikers upon receipt of their offer. The Board considered the evidence presented, as well as Respondent's offer of proof as to the purpose of the strikers' offer, and found that no evidence was presented that established that the offer was other than sincere. Board ordered reinstatement and backpay and usual remedial Notice to Agricultural Employees.

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STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of VESSEY & CO., INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	CASE NO. 79-CE-190-EC

Deborah Escobedo, Esq. 1629 West Main El Centro, California 92243
General Counsel

Richard Paul, Esq. Gray, Gary, Ames & Frye 2100 Union Bank Building San Diego, California 92101 Attorneys for Respondent

Francis Fernandez
P.O. Box 1940
Calexico, California
United Farm Workers of America, AFL-CIO
Attorney for Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM A. RESNECK, Administrative Law Officer: This case was heard before me in El Centro, California, on January 31, February 1, February 7, and February 8, 1980. This

case arises out of an unfair labor practice charge filed on December 8, 1979, with the Agricultural Labor Relations Board by the United Farm Workers of America, AFL-CIO (hereinafter referred to as "UFW" or "the Union") against Vessey & Co., Inc. (hereinafter referred to as "the respondent," "the company" or "the employer"). The charge alleges that on or about December 7, 1979, the employer replaced all the workers at Vessey & Co. for their participation and concerted activity, thereby showing its "bad faith intentions."

A complaint was issued against the company on December 27, 1979, alleging that the company violated §1153(a) and (c) of the Agricultural Labor Relations Act (hereafter called "the Act").

The employer filed an answer to the charge on January 2, 1980.

All parties were given full opportunity to participate in the hearing, and the general counsel, the UFW, and the employer were all represented by counsel at the hearing. After the close of the hearing, general counsel and the employer filed briefs.

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

FINDINGS OF FACT

1. JURISDICTION

Employer admitted in its answer to the complaint that it is an agricultural employer within the meaning of §1140.4(c) of the Act, and that the union is a labor organization within the meaning of §1140.4(f), and I so find.

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II. THE ALLEGED UNFAIR LABOR PRACTICE

Paragraph 5 of the complaint alleges that on November 27, 1978, the UFW and respondent began negotiating a contract to follow the then existing contract which expired December 31, 1978. Paragraph 6 alleges that on January 19, 1979, the UFW and respondent negotiated regularly. On January 20, 1979, respondent's "employees commenced a strike.

Paragraph 7 alleges that on December 4, 1979, the strikers offered unconditionally to return to work. Paragraph 8 alleges that on December 7, 1979, respondent advised the strikers that they were already replaced but would be rehired if openings became available. Paragraph 9 alleges that on December 10, 1979 and continuing to date, respondent hired new replacement workers without previously offering to reinstate any of the above-mentioned strikers.

Finally, Paragraph 10 alleges that by the above acts, respondent by hiring new replacement workers, violated §1153(a) and (c)in refusing to rehire the strikers because of their concerted activities in protecting their terms and conditions of employment and in order to discourage their self-organization rights.

Respondent denies that it refused to rehire the strikers or otherwise violated the Act, contending that (a) the strikers had not unconditionally offered to return to work, and (b) the strikers had already been permanently replaced.

III. FACTS

A. Background

Vessey & Co. is a corporation engaged in the business of growing and shipping lettuce and farming other crops on about 200 acres in the Imperial Valley (RT 67).[1] Vessey has approximately 100-150 employees engaged not only in harvesting but as tractor drivers, irrigators, weeders and thinners, and sprinklers (RT 69). A collective bargaining agreement was entered into between the UFW and respondent in 1977. The agreement expired on December 31, 1978. On January 19, 1979 the UFW struck respondent, The strike was still in effect at the time of the hearing.

The controversy here centers around the lettuce harvest season which started on December 10, 1979. The parties have stipulated that on December 4, 1979, the company received a signed list from the strikers stating as follows:

> We the undersigned workers of Vessey Co, hereby offer to return to work and declare that we are available for work upon recall. (G,C,2)

It was stipulated that prior to December 4, 1979 the company had hired some replacements, and that after December 4, 1979, the company did arrange to hire some individuals who were not on the list above (Stipulation, G.C.16).

The issues then are (1) whether the offer from the workers was an unconditional offer to go back to work, and (2) whether the company had made arrangements for an alternative work force prior to receipt of the December 4 offer from the workers. Most of the testimony at the hearing centered around the arrangements made by the company to procure an alternative work force. The

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[1]RT refers to the Reporter's Transcript on appeal in the case of of ALRB v. Vessey & Co., Inc., Action No. 2356, Imperial County Superior court, which was entered into the record of this present proceeding by stipulation of counsel.

witnesses were John Vessey, respondent's General Manager; Margarito Dominguez, general foreman in charge of the harvest; Bob Ignacio, an outside farm labor contractor; and Vessey's own individual foremen, Salvador Pena, Ismael Sepulveda, Leopoldo Reyes, Federico Sifuentes, and Miguel Serabia. The final witness from Vessey was David Ross, house counsel.

The other witnesses were two individuals who worked in the lettuce harvest, Jesus Lozano Romayor and Constantino Reyes; and Carmen Flores, attorney for the UFW.

The following is a summary of the testimony of the above individuals:

B. Summary of Testimony

Jon Vessey: Mr. Vessey is general manager and secretary-2 treasurer of Vessey & Co, (II:2). He himself hired only one person to work in the lettuce harvest which began on December 10 (RT 67, 69). Instead, Margarito Dominguez, Bob Ignacio, Miguel Serabia, Salvador Pena, Fred Sifuentes, Ted Gomez and Ismael Sepulveda did the hiring (RT 68,79-80). Mr. Dominguez was general supervisor in charge of the harvest and all the other individuals worked under him (RT 71,79-80).

Efforts to plan for an alternative work force began around mid-October (IV:53). Vessey concentrated on three sources: hiring from the local area; an arrangement with Bob Ignacio, a licensed farm labor contractor; and efforts to obtain workers from Arizona (IV:53).

Hiring from the local area involved polling the weeding and

[2] References to the transcript of the proceedings will contain a roman numeral, either I,II,III, or IV, indicating the transcript volume, followed by the page number of that volume.

thinning crew to see if any of those workers presently working for Vessey would be interested in working in the harvest (IV: 53-54). Traditionally, it was not customary for the weeders and thinners to work in the harvest packing lettuce (RT 82). However, Vessey instructed Fred Sifuentes, the foreman for the weeding and thinning crew, to see if there was any desire to work on the wrap machines. Sifuentes gave Vessey a list of those who showed interest in working in the lettuce harvest sometime between November 15 and November 20 (G.C.14). However, none of the workers were specifically hired at that time (II:123-128).

The arrangement with Bob Ignacio, a licensed farm labor contractor, involved an undated agreement whereby Ignacio agreed to provide eight trios (24 workers) for the harvest. (G.C.13; II:68-73). Vessey's agreement with Ignacio was to pay for Ignacio’s motel bill if Ignacio would provide eight trios, but Vessey was not sure how many trios Ignacio would bring and would have hired even seven or nine trios (RT 75). In fact, Vessey was not sure how many men he would need until the harvest actually started (RT 75-76).

The hiring from Arizona was handled by Dominguez and the foremen under him, and although Vessey believed there would be at least one ground crew, the specifics as to who was coming were left up to the individual foreman who recruited in Arizona (IV:55).

Vessey had for the lettuce harvest both a ground crew and a wrap machine crew. The ground crew consists of approximately eight-twelve trios, which are people involved in the cutting and packing of lettuce, and approximately three closers and four loaders

(RT 89). The trios cut and pack the lettuce; a closer closes the top of the boxes; and a loader loads boxes of lettuce onto a truck (RT 89).

With *a* wrap machine, each head of lettuce has a cellophane wrap placed around it (RT 90). The ground crew is paid by the piece rate, while the wrap operation, which is slower because of the additional wrap step, is paid by the hour (RT 90-91).

On December 10, the first day of the harvest, they started off with two machines and then three days later, they put a third machine into operation (RT 93-94).

When Vessey received the strikers' offer to return to work (G.C.2) on December 4, he did not immediately hire workers on the list, because he had already arranged for a work force, and because he was not sure what seniority provisions would apply (IV:57-58). The names on the list were not in order of seniority, and he was not sure what positions were requested (IV:60-61).

A reply letter was sent to the Union on December 6, seeking clarification and also to see if workers were applying for jobs for the wrap machine (Exhibit F; II:65-66). However, the letter on December 6 did not specifically refer to the wrap machine (IV:83). Instead it merely asked the workers if they wished to remain in their old job classification and did not directly ask the workers if they were interested in working on the wrap machines (IV:84).

Six of the striking workers did return to work for Vessey (IV:72) in two groups of three each (IV:77).

Finally, the replacement workers who arrived to work on

the harvest all did not arrive on the first day, but all did arrive within the first week (IV:79).

Margarito Dominguez: Mr. Dominguez has worked for Vessey off and on since 1969 (RT 132). He was put on the payroll for the current harvest season as harvest supervisor in late November 1979 (RT 133).

He was told by Vessey to recruit about 40 people, which would be around 10 trios, plus closers and loaders (RT 134). He could only recall recruiting one person and his foremen recruited the rest (RT 134). Mike Serabia and Salvador Pena did the recruiting, and they figured there were about 40 people coming to work (RT 135-136). Of those people, a few people came to work (RT 136); in fact, he believed there were about 12 people (III:18).

By the end of November, Mr. Dominguez felt that "he knew more or less how many were telling me they were going to come down and work." (III:28) . However, he had no idea how many were actually going to show up for the work for the harvest (III:34-35).

The foremen continued to recruit after December 4 for both the ground crew and the wrap machine (III:43-45). Salvador Pena recruited for the ground crew, and Miguel Serabia for the wrap machine (III:44-45). When the harvest began there were enough people to do the work (III:27).

Vessey showed him the list of strikers willing to go back to work (G.C. Exhibit 2:III:46-48). He saw the list around December 4 or 5 but never instructed his foremen to try to recruit from the list (III:48-49).

Some of the people on the list were ultimately hired (III:50). Most of the people on the list were picketing during December (III:55-58).

Bob Ignacio: Mr. Ignacio is a licensed farm labor contractor (RT 109). He had a conversation with Jon Vessey in early November about providing workers for the lettuce harvest (RT 111). There was no exact agreement about the salaries to be paid the workers, but Vessey was willing to pay the going rate (RT 111-112).

Ignacio agreed to furnish eight trios and three closers and four loaders (RT 113-114). He never gave Vessey a list of the people he was to provide, nor did he tell him the names (RT 116-117}.

His brother, Don Ignacio, contacted men in Bakersfield who wanted to work, and told him that he had about 40 men who wanted to work (RT 118-119). His brother never gave him a list of the names or phone numbers (RT 120). Then, at the end of November, he went to Blythe to speak to the men and spoke to about 10 of them (RT 121-122).

Of the people he recruited approximately three or four trios showed up--one closer and no loaders (RT 125-126). Of the 40-50 people his brother recruited, he expected between 4-6 trios to show up on December 10 (III:85). Twenty-three people actually showed up for work on December 10 (III:86). Within a week or two after December 10, he was told not to hire any more people (III:88).

Salvador Pena: Mr. Pena is a foreman for Vessey's ground crew (RT 153). He found 12 people to work for Vessey, either cutting or packing lettuce (RT 154-156). Of the 12, 10 only worked

for two days (RT 157). The 12 people he contacted were working at the lettuce harvest in Arizona (RT 159-160). He contacted these 12 after receiving instructions from Dominguez while both were working at Cortaro Farms in Marana, Arizona (III:94). The 12 people he spoke to were in his crew in Arizona (III:100).

Ismael Sepulveda: Mr. Sepulveda has been a foreman on the lettuce machines for Vessey since December 10 (III:120), Before that he worked with Dominguez and Pena in Arizona (III; 121). During the harvest in Arizona, he talked to people about working at Vessey (III:122). After the Arizona harvest on December 2, he talked to 10-14 others about working for Vessey at a pool hall in Sonora (III:123). Of these 10-14 people he had worked with one or two in Arizona, and several others had worked in Arizona, but he did not recall their names (III:124-125).

Of the workers he spoke to at the pool hall, he recalled the names of seven who are working for Vessey now, and perhaps three others to whom he may have talked at the pool hall (III:123-131). Of the people he spoke to at the pool hall, he knew only a few of them by name (III:137). He did not take down any names while at the pool hall and did not know after he left if any of them were going to show up at Vessey (III:137-138). He was at the pool hall about December 2 and first spoke to Dominguez to inform Vessey two or three days later (III:124;140).

On December 10, when the workers first arrived at Vessey, there were 12 or 13 workers who had not been at the pool hall but instead came with friends who had worked at Cortaro Farms in

Arizona (III:140-141). These workers were hired on December 10 (III:141). He was not told about the list of strikers who wanted to come to work (III:143).

On Respondent's re-direct, Mr. Sepulveda changed his answers to state that about 12 or 14 people he talked to at the pool hall showed up to work for Vessey (III:146). He also believed that the others may have been in Salvador Pena's crew (III:148).

Leopoldo Reyes: Mr. Reyes was a foreman for the machine crew (RT 143-144). He started to work for Vessey on December 7 doing preliminary work to get the machine ready (RT 144). When the harvest started on December 10, he brought four people with him to do the wrapping; he also brought his wife, daughter, and son to work (RT 149). The four people he hired he talked to at a restaurant in Calexico on December 10, and they went to work a few hours later (RT 150).

He never gave Vessey a list of people he was going to bring to work because he was not sure whether or not they would show up (RT 152).

Federico Palacio Sifuentes: Mr. Sifuentes has worked for Vessey for 17-18 years (III:151). During the present lettuce harvest, his job was to collect the lunches for the workers and move the restrooms (III:151). During the weeding and thinning season, he supervised the crew foreman (III:151). Two or three from the weeding and thinning crew were now working in the harvest (III:152).

He recalled two trios and one closer (seven people) who

wanted to work in the harvest (III:159).

Miguel Serabia: Mr. Serabia has worked for Vessey since 1968 and is currently the foreman in charge of the lettuce wrap machines {IV: 21). He also recruited workers at Cortaro Farms in Arizona pursuant to instructions from Margarito Dominguez (IV:27-29).He recalled four to eight people from his ground crew in Arizona that worked at Vessey (IV:29-30).

He stated that he began to hire workers for the wrap machine in the last week of November through December 2 or 3 (IV: 31). By December 3 he had a full crew for his machine (IV:31). Out of the 20-25 people in his crew in Arizona, about 10-15 people showed up for work at Vessey (IV:32).

David Ross: Mr. Ross is house counsel for Vessey & Co. and brother-in-law of Jon Vessey (IV:87,97). He never received any response to his letter of December 6 (G.C., Exhibit F) and December 26, 1979 (G.C,9, Exhibit I; IV:88).

He never recalled receiving G.C.'s Exhibit 20 (IV:130).

Jesus Lozano Romayor: Mr. Romayor has been a loader for Vessey since December 10 (IV:102). He contacted the foreman known to him as "El Mapa" on the evening of December 9 and was hired for the next day (IV:103). He is not a member of the Union (IV:104).

Constantino Reyes: Mr. Reyes has been working as a closer for Vessey since December 10 (IV:108). He was hired on December 9 and is not a member of the Union (IV:108-109).

His father is Leopoldo Reyes, a foreman for Vessey, who told him about the job before December 9, but did not tell him that

he had a job before December 9 (IV:110). He was definitely told that he had a job on December 9 (IV:111).

Carmen Flores: Ms. Flores has been an attorney for the Union for the last seven months (IV:112-113). Her response to the employer's letter of December 6 was to file an unfair labor practice charge on December 7 and inform the employer by letter (G.C.20; IV:118-121).

ANALYSIS OF THE ISSUES AND CONCLUSIONS

The issues to be decided here are as follows:

(1) Did the Union's offer of December 4 constitute an unconditional offer to return to work?

(2) If so, had the strikers been permanently replaced prior to the December 4 offer to return to work?

I conclude that the strikers unconditionally offered to return -to work on December 4 and that permanent replacements for all the strikers had not been hired prior to December 4. Accordingly, I find the employer here guilty of §1153(a) and §1153(c) violations of the Act.

I. THE DECEMBER 4, 1979 OFFER TO RETURN TO WORK

On December 4, 1979, the employer was handed a list with the following language at the top:

> We the undersigned workers *of* Vessey Company hereby offer to return to work and declare that we are available for work upon recall.
>
> Nosotros los trabajadores de la Vessey Company ofrecemos devolves al trabajo y declaramos que estamos listos para trabajar cuando nos llamen.
>
> (G.C.2)

Following this language was a page containing 41 signatures and an attached page containing 20 signatures. The first page contained the names of workers who had prior experience with Vessey in the "ground crews" (IV:59). The second page contained names of workers who had worked in Vessey's weeding and thinning crews prior to the strike (IV:60). Only five of the stikers who signed this list were ultimately hired by Vessey, and then approximately a month later (G.C.3).

After receiving the December 4 list, the company responded with a letter dated December 6 and by sending cards to the workers informing them that they had already been permanently replaced.

Employer urges two arguments to support its contention that the offer to return to work was not an unconditional one:

(1) It asserts that the words "upon recall" made the offer conditional since it invoked the concept of seniority. Employer concludes that since the list was not in the order of seniority, it was therefore a conditional offer; and

(2) That the letter of December 6 served as a counter-offer and imposed upon the Union a duty to inform the company further before any formal agreement to work had been established.

Initially, it is clear that a union may make an unconditional offer to return to work on behalf of its members. NLRB v. McQuaide, Inc. (3rd Cir.1977) 94 LRRM 2950, 2956; American Cynamid Co. v. NRLB (7th Cir.1979) 100 LRRM 2640. Further, with respect to the seniority issue, the company had been adhering to the general concept of seniority since the expiration of the collective

bargaining agreement. Moreover, the company had in its possession the seniority list. Although the company may have had some questions concerning the strict application of seniority, the words, "upon recall" do not serve to make the offer to return to work a conditional one. Instead, the company now had a duty to give preference to the workers contained in General Counsel's Exhibit 2 and to begin hiring them as the positions were being filled. See Bioscience Laboratories (1974) 209 NLRB 106, 85 LRRM. 1568.

The company's second contention involves its December 6 letter (G.C.9, Ex.F), in which the company essentially stated that it had already hired a replacement work force, but that it would put the strikers on a preferential hiring list. The letter asked whether the workers would remain in their old job classifications and then requested that workers should contact the office to provide information about their current address, phone number, social security number, seniority date, and job classification.

The letter of December 6 was not a valid counteroffer, but sent merely for the purposes of delay. For example, the company apparently had sufficient information to send out cards to workers saying that a replacement force had been hired (G.C.9, Ex.G). In addition, the company already had in its possession all the information concerning the seniority list (G.C.10,11,& 12). Finally, the company's practice was not to take down the remainder of the information requested until the first day of work (II:10-11). Accordingly, I find on the evidence before me that the letter of December 6 was not a good faith inquiry and would not invalidate

the Union's December 4 offer to return to work.

Equally unpersuasive are the authorities respondent cites in support of its contention. For example, respondent relies heavily on the case of Cartriseal Corp. (1969) 178 NLRB 272, on pages 63 and 64 of its brief. There the union offered to return to work on April 3, but no jobs were available until May 3. In the interim, the union instituted a strike. Further, the evidence showed that some of the employees were not ready to return to work as they were either engaged in other employment or they had medical problems. There, an administrative law officer concluded that the union did not make a good faith offer to return to work.

Unlike that case, where there was no work available for a month, the evidence demonstrated that jobs were available on December 4 and thereafter once the offer to return to work had been made. Thus, unlike the month delay in Cartriseal where the union negated its evidence of good faith by striking, there is no similar evidence here.

Further, employer cites Pacific Gamble Robertson Co. v. NLRB (6th Cir.1950) 186 F.2d 106 on the last page of its brief (page 66) stating that this authority is "squarely on point." There, the Union requested employment on February 28 and between March 25 and March 31, each one of the strikers was offered re-employment. Each one of the strikers individually rejected the offer. On that evidence no unfair labor practice was found.

Rather than the above authority being on point, the evidence here is directly contradictory. Instead of each one of the strikers

here being offered re-employment, only six were hired and that only after a one-month delay and after several other individuals were hired in the interim.

II. THE ISSUE OF PERMANENT REPLACEMENTS

The second issue here is whether the employer had made arrangements for an alternative work force prior to the receipt of the union's offer of December 4 to return to work. Preliminarily, it should be noted that for the purpose of this decision, it is assumed that the strikers here are economic strikers rather than unfair labor practice strikers. If the strikers were held to be unfair labor practice strikers, then they would be entitled to immediate reinstatement whether they had been replaced or not. H&F Binch Co. v. NLRB (2nd Cir.1972) 79 LRRM 2692, 2696. However, as economic strikers they would only be entitled to reinstatement as jobs became available.

General Counsel contends in its brief that the strikers here were unfair labor practice strikers since in a decision issued on March 4, 1980 in Admiral Packing Co. 79-CE-36-EC, an administrative law officer found that the employer here, one among many employers, bargained in bad faith with the Union since December 8, 1978. This recommended decision is now before the ARLB, and if it is upheld, then it would make moot the following determination since as unfair labor practice strikers, the workers would be entitled to immediate reinstatment. H&F Binch Co. v. NLRB, supra. However, in the interest of judicial economy so that the matter will not have to be retried, this opinion will assume that the strikers were

economic strikers and then address the question whether permanent replacements had been hired as of December 4.

It is clear that an employer may hire permanent replacements for economic strikers. NLRB v. Mackay Radio & Telegraph Co. (1938) 304 US 333, 345-347. Moreover, in order to hire a replacement worker, it is not necessary that an employer enter into a formal written contract. Rather, the standard used is that outlined below.

> This left for subsequent determination the subsidiary question of just what circumstances constituted a hiring to fill the place of strikers. This must be answered in a practical frame. When strikers have resorted to the economic weapon of endeavoring to impair production, the employer is entitled to respond with efforts to preserve it and must have latitude in hiring replacements sufficient, but no more than sufficient, to that end. On the one hand, a mere offer, unaccepted when the striker seeks reinstatement, is insufficient to qualify; on the other, actual arrival on the job should not be required if an understanding has been reached that this will occur at a reasonably early date, cf. Anderson, Clayton & Co., 120 NLRB 1208, 1214, 42 LRRM 1138 (1958). The standard established by the Board in earlier decisions appears to have been that a replacement has been obtained if, but only if, both the employer and the replacement understand that the latter has accepted the vacant position before the replaced striker offered to return to work. See Hot Shoppes,Inc., 146 NLRB 802, 803-05, 55 LRRM 1419 (1964); Georgia Highway Express, Inc., 165 NLRB 514, 516, 65 LRRM 1408 (1967), aff'd, 403 F.2d 921, 67 LRRM 2992 (D.C. Cir.) cert. denied, 393 U.S. 935, 69 LRRM 2623 (1968); Coca Cola Bottling Co. 166 NLRB 134, 138, 65 LRRM 1596 (1967). Since hirings are almost always oral and at will, it is not necessary that conversations should have taken a form where,the "replacement" would have a cause of action if a striker was allowed to return to work before the replacement arrived on the scene. Perhaps the Trial Examiner's phrasing, that the replacement would have reasonable "grounds for indignation" if he were subsequently denied the promised job, is about as good a formulation of the appropriate standard as can be achieved.
>
> H &F Binch Co.v.NLRB, supra at 2695.
> (Emphasis added)

Accordingly, in judging this matter. I will use the standard of

whether the replacement workers would have "reasonable grounds for indignation" if denied the promised job. Moreover, in order for the employer to have the defense of a replacement work force, he must demonstrate that arrangements for the work force were made prior to December 4. Thus, any workers hired after December 4 would not be subject to the defense of a replacement work force since they were hired after the receipt of the union's unconditional offer to return to work on December 4.

In evaluating the testimony, both Jon Vessey and Margarito Dominguez did no recruiting directly themselves. Instead, the recruiting was assigned to their foremen, mainly Miguel Serabia and Salvador Pena. It is clear that both these gentlemen continued to recruit after December 4 for both the ground crew and the wrap machine. (III:43-45). However, neither of these men were instructed to recruit from the list of strikers after December 4 (III:48-49).

Further workers not recruited from Arizona but who showed up on "December 10, when the harvest started were hired for the first time (III:140-141).

Finally, workers recruited locally from the Calexico area were also hired on December 10 (RT 149-150; IV:103, 108).

Employer here is guilty of §1153 (a) and §1153(c)violations failing to hire the strikers after receipt of the December 4 offer to return to work. For example, in American Cynamid Co. V.NLRB (7th Cir.1979) 100 LRRM 2640, the maintenance and service employees went out on a union sanctioned striker on April 17, 1975. On January 9, 1976, the company entered into an outside contract

for maintenance and service work effective February 1. On January 22, the union was first informed of this outside agreement, and on January 28, the company informed the union that all hourly employees working in that department would be permanently terminated effective January 31. On January 29 the employees signed a letter and delivered it to the employer unconditionally offering to return to work.

It was held there that the company's unilateral decision to contract out work was an unfair labor practice, and even it the strikers were economic strikers, they, as the company's employees, had a right to be recalled pursuant to their unconditional offer to return on January 29 since they had not yet been permanently replaced.

Clearly our present case presents an even stronger situation for the finding of an unfair labor practice. As in the Cynamid case, the work of the harvest did not actually start until December 10, or some six days after the employer received the employee's unconditional offer to return to work. Moreover, not only was the employer continuously hiring during this week's period but he did not even inform the foremen in charge of hiring about the strikers offer to return to work.

Economic strikers who apply for reinstatement even at a time when their jobs are held by permanent replacements remain employees and are entitled to full reinstatement upon the departure of replacements. Laidlaw Corporation (1968) 171 NLRB 1366; enf'd (7th Cir.1969); 414 F.2d 99; cert.denied (1970) 397 U.S. 920. Accordingly,

even if we assume that the employer was actively seeking a replacement work force, it was clear that permanent replacements were still being hired after December 4 and thus the employer committed an unfair labor practice in not hiring the strikers.

Moreover, on the record before me I find that the employer has not sustained its burden of proving that its actions were motivated by legitimate business objectives. In the leading case of NLRB v. Great Dane (1966) 388 U.S.26, the United States Supreme Court set forth the controlling standard:

> From this review of our recent decisions, several principles of controlling importance here can be distilled. First, if it can reasonably be concluded that the employer's discriminatory conduct was "inherently destructive" of important employee rights, no proof of an anti-union motivation is needed and Board and the 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 provided 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.
>
> 388 U.S. at 34 (emphasis added)

The standard established by the U.S. Supreme Court in Great Dane, supra, was reaffirmed the following year in the landmark decision of NLRB v. Fleetwood Trailer Co. (1967) 389 U.S. 375. There, after termination of a strike, the union requested reinstatement of the strikers. The employer responded there were no jobs available because of curtailment of production during the

strike. However, the employer subsequently hired six new employees for jobs which the strikers were qualified. It was held that unless the employer could demonstrate his actions were due to legitimate and substantial business justifications, he was guilty *of* an unfair labor practice. Moreover, the burden of proving such justification was on the employer. 389 U.S. at 378.

Our present situation is controlled by the foregoing authorities as well as the Laidlaw case, supra. No more important right belongs to an employee than the right of continued employment. The employer's conduct in refusing to hire the strikers after receipt of their offer to return to work was so inherently destructive of employee rights that no evidence of specific anti-union motivation is needed. Moreover, the employer has not sustained its burden of proving a legitimate business justification since there were openings for employment and new workers hired after December 4. As the court stated in Laidlaw:

> As Respondent brought forward no evidence of business justification for refusing to reinstate these experienced employees, while continuing to advertise for and hire new unskilled employees, we find such conduct was inherently destructive of employee rights. The right of reinstatement continued to exist so long as the strikers had not abandoned the employ of Respondent for other substantial and equivalent employment. Moreover, having signified their intent to return by their unconditional application for reinstatement and by their continuing presence, it was incumbent on Respondent to seek them out as positions were vacated. Having failed to fulfill its obligation to reinstate the employees to their jobs as vacancies arose, the Respondent thereby violated Section 8(a) (3) and (1) of the Act.[3]
>
> 171 NLRB at 1369

[3] §1153(a) and §1153(c) teach the language found in $8(a)(1) 8(a)(3) of the NLRA.

CONCLUSIONS OF LAW

Based on the foregoing, I make the following conclusions of law:

1. Vessey & Co., Inc., is a California corporation engaged in agriculture and is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

2. United Farm Workers of America, AFL-CIO, is a labor organization within the meaning of Section 1140.4(f) of the Act.

3. The Employer engaged in unfair labor practices within the meaning of Sections 1153(a) and 1153(c) of the Act.

4. The unfair labor practices affected agriculture within the meaning of Section 1140.4(a) of the Act.

REMEDY

In fashioning a remedy for the employer's failure to hire from the list of strikers after December 4, 1979, the issue becomes how many permanent replacements were hired by the employer prior to December 4, 1979. The parties have stipulated here that prior to December 4, 1979, the company had hired some replacements (GC 16, No.4). Further, the parties have stipulated that after December 4, 1979, the company did arrange to hire some individuals who were not strikers who had offered to return to work (GC 16, No. 5). The issue then becomes how many openings existed after December 4 that the company should have hired from the list of strikers contained in General Counsel Exhibit 2. Unfortunately, on the record before me, I am not able to make any numerical determination at this time.

For example, General Counsel suggests in its brief that there

was a substantial amount of turnover in the work force during the first two-three weeks of the harvest comprising in some instances as much as one-third to one-half of the work force. (GC's Brief, pp. 7,8,notes 17 & 19.) Conversely, the employer contends that after the initial shakedown period of a week to 10 days, the number of workers remained relatively constant. (Employer's Brief, p.59, note 2.) I have done no independent determination of the records but find that based on both the evidence and the stipulation of the parties that there were openings after December 4 and that the company was in violation for failing to hire the workers from the list contained in General Counsel's 2, as those openings became available. This issue can perhaps best be decided in a subsequent compliance hearing, or it may very well be mooted if the determination that the strikers were unfair labor practice strikers is affirmed.

To the extent that there were jobs available after December 4, 1979, reinstatement with back pay plus interest is appropriate for as many of the workers as there are jobs found to be available.

Accordingly, upon the basis of the entire record and of the Findings of Fact and Conclusions of Law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

Respondent, its officers, agents, and representatives shall:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire any employee or otherwise discriminating against any employee in regard to hire,

rehire, or tenure of employment or any other term of condition of employment because of any employee's membership in or activities on behalf of United Farm Workers of America, AFL-CIO, or any other labor organization.

(b) In any other manner interfering with, restraining or coercing employees in the exercise of their Section 1152 rights.

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

(a) Offer the workers contained in General Counsel Exhibit 2 to their former position, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, beginning with the earliest date following issuance of this Order when there are positions available in which they are qualified;

(1) In view of the seasonal nature of the employment which was at issue in this action, respondent shall inform all the above workers of the offer of reinstatement in writing, 30 to 45 days before the date on. which the respondent expects to begin the work to which the above workers shall be reinstated. At the same time, respondent shall notify each of these persons that their positions will be held open for them for a reasonable period of time after such work begins. The offer of reinstatement shall be sent by certified mail, return receipt requested, and a copy of the offer shall be sent to the Regional Director.

(2) Nothing in the preceding paragraph shall be construed to relieve the respondent of the obligation to tender

said offer of reinstatement Immediately in the event that the work to which the above workers are to be reinstated is taking place at the time this Order is issued, or if respondent expects it to begin less than 30 days after the issuance of this Order. Or, if judicial review of this Order is sought, nothing in the preceding paragraph shall be construed to relieve the respondent of the obligation to tender said offer of reinstatement Immediately in the event that the work to which the above workers are to be reinstated is taking place at the time this Order becomes enforceable, or if said work begins less than 30 days after this Order becomes enforceable.

(3) If the Regional Director determines that the procedures set out in paragraph 2(a)(l) above is likely to be, or has been inadequate to provide actual notice to the above workers referred to in paragraph 2(a) of their rights pursuant to this Order, the regional director may, in his discretion, direct the respondent to take additional steps to provide actual notice to those workers. The regional director may, for this purpose, direct the respondent to publicize the contents of this order by means including, but not limited to, the following: distribution of flyers or leaflets in places where they are likely to be seen by agricultural employees; the purchase of newspaper advertisements; or the purchase of radio advertisements.

(b) Make whole as many of the workers on General Counsel Exhibit 2, as there are found to be job openings which existed on or after December 4, 1979, for any loss of earnings and other

economic losses, plus interest thereon at a rate of 7 percent per annum, they have suffered as a result of Respondent's refusal to rehire them in December, 1979.

(c) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due under this Order.

(d) Sign the attached Notice to Employees and post copies of it at conspicuous places on its property for a period of 60 days the times and places of posting to be determined by the Regional Director. Copies of the Notice, after translation by the Regional Director into appropriate languages, shall be furnished by Respondent in sufficient numbers for the purposes described herein. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(e) Hand out copies of the attached Notice, in appropriate languages, to all current employees,

(f) Mail copies of the attached Notice in all appropriate languages, within 31 days after the date of issuance of this Order, to all employees who were recalled to work for the 1979 melon harvest.

(g) Arrange for a representative of Respondent or a Board agent to read the attached Notice in appropriate languages to the assembled employees of Respondent 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 Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(h) Notify the Regional Director in writing, within 31 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

DATED: July 25, 1980.

AGRICULTURAL LABOR RELATIONS BOARD

By William A. Resneck

WILLIAM A. RESNECK
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing 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. 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 farmworkers 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 hire or rehire any person, or otherwise discriminate against any employee in regard to his or her employment, because of his or her membership in or activities on behalf of the UFW or any other labor organization, or because of any other concerted activity by employees for their mutual aid or protection.

WE WILL pay employees whom we discriminated against any money they may have lost because we did not rehire them in December 1979 for the lettuce harvest season.

DATED: VESSEY AND COMPANY, 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.