STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DESSERT SEED COMPANY,	)	
	)	
Respondent,	)	Case Nos. 80-CE-226-EC
	)	81-CE-36-EC
and	)	81-CE-37-EC
	)	81-CE-79-EC
UNITED FARM WORKERS	)	82-CE-94-EC
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	9 ALRB No. 72
	)	

DECISION AND ORDER

On March 11, 1983, Administrative Law Judge (ALJ) Michael H. Weiss issued the attached Decision and recommended Order in this proceeding. Thereafter, Respondent, Dessert Seed Company, timely filed exceptions to the ALJ's Decision, with a brief in support of its exceptions, and the General Counsel timely filed a brief in reply to Respondent's exceptions.

Pursuant to the provisions of Labor Code section 1146, 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 ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm his rulings, findings of fact,[1/] and conclusions of law

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[1/] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an ALJ's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. (Standard Dry Wall Products, Inc. (1950) 91 NLRB 544 [26 LRRM 1531], enforced (3d Cir. 1951) 188 F.2d 362 [27 LRRM 2631].) We have carefully examined the record and find no basis for reversing his findings.

and to adopt his recommended Order,[2/] with modifications.

We agree with the ALJ's analysis of the agency issue herein and agree with his conclusion that Respondent violated Labor Code section 1153(a) by refusing to rehire Jose Tapia and Raul Pacheco because of their protected concerted activities. However, we note that this case presents an unusual situation. The part of Respondent's operations in which the discriminatees worked was a commercial packing shed, not itself subject to the jurisdiction of this Board. The gravamen of the complaint, however, is that Respondent acted in the interests of and, therefore, as an agent of Vessey and Company and Colace Brothers, two agricultural employers against whom the discriminatees struck in January 1979. The credited testimony in this case makes it clear that discriminatees Tapia and Pacheco were "blacklisted" by Vessey and Colace and that Respondent refused the employees rehire because of that blacklist.

Vista Verde Farms v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 307, 322 affirmed this Board's interpretation of agency principles, holding an employer responsible for the misconduct of a labor contractor when the employer's employees had reason to believe the labor contractor was acting on behalf of the employer. The fact that labor contractors are, by statute, excluded

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[2/] We affirm the ALJ's recommendation that the makewhole period in this case begin six months prior to the filing date of the charge alleging Respondent's refusal-to-bargain over a change in the medical plan. Since Respondent's refusal was based on its belief that the certification of the union was invalid, the charge regarding the change in the medical plan raised Respondent's entire defense to all bargaining-related allegations. We therefore conclude that it is fair to apply the makewhole remedy to all of Respondent's conduct within six months of the first bargaining-related charge. (See Ron Nunn Farms (1980) 6 ALRB No. 41.)

from the definition of "agricultural employer" in Labor Code section 1140.4(c) did not prevent the Board from finding a labor contractor's conduct to have violated the Act due to his status as an agent of the grower. (Vista Verde Farms, supra, 29 Cal.3d 307, 323-326.) In the instant case, Respondent acted as the agent of Vessey and Colace. Arguably, the allegations herein might have been lodged against Vessey and Colace, as the principals in this blacklisting scheme.[3/] The allegations were, in fact, lodged against Respondent directly. Although this factor distinguishes the instant case from the agency cases cited by the ALJ, we find it appropriate, in these circumstances, to hold the agent liable for the damage caused by the discrimination.

It is a general principle of California law that an agent will be individually liable to an innocent third party for the fraud or other "wrongful act" of the principal. (See Millsap v. National Funding Corp. (1943) 57 Cal.App.2d 772, 781; Restatement of Restitution, section 143; Restatement 2d of Agency, section 339;

[3/] The record in this proceeding indicates that Vessey and Colace also violated the Act by their involvement in the blacklisting of strikers. Vessey and Colace were alleged to be agricultural employers in the complaint; however, they were not named in the caption, nor were they served with the charges or complaint by the Charging Party or General Counsel. During the proceedings, Colace was served with a subpoena duces tecum, to which Colace responded through the same attorney representing Respondent herein. Both John Vessey and Joe Colace, Jr. testified at the hearing and denied any involvement in a conspiracy to blacklist Tapia or Pacheco. Neither Vessey nor Colace attempted to intervene in these proceedings, nor did the General Counsel, in its various amendments of the complaint, name them as parties. Although it appears that Vessey and Colace received actual notice of the allegations involving them, they were never given notice that they could be subject to the Board's remedial authority. Under these circumstances, we are not inclined to issue an order directly against Vessey and Colace.

1 Witkin, Agency and Employment, section 190, p. 784.) Although this principle is not generally applied to an innocent agent caught unknowingly in the "wrongful" scheme of the principal, we find that Respondent here willfully and knowingly participated in Vessey and Colace's conspiracy to deny the discriminatees employment, and should be equally liable for the losses the discriminatees have suffered as a result of these "wrongful acts."[4/] (See also Packing House and Industrial Services v. NLRB (8th Cir. 1978) 590 F.2d 688, 699 [100 LRRM 2356].)

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that:

Respondent Dessert Seed Company, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to hire or rehire, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any union activity or other concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) Refusing to bargain collectively in good faith with the United Farm Workers of America, AFL-CIO (UFW) as the

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[4/] We do not accept the ALJ's recommendation that Tapia and Pacheco not be reinstated by Respondent. In our view, Respondent's remedial obligations here are the same as in any other case of discrimination and, absent some further distinction, we will award our standard remedial provisions, including reinstatement.

exclusive representative of its agricultural employees as required by section 1153(e) of the Act and in particular (1) unilaterally changing benefits, terms or conditions of employment without notice to and good faith bargaining with the UFW and (2) refusing to meet and confer with the UFW and bargain in good faith.

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

(a) Immediately offer to Jose Reyes, Jesus Velasquez, Jose Tapia, and Raul Pacheco full reinstatement to their former jobs or equivalent employment, without prejudice to their seniority or other rights or privileges.

(b) Make whole Jose Reyes, Jesus Velasquez, Jose Tapia and Raul Pacheco for any loss of pay and any other economic losses they have suffered as a result of the refusal to rehire them, reimbursement to be made according to established Board precedents, plus interest thereon in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(c) Upon request of the UFW, rescind the medical plan granted in August 1982, and, thereafter, meet and bargain collectively with the UFW, at its request, regarding such change.

(d) Upon request, bargain collectively in good faith with the UFW as the exclusive representative of its agricultural employees, and if an understanding is reached, embody such understanding as a signed agreement.

(e) Make whole all agricultural employees employed by Respondent from March 16, 1981 to October 18, 1982, and from October 19, 1982, to the date Respondent commences good faith

bargaining with the UFW which leads to a contract or a bona fide impasse, for all losses of pay and other economic losses sustained by them as the result of Respondent's refusal to bargain, such losses to be computed in accordance with this Board's precedents, plus interest computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(f) Preserve and, upon request, make available to this Board and its agents, for examination and 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.

(g) 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.

(h) 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 during the period from July 1980 until the date on which the said Notice is mailed.

(i) Provide a copy of the attached Notice in the appropriate language, to each employee hired within the 12 month period following the date of this Order.

(j) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its premises, the time(s) and place(s) 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.

(k) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its 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 of 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 in order to compensate them for time lost at this reading and during the question-and-answer period.

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

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's agricultural employees be,

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and it hereby is, extended for a period of one year commencing on the date of issuance of this Order.

Dated: December 21, 1983

ALFRED H. SONG, Chairman

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB or Board) by the United Farm Workers of America, AFL-CIO (UFW), the certified bargaining representative of our employees, the General Counsel of the ALRB issued a complaint which alleged that we, Dessert Seed, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we had violated the law by failing or refusing to bargain with the UFW, by unilaterally changing our employees' terms and conditions of employment without notifying or bargaining with the UFW, and by refusing to rehire Jose Reyes, Jesus Velasquez, Jose Tapia and Raul Pacheco.

The Board has told us to post and publish 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 it is true you have these rights, we promise that:

WE WILL meet with your authorized representatives from the UFW, at their request, for the purpose of reaching a contract covering your wages, hours, and conditions of employment.

WE WILL make whole all of our employees who suffered any economic losses as a result of our failure and refusal to bargain with the UFW since March 1981.

WE WILL, if the UFW asks us to do so, rescind any of the changes we have previously made by changing the medical benefits and plan, and we will reimburse with interest those present and former employees who suffered any money losses because we unlawfully made changes in the medical benefits and plan.

WE WILL NOT hereafter refuse to rehire, or in any way discriminate against, any agricultural employee because he or she has engaged in union activities.

Dated:

DESSERT SEED COMPANY

By: _____
Representative Title

If you have a question about your rights as farm workers or about this notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, 92243. 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

Dessert Seed Company (UFW)

9 ALRB No. 72
Case Nos. 80-CE-226-EC
81-CE-36-EC
81-CE-37-EC
81-CE-79-EC
82-CE-94-EC

ALJ DECISION

The ALJ found that Respondent discriminatorily refused to rehire two former employees because of their strike activity against neighboring agricultural employers. Although the two employees were employed by Respondent in a non-agricultural capacity, the ALJ found that Respondent had knowingly participated in a blacklisting scheme and therefore was liable as an agent of the agricultural employers.

The ALJ also found that Respondent discriminatorily changed its leave policy and thereafter refused to rehire two known union supporters.

Finally, the ALJ found that Respondent's technical refusal to bargain in January 1981 was not asserted with a reasonable, good faith belief that the underlying certification election was not a valid expression of its employees' free choice. Respondent's objections regarding pre-election campaigning, and its complaint over the dismissal of those objections without a hearing, were undercut by J.R. Norton Company v. ALRB (1979) 26 Cal.3d. 1. Although Respondent's refusal to bargain was a continuing violation, charges were not filed until September 16, 1981. The ALJ therefore recommended that the makewhole remedy commence six months prior to the filing of the charge, on March 16, 1981.

BOARD DECISION

The Board adopted the ALJ's findings, conclusions, and recommended remedy with modifications in the provisions regarding the notice to employees and regarding reinstatement of two employees.

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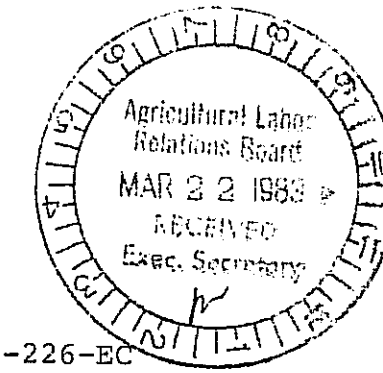

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	CASE NOS. 80-CE-226-EC
DESSERT SEED COMPANY,	81-CE-36-EC
Respondent,	81-CE-37-EC
and	81-CE-79-EC
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	82-CE-94-EC
Charging Party.	ADMINISTRATIVE LAW JUDGE'S DECISION

Appearances:

For the General Counsel:	JOSE ANTONIO BARBOSA EUGENE CARDENAS (Graduate Legal Assistant) El Centro, California
For Charging Party:	IRA GOTTLEIB Keene, California
For Respondent:	MERRILL F. STORMS, JR. GRAY, CARY, AMES & FRYE El Centro, California

STATEMENT OF THE CASE

MICHAEL H. WEISS, Administrative Law Judge:

This case was heard before me on eight hearing days between October 19 and November 4, 1982, in El Centro, California. The initial complaint was issued on October 16, 1980 and experienced a rather checkered existence thereafter. Ultimately, the complaint was amended three times, once on March 1, 1982, again on April 29, 1982, and finally on September 17, 1982. The Third Amended Complaint alleges three separate violations[1/] of Sections 1153(a),

1/ The three separate allegations will be referred to as the "Pacheco-Tapia" charge, the "Velasquez-Reyes" charge and the refusal-to-bargain charge.

(c) and (e) of the Agricultural Labor Relations Act (hereinafter the Act) by DESSERT SEED COMPANY (hereinafter Dessert Seed or Respondent).

All parties were given full opportunity to participate in the hearing[2/] and after the close of the hearing the General Counsel, Charging Party and Respondent each filed a brief in support of its respective position.

Upon the entire Record,[3/] including my observation of the demeanor of the witnesses, and after consideration of the post-hearing briefs filed by the parties, I make the following:

FINDING OF FACT

I. Jurisdiction

Respondent admits in its Answer,[4/] and I so find, that the UFW is a labor organization within the meaning of Section 1140.4(f) of the Act. Respondent denied, however, General Counsel's allegation set forth in paragraph 6 of the complaint that, "Respondent has been at all times herein an agricultural employer and/or acting in the interest of agricultural employers within the meaning of §1140.4(c) of the Act." During the hearing, Respondent entered into Stipulation II, which admits with respect to the Velasquez-Reyes and refusal-to-bargain charges that Respondent

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2/ Charging Party's Motion to Intervene pursuant to 8 Calif. Admin. Code §20208 was granted.

3/ Appendix I contains the four Stipulations of the parties.

4/ All references hereinafter to the moving papers are to the Third Amended Complaint and Answer found in General Counsel's Exhibits 1.12 and 1.16 respectively.

was an agricultural employer.[5] Respondent's denial of agricultural employer status, resulting from its jurisdictional defense raised in conjunction with the Pacheco-Tapia allegation, was retained. I accordingly find that Respondent is an agricultural employer with respect to the Valesquez-Reyes and refusal-to-bargain allegations and will discuss in more detail hereinafter Respondent's jurisdictional defense concerning the Pacheco-Tapia allegation.

II. The Unfair Labor Practice Allegations

The Third Amended Complaint makes the following allegations:[6]

1. That on or about June or July, 1980, Respondent, through its agents refused to rehire Jose De Jesus Tapia and Raul Pacheco while acting in the interest of Vessey & Company and Colace Brothers, Inc., respectively, because of Tapia's and Pacheco's concerted activities at these companies. [Referred to as the Pacheco-Tapia charge].[7]

2. That between October, 1980 and February, 1981 Respondent through its agents, refused to rehire its agricultural employees Jesus Velasquez and Jose Reyes because of their union sympathies and support. [Referred to as the Velasquez-Reyes charge].

3. That on or about August 1, 1981, Respondent unilaterally changed its employees' medical without notice to or

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5/ The Board had determined in 1976 and again in 1978 that Respondent's agricultural operation was subject to its jurisdiction. See, e.g. Dessert Seed Co., (1976) 2 ALRB No. 53 and General Counsel's Exhibit 2.9.

6/ The charging allegations are found in paragraphs 11-16 respectively of the Third Amended Complaint.

7/ The six complaint allegations were the subject of five separate charges, which the Respondent denied in its Answer,on the basis of its information and belief,to receiving timely. However, the parties entered into stipulation II which in pertinent part states that Respondent was duly served with the five charges herein.

opportunity to bargain with the UFW; in addition, Respondent has failed and refused to bargain with the UFW since approximately February 2, 1982. [Referred to as the refusal-to-bargain issue].

Respondent denies that it violated the Act and specifically asserts regarding the Pacheco-Tapia charge that (1) the ALRB has no juisdiction regarding this charge in that the jobs Pacheco and Tapia were seeking were non-agricultural jobs; (2) there is inadequate or no showing of any agency relationships between Dessert Seed and Vessey and Colace Brothers; and (3) Respondent neither had any photos in its possession nor was aware of Pacheco's and Tapia's concerted activities at Vessey and Colace Brothers respectively, and asserts its refusal to rehire the workers was for lawful reasons. Regarding the Velasquez-Reyes charges, Respondent contends that these two workers were not rehired because they sought less than year round work. Finally, Respondent asserts regarding the refusal-to-bargain charge that it had refused to so bargain from September 19, 1979, or at least January 16, 1981, in order to challenge the UFW certification. Accordingly, the August, 1981 and February, 1982 charges were untimely pursuant to Section 1160.2 of the Act.

III. Company Operations

Dessert Seed Company consists of both agricultural and non-agricultural operations. The agricultural operation in El Centro, California grows, harvests and breeds various types of field and vegetable seeds, including lettuce, onion, melon, watermelon, cauliflower, broccoli, celery, alfalfa, flowers, cotton and wheat as well as other seeds. The company's agricultural operation grows and harvests for seeds exclusively, not crops. Approximately 3000 acres were harvested in 1980 and more than 8000 acres in 1982. The agri-

cultural operation and its employees have been the subject of two ALRB certification elections, one in 1975 which was won by the Teamsters and again in December, 1977, which was won by the UFW.

Respondent's commercial or warehouse portion consists of cleaning, packaging, warehousing and selling its own seed as well as buying and selling other companies' seeds.[8/] The commercial portion of Respondent's operations has been subject to the jurisdiction of the NLRB.[9/]

Until November 1, 1980 Respondent was owned and operated by brothers, Ray and Archie Dessert, President and Vice-President respectively. On November 1, 1980, Dessert Seed formally became a division of Arco (Atlantic-Richfield Co.) with Archie Dessert remaining as Vice-President and General Manager, but as an employee of Arco.

The agricultural operation was supervised on a day-to-day basis by Russell Wagoner and assisted by Victor Gloria until sometime in the fall, 1980. As Wagoner's health failed he remained as an adviser but the day-to-day supervision of the agricultural

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8/ Annual sales are between $20 million and $21 million worldwide. VI R.T. p. 176, line 25.

9/ See Stipulation I, ¶¶ 9 and 10.

operation was assumed by Gloria.[10/]

Albert Sanchez supervised the crew of approximately 35 agricultural workers who worked year round growing, harvesting and breeding the seeds.[11/] Over the years Respondent also utilized crews from a labor contractor, Joe Anaya, to supplement, when needed, work performed by the Sanchez crew.

The commercial operation was located in a large warehouse in El Centro where Ray and Archie Dessert also had an office.[12/] A field seed cleaning division was under the supervision of foreman Mike Yslava and a vegetable-garden seed cleaning division was under the supervision of Albert Gonzalez.[13/] Each of the foremen hired

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10/ Wagoner testified at the hearing and was obviously not a well man. Absent the seriousness of his illness, I was prepared to draw adverse inferences from his testimony and not credit it. However, Respondent's attorney appropriately raised outside the presence of Wagoner the extent of his illnesses which contributed to his being relieved of much of his duties and affected the manner that he testified. Under the circumstances, it would be inappropriate to consider, and I have not, Wagoner's testimony in deciding the Velasquez-Reyes charge (the only charge Wagoner was involved in and testified about).

11/ According to Archie Dessert, members of the Sanchez crew had attained some of the longest seniority of any workers employed by an Imperial Valley employer. The crew members were also strongly and visibly UFW supporters by December, 1977.

12/ A nephew, Spike Dessert, had an office there as well. He, however, had responsibility for buying non-seed necessities or construction jobs and had no supervision over Gonzalez or Yslava, and the warehouse operation. VI,R.T.,pp.191-192. Ray and Archie Dessert were the supervisors over Gonzalez and Yslava. Ibid.

13/ Respondent declined in its Answer to admit to the supervisor status of the various Dessert Seed foremen and supervisors. However, with respect to the Velasquez-Reyes and refusal-to-bargain charges, Respondent stipulated to the supervisor status within the meaning of §1140.4(j) of the Act to Dessert, Sanchez, Gloria, Wagoner and Gonzalez. (See Stipulation II, ¶6). I further find Yslava as well to be a supervisor within the meaning of the Act.

for his own division but it was not uncommon for a worker to transfer between departments. Respondent hired both year round and seasonal workers for its commercial operation. The seasonal employment occurred from July to late September or early October.[14/]

IV. The Unfair Labor Practice Allegations

1. Pacheco-Tapia Allegation

It is not disputed that in June or early July, 1980, Raul Pacheco and Jose Tapia were denied re-employment for jobs in Respondent's commercial, i.e., non-agricultural, operation. The basis for this refusal to rehire coupled with whether the ALRB has jurisdiction to hear this matter are strongly disputed.

Raul Pacheco - At the time of his reapplication in 1980 to Dessert Seed, Raul Pacheco had worked seasonally for Colace Bros., Inc. for ten years (since 1970) in their melon and lettuce harvests as well as for Dessert Seed for ten years in their commercial seed operation. Like many agricultural workers, Pacheco (as well as Tapia) worked two seasonal jobs, returning to the other after the completion of the respective crop season. For ten years Pacheco worked the winter lettuce season (December-March) and spring melon season (April-early July) at Colace Brothers in El Centro followed by work from July to late September-early October with Respondent.

In January, 1979, a strike was sanctioned against Colace Brothers and Vessey & Co. (as well as a number of other Imperial Valley growers) by the UFW. Pacheco joined the strikers and was

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14/ See Stipulation III.

often on the picket line during January, February and March and again in October, November and December. In between these picketing periods, Pacheco sought employment from Dessert Seed again. In June he requested work from Albert Gonzalez who told him he didn't have any work at the time. Pacheco sought work from Yslava, who hired him for the season until October.

While picketing during the fall, 1979, Pacheco saw Joe Colace, Jr., the head field supervisor at the picketed fields often. On one occasion, Pacheco credibly testified that he spoke to Colace when Colace took his photo. Pacheco asked Colace, "Why are you taking my photo?". Colace replied "As a remembrance for my family". Pacheco responded, "I could give you one of my photos from home." Pacheco testified to Colace photographing him both with a still camera and later in the year with a movie camera.[15/]

In December, 1979 Pacheco asked for work from one of Colace Brothers' foremen in Calexico. He was told there wasn't any. Accordingly, he sought and obtained work cutting lettuce at Century Farms until the harvest ended in March, 1980. Also in December, 1979 34 of Colace Brothers' strikers made a written unconditional request for reinstatement through the UFW. Colace Brothers instead commenced the December harvest with replacement workers. The UFW filed a charge in December that went to complaint in January, 1980.[16/]

15/ Colace testified he took only movie pictures in the fall, which he showed only to his family. As discussed in more detail later, I do not credit Colace. Respondent objected, as hearsay, to Pacheco's testimony of Colace's statements. However, the statements were admitted and considered for their impeachment of Colace's testimony and Respondent's defense.

16/ I have taken judicial notice of applicable findings in Joe Maggio, Inc., Vessey Co. and Colace Brothers, Inc. (October 7, 1982) 8 ALRB No. 72, p. 30. See also Vessey & Co., (1981) 7 ALRB No. 44 and Colace Brothers, (1982) 8 ALRB No. 1

Pacheco testified that in March, 1980 he was one of six senior workers recalled to work by Colace Brothers for its melon harvest through the UFW and ALRB efforts. Respondent contends that the recall was solely and voluntarily by Colace Brothers. While the record is not free from ambiguity, it does not support Respondent's claim of "voluntary" reinstatement in view of the strikers' December offer of reinstatement, Colace Brothers' refusal to rehire its striking seniority workers and the pending ALRB complaint.

Pacheco credibly testified to a conversation with foreman Gonzalez in Calexico during January, 1980. While on Imperial Avenue Gonzalez pulled up in his car and got out. Gonzales spoke to Pacheco telling him that Colace, Jr. had photos of him picketing at Colace Brothers and had taken them to show to Dessert Seed Co.[17/] Gonzalez went on to say that it was possible that Pacheco would not get work there when he came back to ask for it. Pacheco replied he would file a charge if that happened.

Jose Tapia - Tapia emigrated to this country in October, 1977. In 1978 he was working with a general contractor as a laborer on small construction projects. Foreman Albert Gonzalez hired the contractor and Tapia to jackhammer the old cement and to pour a cement foundation for his garage. According to Tapia he became friendly with Gonzalez and his wife while working at their home for a couple of weeks. Gonzalez complimented Tapia on what a good worker he was and suggested that Tapia contact him at Dessert Seed if he wanted a job. Tapia was hired by Vessey & Company for its spring,

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17/ Archie Dessert is Joe Colace's uncle. Colace Brothers does approximately $5,000 yearly business with Dessert Seed.

1978 melon harvest. When one of the loaders was injured Tapia became a loader through that melon season until the end of June.

On or about June 21 Tapia went to Dessert Seed seeking work from Gonzalez, who offered him a job. Gonzalez went and obtained an application form, which he helped Tapia to fill out.[18/] He then put Tapia to work in the warehouse. For the rest of that seaon until the end-of-September layoff,Tapia worked in both Gonzalez' and Yslava's departments. In September, before the layoff Gonzalez told Tapia he was pleased with his work and hoped he would be with them again the following season. After his layoff Tapia returned to Vessey & Co. until late January or early February, 1979, when he went out on strike. Between February and June, 1979 (and again October to December, 1979) Tapia was on the picket line daily. Throughout this period he was photographed on the picket line frequently by John Vessey, his boss.[19/]

At the end of June, 1979 Tapia sought work at Dessert Seed and was rehired by Gonzalez again. After 4 or 5 weeks he was transferred to Mike Yslava's department. Tapia usually wore his Vessey & Co. hat and on one occasion that summer had a convesation with mechanic Tino in the shop while he and Tapia were welding a bumper on a jeep for Spike Dessert. Tino asked Tapia if he worked for Vessey & Co. and Tapia replied, "Yes." Tino then asked, "It's hard there right now, is the union going to win?" Tapia said,

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18/ See General Counsel's Exhibit 6.

19/ See, for example, General Counsel's Exhibits 7A-7C. There was also considerable strife and violence related to the picketing on the Vessey, Colace Brothers and seven or eight other Imperial Valley growers' fields which resulted in injunction proceedings in Imperial County Superior Court initiated by the ALRB on three or four occasions during 1979 against both the growers and the UFW.

"Yes." Tino also mentioned the problems there, including rock throwing.

Some time later, Gonzalez told Tapia that his conversation was overheard and reported to George Luce, the equipment foreman. Luce had asked Gonzalez who had been sent to the welding shop because that man was a chauvista.

Gonzalez then asked Tapia, "Why did you talk about the union in front of others; I sent you over there because Yslava needs someone and it could be you." Gonzalez told Tapia later that he was hiding him from George, whenever George would ask, "Where's Tapia?" In late August Gonzalez told Tapia there were picketing photos of him in the office and he (Tapia) was "burned." Tapia responded, "What's wrong, I haven't tried to get the workers involved here (with the union) - I've done my work." Gonzalez replied, "I don't know, you're burned, they want to get rid of you." At season's end, in early October, 1979, Tapia had a conversation with Yslava and Gonzalez. While in Yslava's office Tapia asked him, when would he (Tapia) be able to get a permanent job there. Yslava told him he wasn't going to, that there were certain "problems" with Tapia but would not discuss what the problems were.

In late September, while on a lunch break, Gonzalez came over to Tapia and briefly showed him a color photo of Tapia and his car at the Vessey picket line and laughed and said "Look". Gonzalez then told Tapia that a Vessey & Co. foreman had brought the photos to Dessert Seed.

At the end of the season Tapia had another conversation with Gonzalez. Gonzalez told Tapia, "You see, you yourself put the

noose on yourself." Tapia inquired, "Are they going to rehire me?" Gonzalez replied, "I don't think so. I can't - I can't hire you anymore." Tapia replied, "What is so wrong with being a chauvista?" Gonzalez advised Tapia to change the license plates on his car to different ones from the license plates in the photos.[20/]

Between October and December, 1979 Tapia resumed picketing at Vessey & Co. During that time two verbal confrontations occurred between Tapia and Vessey, one at a field near Vessey's home and one near a small market called "Le Chuga" store.[21/]

For approximately two months Tapia stopped picketing Vessey & Co. and cut lettuce for another Imperial Valley grower. He returned to the Vessey & Co. picket line in February, 1980 and was notified of his termination for strike misconduct after he resumed picketing. Tapia credibly testifed to another conversation with Gonzalez in April, 1980 outside the "7-11" store when in response to Tapia's inquiry when work would start Gonzalez informed him there would be no chance he would be able to return because of the photos showing his strike activity.

20/ Gonzalez denied having any conversations with Tapia concerning Vessey photos or having seen such photos or showing such photos to Tapia. As indicated hereinafter, I do not credit Gonzalez.

21/ Vessey and Tapia are both in their thirties, articulate and appear to feel strongly about their respective opposing positions in the labor strife. Each did not seem to harbor many warm feelings for the other. The parties stipulated that Vessey & Co. terminated Tapia in February, 1980 for purported strike violence. See General Counsel's Exhibit 8. The basis and validity of the termination in February, 1980 is the subject of a separate charge and hearing.

Reapplication by Tapia and Pacheco - On Monday, July 7 Pacheco and Tapia went to Dessert Seed independently about noon and sought re-employment at the same time from Gonzalez[22/]

Pacheco credibly testified that he left work at Colace Brothers with a co-worker, Luis Montero, between 11 and 12 on Monday, July 7 to ask Gonzalez for work at Dessert Seed. Montero went to ask for work as well. Pacheco, with Montero standing nearby, said to Gonzalez that he had come back for an answer whether he would be given a job. Gonzalez told Pacheco that the company would not give him a job because of the Colace photos of him picketing (including photos of him with his car and license plate). Tapia arrived while Pacheco and Gonzalez were talking. Tapia approached Gonzalez and asked for work. Gonzalez told him, "There is not going to be any work for you here; Spike, Archie and Ray have photos of you." Pacheco, Tapia and Gonzalez then went into Gonzalez's office in order for Gonzalez to talk to Spike. Montero left without asking for work after hearing the interchange between Gonzalez, Tapia and

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22/ Pacheco testified that he had visited Dessert Seed several days earlier and was told by Gonzalez that he (Gonzalez) would give him work but the company, because of the photos, wouldn't. Gonzalez told Pacheco he would talk to the others and come back back on Monday, July 7. Tapia had also earlier talked to Gonzalez about work at Dessert Seed and was told to return after the July 4 holiday. Respondent claimed that Pacheco's declaration filed in support of the charge and Tapia's NLRB charge filed by the UFW (Respondent's Exhibits A and B respectively) are materially inconsistent and impeach their hearing testimony. I do not concur. In fact, Pacheco's declaration and Tapia's NLRB charge are fully corroborative of their hearing testimony in all material matters. Moreover, Tapia and Pacheco are very credible and believable witnesses whose testimony is consistent and corroborated by the testimony of Luis Montero and Rafael Rocha, two independent witnesses.

Pacheco.[23] While waiting for Gonzalez, who left to speak to Spike Dessert, Yslava came into the office. Pacheco and Tapia both asked him for work. Yslava replied, "Why do you want work here, you make good money in lettuce," and left the office. Gonzalez returned and said, "There's no work for you. I'd put you to work, but I can't. I'd get in trouble if I did." Tapia and Pacheco then left.

Gonzalez's version regarding Pacheco's and Tapia's request for work differs. Gonzalez corroborated that Pacheco came twice a few days apart seeking work. The first time he gave Pacheco a new application. The second time was when Tapia was present as well. Gonzalez testified that Pacheco and Tapia asked him if he was going to give them a job. Gonzalez replied he would go ask Spike Dessert. They went into Gonzalez's office and he went to speak to Spike. Gonzalez returned and testified he told Pacheco and Tapia that "I don't have to hire you, there's no job."[24] Gonzalez also testified that he didn't want to hire Pacheco because he was a "troublemaker", asking for more money and benefits for he and his co-workers. He testified he would have otherwise hired Tapia, except that Tapia and Pacheco were together and Pacheco had 10 years

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23/ Montero, a Colace Brothers' seniority worker, had also picketed Colace Brothers and testified to Joe Colace, Jr. taking photos of the picketing strikers including Tapia and himself. He was a very credible witness and fully corroborated Tapia and Pacheco. Respondent's objection to Montero's testimony because he was not previously listed as a non-employee witness was denied. Montero is an agricultural employee for another employer and comes within the protection of Giumarra and the Act. Given the charges and finding of a retaliatory discriminatory refusal to hire here, the desire to protect Montero's identity and status is appropriate.

24/VI RT.97-99. Gonzalez's testimony that he asked Spike Dessert whether or not he had to hire Pacheco and Tapia is contrary to the fact that Spike had no authorization or supervision over Gonzalez and Yslava and their hiring authority. However, his testimony is consistent with the fact that he had instructions from the Desserts not to hire Tapia and Pacheco because of their union activities at Colace Brothers and Vessey & Co.

seniority while Tapia had two. During his cross-examination, Gonzalez's testimony lent support to Tapia's and Pacheco's. For instance, Gonzalez concedes there were "rumors" at the warehouse amongst the workers of existence and presence of picket line photos, although he claims to not have seen them. Gonzalez also concedes that he was told by foreman George Luce that Tapia was a "trouble-maker." Moreover, Gonzalez concedes that Tapia had asked him for warehouse work prior to July 7 and Gonzalez referred him over to the company's shop at the Navy base for a two day welding job. Gonzalez's testimony that he would have given Tapia a job if Pacheco wasn't with him is belied by the fact that Gonzalez hired 5 workers on June 27 and 20 workers between July 7 and 10. (See Stipulation III).[25/]

Tapia returned to Dessert Seed several days later accompanied by two co-workers, Rafael Rocha and Carlos Encinas. He also had a tape recorder hidden in his pocket that he had borrowed from Carlos Bowker of the ALRB's El Centro office. With Rocha and Encinas standing nearby Tapia turned on the tape and asked Gonzalez for work again. Gonzalez replied that he couldn't, that Ray, Archie and Spike (Dessert) did not want to have anything to do with him because he was a chauvista and they had the photos of him on their desk.

25/ Gonzalez's testimony, particularly when contrasted with Tapia's and Pacheco's, is not believable. Much of his testimony was given in a very fast, pat and rote delivery, appearing to be overly prepared and coached. At other times, his testimony was rambling, vague, even incoherent and often contradictory. His testimony, as a whole,is not worthy of belief. This is in sharp contrast to Tapia and Pacheco, who were particularly credible and persuasive witnesses, testifying in a clear, specific and believable manner.

Rafael Rocha also testified at the hearing and fully and credibly corroborated Tapia's testimony regarding the trip to Dessert Seed with Tapia to look for work and Gonzalez's response. He also corroborated Tapia's borrowing, using and returning the tape recorder to the ALRB office.[26/]

Procedural History of the Tapia-Pacheco complaint - Subsequent to the July 7 refusal to rehire, the UFW filed a charge against both Dessert Seed and Colace Brothers on behalf of Pacheco and Tapia.[27/] The Dessert Seed charge went to complaint in October, 1980 while the Colace Brothers complaint was dismissed by the Regional Office. The UFW did not appeal that dismissal because the Dessert Seed charge remained viable and extant. A hearing was scheduled in December for the Dessert Seed charge with a pre-hearing set for December 10. However, on December 2, the Regional Director, through the assigned staff counsel Warren Bachtel, dismissed the Dessert Seed charge, apparently because the ALRB could not remedy the alleged violation by an order to reinstate. The UFW administratively filed a review of the dismissal to the General Counsel. On January 23, 1981, Dennis Sullivan, the Deputy General Counsel, issued his order remanding the matter for further investigation to determine the basis for Dessert Seed's action and to proceed with the complaint if there was sufficient evidence that it acted in the interest of the agricultural employers. In July, 1981, the UFW filed a charge with the NLRB on behalf of Pacheco and Tapia against Dessert Seed, but it was dismissed

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26/ The tape was not produced at the hearing, however, as it had been misplaced and not found by the ALRB's El Centro office.

27/ 80 CE-226-EC and 80 CE-227-EC respectively

as untimely.[28/] In August, 1981, the outgoing Regional Director again dismissed the Dessert Seed charge without any further explanation. The UFW once again sought review of the dismissal to the General Counsel. On October 23, 1981, the matter was again remanded by the Deputy General Counsel to the Regional Director for an evaluation of the merits of the case pursuant to the original remand. Ultimately, this complaint, consolidating the Tapia-Pacheco charge with the other two charges resulted.

Analysis and Conclusion

General Counsel's Contentions: General Counsel's position is that the broad definition of an agricultural employer found in §1140.4(c) of the Act coupled with the declared policy of the Act to provide broad statutory protection to agricultural employees compel the Board to assert jurisdiction over Respondent and its conduct herein.

Respondent's Contentions: Respondent's defense falls into three categories, factual, agential and jurisdictional. Factually, Respondent claims that (1) Joe Colace, Jr. did not take photos of Raul Pacheco and (2) neither Vessey nor Colace Brothers photos were provided by these two agricultural employers to Respondent and (3) even if photos were provided to Respondent by Vessey and Colace personnel, there is insufficient showing that the providing of the photos was for the purpose of or relied upon by Dessert Seed in refusing re-employment to Pacheco and Tapia. Jurisdictionally, Respondent claims that Respondent's commercial operation is subject to NLRB jurisdiction and the jobs sought by Pacheco and Tapia were non-agricultural jobs. Accordingly, the ALRB has no jurisdiction to hear this matter.

28/ See Stipulation I, ¶12.

Discussion: In its recent decision in Verde Produce Co. (Sept. 10, 1981) 7 ALRB No. 27, the Board summarized the necessary elements in order to establish a discriminatory refusal to rehire in violation of Section 1153(c) and (a) of the Act.[29/]

To establish a prima facie case of discriminatory discharge or discriminatory refusal or failure to rehire, the General Counsel must show by a preponderance of the evidence that the employee was engaged in protected activity, that Respondent had knowledge of such activity, and that there was some connection or causal relationship between the protected activity and the discharge or failure to rehire. Jackson and Perkins Rose Company (Mar. 19, 1979) 5 ALRB No. 20.

Where the alleged discrimination consists of a refusal to rehire, the General Counsel must ordinarily show that the discriminatee applied for work at a time when work was available, and that the employer's policy was to rehire former employees. Prohoroff Poultry Farms (Feb. 7, 1979) 5 ALRB No. 9, review den. by Ct. App., 4th Dist., Div. 1, Nov. 21, 1979, hg. den. Dec. 20, 1979; Golden Valley Farming (Feb. 4, 1980) 6 ALRB No. 8, ALOD at 14, but see p. 2, fn. 1.

If the General Counsel establishes a prima facie case that protected activity was a motivating factor in the employer's decision, the burden then shifts to the employer to prove that it would have reached the same decision in the absence of the protected activity.[30/]

29/ Section 1153(a) of the Act makes it an unfair labor practice for an employer to interfere with, restrain or coerce an employee in the exercise of rights guaranteed the employees under Section 1152 of the Act. Section 1153(c) also makes it an unfair labor practice for an employer to discriminate in regard to the hiring, tenure of employment or any term or conditions of employment.

30/ Martori Brothers Distributors v. A.L.R.B. (1981) 29 C.2d 721; Wright Line, Inc. (1980) 251 NLRB No. 150 [105 LRRM 1162]; Nishi Greenhouse (Aug. 5, 1981) 7 ALRB No. 18.

Factual Contentions: Respondent's initial factual defense is premised on the contention that Joe Colace, Jr. took movie pictures, rather than photos of Pacheco and other strikers picketing Colace Brothers' property. However, the credited testimony of Pacheco and Montero is clear and substantial that Colace, Jr. took photos of them and other Colace Brothers' strikers. John Vessey conceded that he had taken photos of Tapia.[31/] I accordingly find and conclude that photos of Pacheco and Tapia picketing were taken by Colace, Jr. and Vessey respectively.[32/]

Respondent's next factual defense is that there is insufficient evidence that Respondent knew about, had seen or had been provided copies of the photos by Colace Brothers and Vessey & Co. This defense is based upon the general denials to that effect by Joe Colace, Jr., John Vessey, Archie Dessert and Albert Gonzalez. However, the general denials, particularly Gonzalez's are unpersuasive in the face of the very specific, credible and believable testimony of Raul

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31/ Vessey, in fact, had a photo album of strike and picketing photos which had been subpoenaed by the ALRB in conjunction with the Tapia discharge hearing.

32/ Support for finding that Colace, Jr. took picketing photos can be gleaned from the record of the injunction hearings brought by the ALRB against the UFW and various Imperial Valley growers including Vessey & Co. and Colace Brothers during 1979. Part of those pleadings and declarations were also included in the record of Lu-Ette Farms (1982) 8 ALRB No. 55. The declarations and pleadings established that 7 or 8 growers, including Colace Brothers, Vessey & Co. and Lu-Ette were required to institute a joint combined harvest during the January-March lettuce harvest because of the UFW sanctioned strike. Photos were taken of the striker activity, including the picketing, as part of the growers' efforts to establish, verify and monitor strike-related violence. It was in this context that John Vessey took photos of the workers' strike activities and it would have been more likely and plausible that Colace, Jr. did as well.

Pacheco, Jose Tapia, Luis Montero and Rafael Rocha. Each of these witnesses' testimony credibly corroborated the various Gonzalez admissions that the two agricultural employers provided the photos to Respondent, who considered the photos as the basis for refusing to offer re-employment to Pacheco and Tapia. Moreover, Tapia credibly testified that on one occasion Gonzalez briefly showed him a colored photo of him picketing at a Vessey & Co. field with the license plate of his car identifiable as well.

I conclude that General Counsel has presented clear, convincing and persuasive evidence that photos of Pacheco's and Tapia's involvement in union and concerted activities were provided to Respondent in 1979.

Agency Status: Respondent also argues that in any event there has been no showing that Respondent was acting as an agent of the two agricultural employers when it refused to rehire Pacheco and Tapia. Respondent contends that there is insufficient showing that Respondent was acting "in the interest of . . . agricultural employers", as required by the General Counsel's theory and reliance on §1140.4(c) of the Act.

Section 1140.4(c) provides:

> The term "agricultural employer" shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate growers, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.

Respondent argues that at most, the evidence shows that the agricultural employers provided photos that Respondent considered and relied upon in making its determination not to rehire Pacheco and Tapia. However, Respondent maintains, there is insufficient factual and agential nexus to establish that the providing of the photos was in order to cause Respondent to discriminate or to be an agent "acting in the interest" of an agricultural employer.

However, the semantic and conceptual distinction Respondent claims exists is a distinction without a substantive difference here. After considering all the testimony surrounding this issue I have concluded that the only plausible reason that the photos of Pacheco and Tapia picketing were furnished to Respondent was for the purpose of providing the necessary evidence to "blacklist" or "blackball" the two from their usual seasonal employment. The credited testimony of Pacheco, Tapia, Montero and Rocha presents consistent support to the recurring admissions made by Gonzalez that Colace Brothers and Vessey & Co. furnished the picketing photos to Respondent which provided the basis for its refusal to rehire Pacheco and Tapia. Gonzalez repeatedly told Pacheco and Tapia that their rehiring was now out of his hands. Although he (Gonzalez) would rehire them because they were good workers, he now could not for risk of getting into trouble himself.[33/]

33/ I also reject as pretextual Respondent's defense proferred through Gonzalez that Gonzalez would have hired Tapia but didn't because he sought work at the same time as Pacheco; and Gonzalez didn't want to hire Pacheco because Pacheco was a "troublemaker". Gonzalez's entire testimony was not worthy of belief. Moreover, his explanation regarding Tapia does not withstand analysis since Tapia sought employment from Gonzalez both before and after July 7 when Pacheco was there as well. Furthermore, when pressed about what Pacheco did that constituted being a "troublemaker" Gonzalez referred essentially to Pacheco's concerted efforts on behalf of himself and his co-workers. When questioned more closely Gonzalez's testimony became vague, contradictory and ultimately unworthy of belief on this matter as well as his other testimony.

Respondent's defense regarding this aspect of the Pacheco-Tapia charge that the agricultural employers did not provide picketing photos to Respondent has been rejected as contrary to the credited testimony. Respondent offered no other explanation or basis as to why the picketing photos were provided to it. I find, therefore, that the General Counsel has sustained its burden of proof that (1) Pacheco and Tapia were engaged in protected picketing activity; (2) that the respective agricultural employers, Colace Brothers and Vessey & Co. as well as Respondent, knew of such activity; (3) that Colace Brothers and Vessey & Co. furnished the photos to Respondent in order to provide evidence and basis for Respondent's refusal to rehire the two workers for their strike activity, thereby "blackballing" or "blacklisting" them; (4) that both Pacheco and Tapia applied for work when work was otherwise available, and (5) Respondent had (and has) a policy to rehire its employees from prior years.[34/]

ALRB Jurisdiction: The remaining defense raised by Respondent to this charge is an important and novel one. It raises the extent that the ALRB should assert jurisdiction where arguably or actually the NLRB would assert its jurisdiction.[35/]

34/ See, Stipulation III as to hirings; Archie Dessert's testimony regarding his crew's seniority; VI R.T. pp. 138-139 and 147-148, as to Respondent's policy to rehire its employees from prior years. See Prohoroff Poultry Farms (Feb. 7, 1979) 5 ALRB No. 9 and Golden Valley Farming (Feb. 4, 1980) 6 ALRB No. 8.

35/ While the NLRB has jurisdiction over Respondent's commercial operation, it is unclear whether it would have proceeded to the merits of the underlying charge here since the two complainants were alleged to be discriminated against because of conduct that occurred while they were in exempt status, i.e., agricultural workers, under the NLRA. The NLRB declined jurisdiction here solely because the charge was untimely.

Respondent's argument is that the NLRB and ALRB jurisdiction are mutually exclusive, regarding both "agricultural employees" and "agricultural employers". Thus, under the NLRA, once a worker has been found to be an "agricultural employee", he or she is excluded from coverage under the National Act. Conversely, under Section 1140.4(b) of the ALRA, a worker covered under the NLRA is excluded from coverage under the ALRA. Similarly, Respondent argues that since it was not functioning as an agricultural employer towards Tapia and Pacheco when it refused to rehire them, it cannot be subject to ALRB jurisdiction.

General Counsel, on the other hand, contends that the broad definition of an agricultural employer found in Section 1140.4(c) of the Act compels a jurisdictional finding to avoid shielding Respondent from otherwise unfair labor practice liability.

In Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307, the California Supreme Court affirmed the Board's reliance on the liberal principles of employer responsibility established by the NLRB and affirmed by the U.S. Supreme Court in I.A.M. v. NLRB (1940) 311 U.S. 72 and H. J. Heinz Co. v. NLRB (1941) 311 U.S. 514.

This broad employer responsibility for the conduct of others has been considerably expanded beyond the narrow scope of common law agency. It has been extended to include persons such as supervisors, H.J. Heinz Co. v. NLRB, supra; non-supervisory "leadmen", I.A.M. v. NLRB, supra; the wife of a leading foreman, NLRB v. Taylor-Colquitt Co., 140 F.2d 92 (CA 4, 1943); the manager of a building in which an employer has its offices, Northwestern Mutual Fire Association, 46 NLRB 825, 11 LRRM 242 (1943), enf. at 14 LRRM 769 (CA 9), cert. den. 15 LRRM 973; and non-employee third persons, such as businessmen, Consumers Lumber and Veneer Co., 63 NLRB 17, 16 LRRM 292 (1945).

Thus, in NLRB v. Taylor-Colquitt Co., supra, where the wife of a foreman engaged in unlawful conduct, such as breaking up union meetings, the Court upheld the Board's ruling that the employer was responsible for her actions [There was no claim the company instigated or suggested the conduct.]. Morever, where an outside party engaged in wrongful conduct, even without employer instigation, the employer was liable when it failed to disavow the activity, especially if company supervisors were, in any way, involved in the activity. Northwestern Mutual Fire Ass'n., supra.

NLRA agency law has developed its own standards in recognition of the unique needs of affixing responsibility in the labor relations context. The cases note that even after the two 1947 amendments [NLRA §2(2) and §2(13)], a liberal concept of agency was appropriate. NLRB v. General Metal Products Co., 410 F.2d 473, 475 (6th Cir. 1973); Amalgamated Clothing Workers v. NLRB (Hamburg Shirt Co.), 371 F.2d 740, 744 (D.C.Cir. 1966).

In a variety of cases the standards set forth by the NLRB and the courts reappear. See, e.g., Henry I. Siegal Co., Inc., 172 NLRB 825 (1968); Dean Industries, Inc., 162 NLRB No. 106, 64 LRRM 1193. In Dean, despite the absence of direct evidence that the company requested the assistance of the townspeople in an effort to get workers to withdraw their union support, the employer's knowledge of the actions, without a specific disavowal, was sufficient. Sprouse-Reitz Co. 199 NLRB 943, 81 LRRM 1373 (1972) [Employer held responsible for general manager's wife's conduct]; Cast Optics Corp., 79 LRRM 3093 (3rd Cir. 1972).

In Vista Verde Farms, supra, the Court expressed the rationale behind applying such expanded agency responsibility to employers:

> [W]e think that it is clear that in general an employer's responsibility for coercive acts of others under the ALRA, as under the NLRA, is not limited by technical agency doctrines or strict principles of respondeat superior, but rather must be determined, as I. A. of M. and Heinz suggest, with reference to the broad purposes of the underlying statutory scheme. Accordingly, even when an employer has not directed, authorized or ratified improperly coercive actions directed against its employees, under the ALRA an employer may be held responsible for unfair labor practice purposes (1) if the workers could reasonably believe that the coercing individual was acting on behalf of the employer or (2) if the employer has gained an illicit benefit from the misconduct and realistically has the ability either to prevent the repetition of such misconduct in the future or to alleviate the deleterious effect of such misconduct on the employees' statutory rights.

This liberalized principle has added significant when applied to the definition of agricultural employer found in Section 1140.4(c) of the Act, which in pertinent part reads:

> "The term 'agricultural employer' shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower . . . , [or] harvesting association . . . and shall include any person who owns or leases or manages land used for agricultural purposes.

I have factually concluded earlier that Respondent committed coercive conduct against two agricultural employees at the behest of two agricultural employers. In view of the broad protection accorded to all agricultural employees under Section 1152 of the Act,[36/] regardless

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36/ Section 1152 of the Act States:

> Employees shall have the right to self-organization to form, join, or assist labor organizations, to bargain collective through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .

of who the employing entity is, it follows that Respondent should be held liable for its coercive conduct against Tapia and Pacheco.[37/]

Support for this conclusion can be found in the recent decision Silas Koopal Dairy (Jan. 25, 1983) 9 ALRB No. 2, where the Board at pages 4-5 stated:

> Even if Perez were not an employee of Respondent, we would nevertheless find Respondent liable for effectively directing his unlawful discharge. There is no basis either in the declared policy of the Act or in any applicable National Labor Relations Act (NLRA) precedent construing section 1153(c) or (a) as protecting employees only from the unfair labor practices of their own employer. On the contrary the specific terms of the Act clearly manifest a legislative purpose to extend the statutory protection of section 1153(c) and (a) beyond the immediate employer-employee relationship. Thus, section 1153 makes it ". . . an unfair labor practice for an employer . . . to interfere with, restrain, or coerce, agricultural employees [not "its" agricultural employees]" or " . . . by discrmination in . . . employment, to encourage or discourage . . ." union activities of employees [not "its" employees]. The U.S. Supreme Court has affirmed the National Labor Relations Board's (NLRB) consistent holdings that a statutory employer may violate the NLRA with respect to employees other than its own. (Hudgens v. NLRB (1976) 424 U.S. 507, 510 fn. s [91 LRRM 2489].) See also Lucky Stores, Inc. (1979) 243 NLRB 642 [102 LRRM 1057], where the NLRB noted that it ". . . has consistently held that an employer may violate section 8(a) of the NLRA [comparable to section 1153(a) of our Act] not only with respect to actions taken affecting its own employees but also by actions affecting employees who do not stand in such immediate employer-employee relationship".

Additional support can be found in NLRB precedent concerned with analagous issues of when the National Board should assert jurisdiction in "gray" areas. See, e.g., International Org. of Master, Mates & Pilots (1963) 144 NLRB 1172, 1178-1179 and its progeny where the NLRB

37/ A "strict" construction of Section 1140.4(c) of the Act would include Respondent as an agricultural employer since Respondent is an entity "that owns or leases or manages land used for agricultural purposes." It is unnecessary to decide this interpretation in view of the applicability of broad agency principles.

determined that even if a local union is not a "labor organization" within the meaning of the Act [because it's made up of supervisors], nevertheless the local was deemed to be acting as an agent of a "labor organization" and asserted jurisdiction over the unlawful secondary boycott conduct. See also Olaa Sugar Co. (1957), 118 NLRB 1442; Besea Publishing Co. (1963), 140 NLRB 516, 52 LRRM 1051; Ocala Star Banner (1981), 97 NLRB 384, 29 LRRM 1108; and Camptown Bus Lines, Inc. (1976), 226 NLRB No. 3, 93 LRRM 1140.

I conclude, consistent with the ALRB and NLRB precedents set forth above, that the ALRB has jurisdiction to consider, determine and remedy Respondent's coercive conduct against Pacheco and Tapia.[38]

2. Refusal-To-Bargain Allegations

The parties, in Stipulation II attached hereto, stipulated to much of the underlying facts regarding the two refusal-to-bargain allegations.[39] The underlying facts can be summarized as follows:

On December 16, 1977 an election was held amongst Respondent's agricultural employees in which the tally was UFW 38 votes, no union

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38/ The arguments set forth in Respondent's brief, pp. 32-39, do not alter this conclusion. Respondent's reliance on People v. Medrano, 78 Cal.App.3d 198 (1978) is misplaced since it was overruled by Vista Verde Farms v. ALRB, 29 Cal.3d at 325, fn. 8. Respondent's argument that no jurisdiction can be asserted unless it is found that it was acting as an agricultural employer and Tapia and Pacheco were seeking agricultural employment merely avoids or begs the question of whether jurisdiction should otherwise be asserted here based on applicable agency principles. Respondent's "ejusdem genesis" argument similarly begs the question of the applicability of agency principles here. Nor does Respondent's preemption argument prevail because it is unclear whether the NLRB has jurisdiction to resolve the coercive conduct in this matter.

39/ The supporting documentation is set forth as General Counsel's Exhibit 2.1-2.64.

21 notes and two votes unresolved. Thereafter, Respondent filed objections to the election with the Executive Secretary who dismissed the objections on January 12, 1978, without a hearing.[40/] Respondent sought reconsideration with the Executive Secretary and then with the Board of the Executive Secretary's dismissal of the election objections without a hearing. The reconsideration motions were denied and on April 3, 1978 the UFW was certified as the exclusive bargaining representative of Respondent's agricultural employees. Correspondence between the parties resulted in negotiations being initiated on April 28, 1978. A second bargaining session occurred on May 10 and a third on June 16.[41/] On June 16 Respondent filed a Writ of Mandate in the Imperial County Superior Court seeking its order compelling the ALRB to grant a hearing on Respondent's election objections.[42/] In August, 1978 the Superior Court denied Respondent's Writ of Mandate, which was appealed to the Court of Appeal. The parties continued to bargain during the next twelve months. Archie Dessert testified uncontradicted that by August 16, 1979 the parties were "very close" to an agreement. On August 16, 1979 the Court of Appeal affirmed the Superior Court's

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40/ Respondent's objections claimed that the UFW conducted campaigning on election day contrary to an agreement between the parties. The Executive Secretary ruled that even if true, the objections failed to set forth a prima facie basis for requiring a hearing on setting aside the election.

41/ Between April 28, 1978 and August 16, 1979, fourteen negotiating sessions were attended by the parties.

42/ The UFW claims, but presented no testimony in support of its claim that June 16 was the first date it learned that Respondent was seeking to challenge its certification while also bargaining with it. Archie Dessert testified, however, that his negotiator, Tom Nassif, had so advised the UFW at one of the first two bargaining sessions. I do not consider this conflict regarding this seven week period to be of any great moment. The record is clear that the UFW knew of Respondent's intentions on June 16 with the filing of the mandate action. The parties continued to bargain thereafter for the next 15 months.

denial of a Writ of Mandate, but indicated in dictum, that it would have granted the hearing regarding the election objections. The Court of Appeal ruled that the Respondent's remedy, as stated in Labor Code Section 1160.8, was to refuse to bargain and raise its defense in an unfair labor practice proceeding.[43/]

On September 16, 1979, Respondent's attorney and negotiator, Tom Nassif, sent a letter to the UFW outlining the status of the negotiations from his perspective, referred to the recent Court of Appeal's dictum that the Court would have granted Dessert Seed an election objections hearing and concluded the letter:

> It appears that we are at an impasse in negotations and that the Company is not obligated to bargain with the Union because of the NLRB's (sic) improper denial of a hearing. A
>
> Therefore, we are notifying you of our intent to implement our last proposal as outlined above. Please advise me immediately if you have anything further to discuss.

However, no bargaining was requested by either party until October 15, 1980 when the UFW sent a letter to Archie Dessert requesting a session.[44/]

Commencing in January, 1980 Archie and Ray Dessert entered into negotiations with ARCO Co. (Atlantic-Richfield) to sell Dessert Seed Co. This culminated in a tentative agreement to sell Dessert Seed Co. to ARCO, in June, 1980, which was finalized on November 1 when Dessert Seed formally became a division of ARCO. However, according to

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43/ Dessert Seed Co. v. Brown, 96 Cal.App.3d 69, 74-75 (1979).

44/ This should be qualified to include an ambiguous letter sent by the UFW to Nassif on March 18, 1980 indicating the UFW would contact Dessert Seed when it was prepared to go forward with further bargaining.

Archie Dessert the sale became known publicly in October, 1980 when a small article to that effect appeared in the newspaper.

In October and November, 1980 an exchange of letters occurred between the UFW and representatives of Dessert Seed Co. regarding the UFW's request for bargaining. This culminated in a letter dated January 16, 1981 in which Tom Nassif confirmed in writing that Dessert Seed would not bargain with the UFW.

In August, 1981 the company implemented a new medical plan for its employees without notice to or bargaining with the UFW. In February, 1982 the UFW again requested bargaining with Respondent which resulted in a letter from Respondent's attorney on February 3, 1982 confirming that the company would not bargain with the Union.

The UFW filed a charge against the company subsequent to the implementation of the medical plan, on August 1, 1981 and receipt of Respondent's attorney's letter on February 3, 1982. These two charges were ultimately consolidated with the other charges and set for hearing herein.

General Counsel's and UFW's Contentions: The General Counsel and UFW contend that Respondent, by its failure to challenge the UFW certification by refusing to bargain with the Union after the certification in April, 1978, is now estopped or has waived its right to raise such a defense thirty three months later.

They further contend that Respondent's posture is neither "reasonable" nor in "good faith" as those terms are used in J. R. Norton Co. v. ALRB, 26 Cal.3d 1 (Dec. 12, 1979). They, accordingly, seek an order requiring Respondent to make whole its employees from April, 1978.

Respondent's Contentions: Respondent, on the other hand, contends that no waiver of its right to challenge the Union's certification can be inferred or claimed from its bargaining conduct. It claims it both bargained in good faith while at the same time seeking judicial review of the Executive Secretary's determination not to hold a hearing on its election objections. It's dual posture was pursued in order to avoid any make-whole remedy being imposed while it sought to challenge the Union's certification. Moreover, Respondent asserts that the two charges filed are barred by the six month statute of limitations in that the company informed the Union of its refusal to bargain either on September 19, 1979 or on January 16, 1981. The two refusal-to-bargain charges however were not filed until September 16, 1981 and May 5, 1982.

Analysis and Conclusion

Labor Code Section 1160.8 states in pertinent part that a person aggrieved by a final order of the Board with respect to an unfair labor practice may obtain review of such order in the Court of Appeal. The provision is nearly identical to the analogous Section 160 of the NLRA, which has been uniformly interpreted by federal courts to require an employer to obtain judicial review of certification decisions only after it has refused to bargain and the NLRB has issued a final order.[45/] As of June, 1978, three California decisions had been reported which held that ALRB certification orders could only be judicially reviewed after the employer had refused to bargain and the ALRB had issued a "final" order.[46/]

45/ See, e.g. AFL v. NLRB, 308 U.S. 401 (1940); Boire v. Greyhound Corp., 367 U.S. 473 (1964).

46/ See e.g., Nishikawa Farms, Inc. v. Mahony (1977) 66 Cal.App.3d 781; Radovich v. ALRB (1977) 72 Cal.App.3d 36; and Belridge Farms v. ALRB (June 22, 1978) 21 Cal.2d 551.

Nevertheless, respondent entered into negotiations with the UFW commencing on April 28, 1978, while also seeking judicial review of the UFW's certification, by filing a Writ of Mandate in Imperial County Superior Court on June 16, 1978.[47/] It is not disputed that the parties bargained in good faith for the ensuing 15 months until September 16, 1979. Indeed, it is uncontested that the parties were "very close" to an agreement as of the last bargaining session on August 16, 1979. Nevertheless, respondent's attorney and negotiator sent a letter to the UFW on September 16 outlining the status of the negotiations and indicating that it "appears" that they were at an impasse and further alluding to the Court of Appeals dictum on the improper hearing denial of respondent's election objections. The letter seemed to convey several messages to the union. One import of respondent's letter is that negotiations, if they were to be finalized and completed, would necessarily be along terms close to those set forth in the September 16 letter. The reference to the Court of Appeals dictum appears to be an added bargaining chip to to enhance respondent's bargaining posture. The letter's tone and conclusion leaves one with the impression that negotiations were still open and viable, but that the next move was up to the union. In fact, the union took no further action for the next thirteen months until October 15, 1980, when it requested a bargaining session with respondent. Two developments occurred during this thirteen month period which altered to some degree the parties' legal and factual bargaining posture with each other. First, on December

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47/ Respondent's attorney filed a declaration in Superior Court stating that respondent was pursuing both judicial review and bargaining in order to avoid having a make-whole order imposed upon it for challenging the union's certification in the normal unfair labor practice procedure.

12, 1979, the California Supreme Court rendered its decision in J. R. Norton Co. v. ALRB, supra. In Norton, the Court upheld the same administrative regulation and procedure which respondent sought judicial review of when it filed its Petition for Mandate seeking a hearing on its election objections. See 26 Cal.3d at 19. In addition, the Court sustained the ALRB's substantive determination that no hearing was necessary because the employer's objections and supporting declarations were insufficient to warrant a hearing. In Norton, as in Dessert Seed, the election objections raised were similar alleged improper union electioneering. See 26 Cal.3d at 19-23. Second, by June, 1980, Archie Dessert had reached tentative agreement to sell Dessert Seed to ARCO, which was formally accomplished on November 1, 1980. The exchange of correspondence between the parties in October and November, 1980 resulted in the January 16, 1981 letter from respondent's counsel to the UFW stating unequivocally, for the first time, that respondent's new owners would not bargain with the UFW. Although no reason for the refusal to bargain is given in the letter, respondent's defense raised at this hearing was that respondent sought to rely upon the Court of Appeal's dictum that the Board should have set a hearing for respondent's election objections.[48/]

The parties' respective positions concerning the bargaining history between April 28, 1978 and May, 1982 are, not unexpectedly, divergent. Respondent asserts that its bargaining while seeking judicial review does not reflect a waiver of its right to now challenge

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48/ As indicated previously, the evidence was uncontradicted that the parties were "very close" to an agreement as of September, 1979. Since no bargaining took place thereafter, there would be no substantive or factual basis to sustain a claim that the parties were actually at an impasse.

the union certification by refusing to bargain. Respondent further argues that its reliance on the Court of Appeals dictum absolves it of any claim of bad faith or unreasonableness for which a make-whole remedy can be imposed. General counsel and charging party argued that respondent has intentionally ignored the clear administrative procedures to challenge the union's certification, thereby subverting and now delaying both bargaining and certification challenge. They further contend that only a make-whole order for the entire period could adequately remedy respondent's subversion of the election challenge procedure.

After examining and considering the bargaining history and applicable precedent (e.g., Norton, supra) I have concluded that neither advocate's position would adequately protect the integrity of the election challenge process, nor would a four-year make-whole remedy be appropriate here in order to discourage a frivolous election challenge or to repair the collective bargaining process here.

In Norton, the California Supreme Court concluded that a significant reason for upholding the ALRB's rule-making authority, which permits dismissal without hearing of less than prima facie election challenge allegations, is to prevent employer "dilatory tactics designed to stifle self-organization by his employees." 26 Cal.3d at 9. A corollary of this is that the administrative rule-making and election challenge procedure furthers the Act's underlying purpose of encouraging collective bargaining between the parties.

Respondent's pursuit of both judicial review and collective bargaining at the outset of the UFW's certification, without following the clear certification challenge procedure, could have become a

dilatory tactic if the employer failed to bargain in good faith while also seeking judicial review. Such was not the case here. The record is clear and uncontradicted that respondent and the UFW both bargained in good faith for sixteen months. Indeed, by September, 1979, the parties were "very close" to agreement. Nevertheless, the parties broke off active bargaining at that point and bargaining remained in a state of limbo for the next thirteen months until October 15, 1980. The effect of that hiatus must rest as much if not more with the union as with the employer. Moreover, a period of time for the new ownership to determine what course it wishes to take concerning bargaining would also be consistent with the underlying purpose of the Act of encouraging collective bargaining between the parties.

I, accordingly, conclude that respondent's unequivocal communication on January 15, 1981 of the new owners' decision not to bargain with the union marks the first point in time where such a finding can be made and an appropriate sanction imposed.[49/] Respondent stipulates, and I so find, that it has refused to bargain as of January 15, 1981,[50/] unilaterally modified its employees' medical plan on August 1, 1981 without notice to or bargaining with the union, and again refused to bargain with the union on February 3,

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49/ While it is true that respondent had not followed the appropriate election challenge procedure and had also avoided a make-whole remedy for the April 28, 1978 to January 15, 1981 period by this conclusion, nevertheless, the UFW had not been substantively prejudiced, since respondent in fact bargained in good faith until September, 1979 while both parties are responsible for the remaining hiatus.

50/ I reject respondent's alternative contention that it had refused to bargain effective with its September 16, 1979 letter since I do not concur that the letter either says or conveys a clear intention to do so.

1982. Respondent claims that its refusal to bargain was a "technical" one in order to challenge the union's certification and is justified by the Court of Appeals' dictum. I do not concur. On December 12, 1979, the California Supreme Court's decision in J. R. Norton Co. v. ALRB, supra, rejected similar procedural and substantive claims made by the employer there. Applying the Norton two-prong test, I conclude that respondent's refusal-to-bargain posture as of January 15, 1981 was neither in good faith nor reasonable.[51/] There was ample precedent in June, 1978 affirming clear ALRB regulations establishing the proper method for an employer to challenge an election certification. Respondent chose to avoid the imputation of a make-whole remedy by instead filing a direct judicial appeal (which was ultimately dismissed and affirmed on appeal). I nevertheless "excused" such failure in view of respondent's good-faith bargaining until January 15, 1981. However, relying upon the Norton decision, I conclude that respondent's claim that its continuing election challenge is taken in good faith and is reasonable, must be rejected.[52/]

Respondent also claims that the two charges alleging the refusal to bargain are time-barred by Section 1160.2 of the Act,

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51/ See A & D Christopher Ranch (November 23, 1982) 8 ALRB No. 84, p.3, wherein the Board stated: "We shall impose the make-whole remedy unless the employer's litigation posture is reasonable at the time of its refusal to bargain and the employer seeks judicial review of the Board's certification in good faith." See also J. R. Norton Co. (May 30, 1980) 6 ALRB No. 26.

52/ Respondent's reliance on the Court of Appeals' dictum is curious. The Court rejected respondent's procedural argument and reaffirmed again the plain language of the applicable statute, regulations and judicial precedent. Moreover, the Court's dictum that it thought respondent was entitled to an election objections hearing was both procedurally and substantively overruled by the California Supreme Court's holdings in Norton four months earlier. I also declined to receive into evidence respondent's supplemental affidavits or testimony in support of its election challenge because that matter was not before me. Respondent's offer of proof is part of the ALJ hearing file.

which provides in pertinent part that "(n)o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board..." The two charges were filed on September 16, 1981 and May 7, 1982. I have concluded that respondent refused to bargain as of January 15, 1981. The UFW had made renewed demand for bargaining on October 15, 1980 and respondent's refusal to bargain is treated as a continuing one without the requirement that the union make a daily or periodic renewal of its demand. See Ron Nunn Farms (July 23, 1980) 6 ALRB No. 41; George Arakelion Farms (May 20, 1982) 8 ALRB No, 36.

Since the union had notice of respondent's refusal to bargain on January 15, 1981,[53/] and following the Board's precedent set forth in Ron Nunn, supra, I conclude that no make-whole remedy should be imposed prior to the six month statute of limitations period, or March 16, 1981 (September 16 less six months).

To summarize, it is undisputed that respondent has refused to meet and bargain with the union. It is also undisputed that respondent made unilateral changes in the medical benefits provided without bargaining with the union. Thus, respondent has violated Sections 1153(e) and (a) of the Act. I conclude that respondent's defense that its refusal to bargain is a good faith and reasonable attempt on its part to challenge the union's certification based on election objections is not in good faith or reasonable as of January 15, 1981. I further conclude that a make-whole remedy should be imposed as of March 16, 1981.

53/ Respondent's January 15 letter was confirming the phone conversation between the parties on January 15 regarding the refusal to bargain.

3. Reyes-Velasquez Charges

The facts underlying this charge are undisputed for the most part. Jose Reyes and Jesus Velasquez were employed in respondent's regular or full-time agricultural field crew for a number of years (Reyes for five years, Velasquez for thirteen years). Velasquez sought and received a leave of absence in August of 1979 from his foreman Albert Sanchez.[54/] Velasquez sought the leave of absence because that was the first year he received Social Security and by the end of August he had reached his maximum income. Additional income earned would cause an offset of his Social Security benefits. Velasquez was told to return on November 22, 1979, which he did, but was not actually put back to work until January, 1980. In late August, 1980, Velasquez again requested a leave of absence from Sanchez and credibly testified that Sanchez granted it. Sanchez, on the other hand, testified that he did not grant a leave of absence and instead told Velasquez that he (Sanchez) could not rehire Velasquez because he wasn't working year-round. Velasquez, however, persuasively testified that had Sanchez told him he would lose his job if he took the leave of absence, he would not have left. When Velasquez returned for work at the end of the year, he was told by Russell Wagoner to "wait a little bit" and return later. Velasquez returned several times during 1981 to seek work, including in April when he filled out a new application, but was not rehired. Velasquez instead worked periodically for various labor contractors, including Joe Anaya at respondent's fields, during the period he

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54/ This leave of absence was in writing. See General Counsel Exhibit 3.

was seeking re-employment with respondent.

Jose Reyes first asked Sanchez for a leave of absence in October, 1980. Victor Gloria was present when he asked. Reyes told Sanchez that he had reached the maximum income limit for his Social Security benefits and wanted to take a leave of absence and return at the end of December. Reyes credibly testified that he was granted the leave of absence by Sanchez and when he asked for something in writing was told by Victor Gloria that a written leave of absence was unnecessary: "When there's work, you come back."[55/] Reyes took the leave of absence and returned in December and asked Sanchez for work. Sanchez told Reyes it was okay with him but he would check with Russell Wagoner. Reyes returned and asked Sanchez again in December, January, and February, 1981 and each time was told by Sanchez the same thing, "Russell said to come back later."

Reyes and Velasquez went to talk to Wagoner in late February, 1981, using Sanchez as their interpreter. They asked Wagoner for work. He replied that there was no work, return in two to three weeks. Reyes then asked Velasquez, "Why is there no work for two men but there is for two or three Anaya crews?" Wagoner, according to Reyes, looked upset or annoyed, spoke briefly to Sanchez, and then left.

Reyes also returned in April, 1981 and received a company application. This he took to the union hall to obtain help in

55/ Sanchez testified that Reyes could have requested a leave of absence but he doesn't recall. Both Sanchez and Gloria testified, however, that he did not grant one. Respondent's Exhibit K states that Reyes was "terminated." However, that is considerably different to foreman Sanchez than "voluntarily quit," for the former indicates the person left and can return.

fill it out and returned it to the company several days later. Reyes also worked periodically with labor contractors while seeking work at respondent's. He also worked with Joe Anaya at respondent's fields doing the same work he usually did in Sanchez's crew.

It is not disputed that Sanchez's regular crew were strong supporters of the UFW. They (including Reyes and Velasquez) were instrumental in bringing UFW organizers to Dessert Seed Company in December, 1977, wore UFW buttons and openly spoke in support of the union. The crew provided the principal support for the union election win that December.

Respondent also does not dispute that during January through March, 1979, Reyes, Velasquez, as well as the rest of the Sanchez crew carried UFW flags with them wherever they worked in respondent's fields. They did this in order to bring pressure on respondent to sign the contract the union was negotiating with them.

Respondent does not deny that it was aware of the union support and activities of the Sanchez crew, including Reyes and Velasquez. Rather, it claims that Reyes' and Velasquez's support was nominal or less when compared to more vocal spokesmen such as Roberto Comacho and Adolfo Suno, who both still work for respondent.

Respondent's additional defense is that it refused to rehire Reyes and Velasquez solely because the two workers sought to work when they wanted to rather than when the company wanted them to. A careful review of the evidence, however, shows that respondent's defenses do not withstand analysis.

First, both Velasquez and Reyes were very credible witnesses. While respondent presents its reason for refusing to rehire these two as one of general applicability to its employees, in fact,

respondent exercised considerable discretion as to who was and was not granted leaves of absence. Respondent does not dispute that at least two of its steady employees, Hepolito Perez and Magdaleno Rosales, are granted leaves of absence each year and allowed to return.[56/] Respondent also granted leaves of absence to Rogelio Sandoval, a Sanchez crew member, in 1979 and 1980 when he reached his maximum income for Social Security purposes. Through his son's efforts, he was rehired again in 1981 by respondent's foreman George Luce, to work at the respondent's field near the Navy base. He worked there approximately one to one and a half months before being laid off in October, 1981. When Sandoval asked Victor Gloria whether he would send him to the other (regular) crew, Gloria replied, "I can't send you over there because we have a problem from a charge filed by Jose (Reyes) and Jesus (Velasquez). Later, if this (charge) is resolved, we will try and help you."[57/] Rogelio Sandoval's testimony was very believable and credible and was fully corroborated by his son, Francisco Sandoval, who is an irrigator for respondent and helped his father get the job.

Respondent concedes that in 1981 and 1982 there was work for Reyes and Velasquez, but instead of hiring them respondent hired new workers or used Joe Anaya's crew more. In order to properly

56/ See Stipulation IV. Respondent distinguishes them because they were not in Sanchez's crew. Respondent also concedes that the presence or absence of these two workers or any regular worker would not affect respondent's ability to have the work performed. This would apply, as well, to Velasquez and Reyes.

57/ Gloria denies making such statements.

evaluate the credited testimony, respondent's defense of its refusal to rehire Velasquez and Reyes should be placed in context. Until September, 1979 the UFW and respondent were actively negotiating a contract and close to agreement. Granting leaves of absence to union supporters such as Reyes and Velasquez would be consistent with the UFW's active presence at respondent's company. However, by the fall of 1980, a new ownership had taken over who had made a decision to not bargain with the union and also to challenge their certification and presence at Dessert Seed. Granting oral leaves of absence (as found in the testimony of Velasquez and Reyes) without telling the workers that they would not be rehired if they took the leaves of absence, is also consistent with the new ownership's posture relative to the union.

Moreover, respondent's argument that it retained more vocal UFW supporters such as Adolfo Suno and Roberto Camacho is not persuasive. First, it is not disputed that Reyes and Velasquez, as well as the others, were known UFW supporters and as part of Sanchez's crew were instrumental in bringing the UFW to respondent's agricultural operation. Second, there is no evidence that Suno or Camacho sought leaves of absence, for Social Security or other purposes, so that their presence at respondent's is not probative that respondent did not discriminate against Reyes and Velasquez. Third, the treatment of Suno and Camacho is also susceptible to the inference that their more vocal support of the UFW protected them. A failure to provide equal or fair treatment of them would more likely be regarded as having illicit motives. While both Reyes and Velasquez credibly testified that they preferred to work less than a full year because of their Social Security benefits, nevertheless, if informed that they would not

be rehired if they took leaves of absence, they would have worked year-round.

Analysis and Conclusion

The applicable legal standards and elements of a discriminatory refusal to rehire are set forth on page 18, supra, with reference to the Tapia-Pacheco charges.

After considering all the testimony, Stipulation IV including Respondent's Exhibits E-K and General Counsel's Exhibits 10 and 11, I conclude that the General Counsel has sustained its burden of proof and presented a prima facie case that respondent discriminatorily refused to rehire Reyes and Velasquez. Moreover, I conclude that respondent's defense that it refused to rehire Reyes and Velasquez because they did not work when the company wanted them to was pretextual. The credited testimony is that respondent's supervisors never told the two workers that they would not be rehired for taking their leaves of absence. I specifically find that (1) Reyes and Velasquez were actively engaged in protected union activity in December, 1977, and again in 1979; (2) that respondent knew of this activity; (3) that Reyes and Velasquez sought leaves of absence in 1980 but were not informed by respondent that they would not be rehired if they took the leaves of absence. Respondent's refusal to rehire the two workers was in order to avoid re-employing known union supporters; (4) both Reyes and Velasquez reapplied for work when work was otherwise available; and (5) respondent maintained a policy to rehire its employees from prior years. I accordingly conclude that respondent has violated Sections 1153(c) and (a) of the Act when it refused to rehire Reyes and Velasquez.

THE REMEDY

Having found that respondent has engaged in certain unfair labor practices within the meaning of Sections 1153(a), (c) and (e) of the ACt, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act as follows:

1. Having found that respondent discriminatorily refused to rehire Jose Reyes and Jesus Velasquez, I recommend their reinstatement to their former jobs with back pay and full seniority and other rights from the date that each initially sought reemployment in December, 1980, together with interest in accordance with the Board's order in Lu-Ette Farms, Inc. (1982) 8ALRB No. 55.

2. Having found that respondent discriminatorily refused to rehire Jose Tapia and Raul Pacheco, but doubtful that respondent can be ordered to reinstate them to nonagricultural jobs, I recommend that Tapia nad Pacheco be made whole for all financial losses incurred as a result of the refusal to rehire together with interest in accordance with the Board's order in Lu-Ette Farms, Inc. supra.

3. Having found that respondent failed to bargain in good faith in violation of its duty pursuant to Section 1153(e) of the Act, I shall recommend that respondent be ordered to cease and desist from unilaterally providing medical benefits to its workers and refusing to meet and bargain with the UFW. I will further recommend that respondent be ordered to cease and desist from unilaterally changing or modifying employment benefits which are subject to bargaining with its workers' certified bargaining agent.

4. I further recommend that notice of the violations and remedies and of the rights of the employees protected by law should be posted, mailed and read to respondent's employees in accordance with current Board practice.

O R D E R

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

Respondent Dessert Seed Company, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to hire or rehire, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any union activity or other concerted activity protected by Section 1152 of the Act.

(b) Refusing to bargain collectively in good faith with the UFW as the exclusive representative of its agricultural employees as required by Section 1153(e) of the Act and in particular (1) unilaterally changing benefits, terms or conditions of employement without notice to and good faith bargaining with the UFW and (2) refusing to meet and confer with the UFW and bargain in good faith.

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

(a) Immediately offer to Jose Reyes and Jesus Velasquez full reinstatement to their former jobs or equivalent

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB or Board) by the United Farm Workers of America, AFL-CIO (UFW), the certified bargaining representative of our employees, the General Counsel of the ALRB issued a complaint which alleged that we, Dessert Seed, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we had violated the law by failing or refusing to bargain with the UFW, by unilaterally changing our employees' terms and conditions of employment without notifying or bargaining with the UFW, and by refusing to rehire Jose Reyes, Jesus Velasquez, Jose Tapia and Raul Pacheco.

The Board has told us to post and publish 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 it is true you have these rights, we promise that:

WE WILL meet with your authorized representatives from the UFW, at their request, for the purpose of reaching a contract covering your wages, hours, and conditions of employment.

WE WILL make whole all of our employees who suffered any economic losses as a result of our failure and refusal to bargain with the UFW since March, 1981.

WE WILL, if the UFW asks us to do so, rescind any of the changes we have previously made by changing the medical benefits and plan, and we will reimburse with interest those present and former employees who suffered any money losses because we unlawfully made changes in the medical benefits and plan.

WE WILL NOT hereafter refuse to rehire, or in any way discriminate against, any agricultural employee because he or she has engaged in union activities or has filed charges with the Board or given testimony at its hearings.

WE WILL offer to reinstate Jose Reyes and Jesus Velasquez to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they have lost because we refused to rehire them, plus interest.

WE WILL reimburse Jose Tapia and Raul Pacheco for any pay or other money they lost because we refused to rehire them, plus interest.

Dated: DESSERT SEED COMPANY

By: _____

Representative Title

If you have a question about your rights as farm workers or about this notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, 92243. 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.

employment, without prejudice to their seniority or other rights or privileges.

(b) Make whole Jose Reyes, Jesus Velasquez, Jose Tapia and Raul Pacheco for any loss of pay and any other economic losses they have suffered as a result of the refusal to rehire them, reimbursement to be made according to the established Board precedents, plus interest thereon in accordance with the Board's decision in Lu-Ette Farms, Inc., supra.

(c) Upon request of the UFW, rescind the medical plan granted in August 1982, and, thereafter, meet and bargain collectively with the UFW, at its request, regarding such change.

(d) Upon request, bargain collectively in good faith with the UFW as the exclusive representative of its agricultural employees, and if an understanding is reached, embody such understanding as a signed agreement.

(e) Make whole all agricultural employees employed by Respondent from March 16, 1981, to the date Respondent commences good faith bargaining with the UFW which leads to a contract or a bona fide impasse, for all losses of pay and other economic losses sustained by them as the result of Respondent's refusal to bargain, such losses to be computed in accordance with this Board's precedents, plus interest computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1982), 8 ALRB No. 55.

(f) Preserve and, upon request, make available to this Board and its agents, for examination and 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 back pay period and the amount of back pay due under the terms of this Order.

(g) 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.

(h) 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 during the period from December 1980 until the date on which the said Notice is mailed.

(i) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its premises, the time(s) and place(s) 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.

(j) Arrange for a representative of respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its 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 of 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 in order to compensate them for time lost at this reading and during the question-and-answer period.

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

DATED: March 11, 1983

AGRICULTURAL LABOR RELATIONS BOARD

Michael H. Weiss

MICHAEL H. WEISS
Adminstrative Law Judge

APPENDIX I

STIPULATIONS I - IV

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DESSERT SEED COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	CASE NO. 80-CE-226-EC, et al. STIPULATIONS RE ALRB JURISDICTION

1. The Regional Director issued a complaint based on Charge No. 80-CE-226-EC on October 16, 1980.

2. On December 2, 1980, that complaint was rescinded and Charge No. 80-CE-226-EC was dismissed pursuant to the Regional Director's determination "that the Agricultural Labor Relations Board lacks jurisdiction in this matter."

3. On December 16, 1980, the UFW appealed the dismissal.

4. On January 23, 1981, Charge No. 80-CE-226-EC was remanded to the region by the Deputy General Counsel for the ALRB for further investigation.

5. On August 31, 1981, the complaint was again dismissed by the Regional Director on the basis of his determination that "the ALRB does not have jurisdiction in the instant case."

6. On September 11, 1981, the UFW appealed the dismissal.

7. On March 1, 1982, a new complaint based on Charge No. 80-CE-226-EC was issued.

8. The positions of employment at issue in Charge No. 80-CE-226-EC were seasonal jobs at Respondent's warehouse in El Centro, California.

9. The National Labor Relations Board has previously asserted jurisdiction over Respondent's warehouse in El Centro, California, and over the permanent and seasonal workers employed therein.

10. The NLRB conducted a representation election among Respondent's warehouse employees in El Centro, California, on August 26, 1976.

11. On July 30, 1981, Jose de Jesus Tapia filed Charge No. 21-CA-20508 with the NLRB alleging that Respondent's failure to hire him in July, 1980, violated the National Labor Relations Act.

12. The NLRB's Regional Director investigated Charge No. 21-CA-20508 and on September 10, 1981 determined that it was barred by the NLRA's statute of limitations.

DATED: October 20, 1982.

Counsel for the General Counsel, ALRB

Attorney for Charging Party

Attorney for Respondent

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter Of:	)	
	)	
DESSERT SEED COMPANY,	)	CASE NOS. 80-CE-226-EC
	)	81-CE-36-EC
Respondent,	)	81-CE-37-EC
	)	81-CE-79-EC
and	)	82-CE-94-EC
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	STIPULATIONS II
	)	

It is hereby stipulated by and among the General Counsel of the Agricultural Labor Relations Board (herein Board) and Dessert Seed Company (herein Respondent or Employer) and United Farm Workers that:

I. FACTS

1. A true and correct copy of the original charge in Case No. 80-CE-226-EC was filed by the Charging Party on July 11, 1980, and was duly served on Respondent.

2. A true and correct copy of the original charge in Case No. 81-CE-36-EC was filed by the Charging Party on March 23, 1981, and was duly served on Respondent.

3. A true and correct copy of the original charge in Case No. 81-CE-37-EC was filed by the Charging Party on March 23, 1981, and was duly served on Respondent.

4. A true and correct copy of the original charge in Case No. 81-CE-79-EC was filed by the Charging Party on September 16, 1981, and was duly served on Respondent.

5. With respect to charges 81-CE-36-EC, 81-CE-37-EC, 81-CE-79-EC and 82-CE-94-EC, Respondent admits it was an agricultural employer within the meaning of §1140.4(c) of the Act at all times material herein.

6. With respect to charges 81-CE-36-EC, 81-CE-37-EC, 81-CE-79-EC, and 82-CE-94-EC, Respondent admits that at all times material herein the following persons have been supervisors within the meaning of §1140.4(j):

ARCHIE DESSERT	Vice-President
ALBERT SANCHEZ	Foreman
VICTOR (OR VICTORIANO) GLORIA	Supervisor
RUSSELL WAGNER	Supervisor
ALBERT GONZALEZ	Foreman

7. Tom Nassif was the attorney and negotiator for Dessert Seed Company from November, 1977 to June, 1980 and from December, 1980 to April, 1981.

8. Merrill Storms was the attorney and negotiator for Dessert Seed Company from May, 1980 to the present.

9. December 9, 1977, UFW Petition for Election. (Exhibit 2.1).

10. On December 16, 1977, an election was held whereby the UFW received 38 votes, no union received 21 votes and two votes were unresolved. (Exhibit 2.2).

11. On December 21, 1977, Respondent Dessert Seed Company filed a Petition for Hearing on Certification of Election, Case No. 77-RC-23-EC. (Exhibit 2.3).

12. On January 12, 1978, the Executive Secretary dismissed Respondent's Petition for Hearing on Certification of Election, Case No. 77-CE-23-EC. (Exhibit 2.4).

13. On January 19, 1978, Respondent requested review of Executive Secretary's dismissal of Petition for Hearing on Certification of Election. (Exhibit 2.5).

14. On March 1, 1978, the Executive Secretary denied Respondent's Request for Review, dated January 19, 1978. (Exhibit 2.6).

15. On March 8, 1978, Respondent filed Motion for Reconsideration and Stay of Certification. (Exhibit 2.7).

16. On March 29, 1978, the Executive Secretary denied Respondent's Motion for Reconsideration and Stay of Certification. (Exhibit 2.8).

17. On April 3, 1978, the UFW was certified by the Executive Secretary, Agricultural Labor Relations Board. (Exhibit 2.9).

18. Letter of April 5, 1978, from UFW to Archie Dessert. (Exhibit 2.10).

19. Letter of April 24, 1978, from Tom Nassif to Ann Smith. (Exhibit 2.11).

20. Attendance sheet dated April 28, 1978. (Exhibit 2.12).

21. Attendance sheet dated May 10, 1978. (Exhibit 2.13).

22. Letter from Tom Nassif to Ann Smith, dated May 24, 1978. (Exhibit 2.14).

23. Letter from W.R. Hoffman to Ann Smith, dated May 30, 1978. (Exhibit 2.15).

24. Attendance sheet dated June 16, 1978. (Exhibit 2.16).

25. On June 16, 1978, the Respondent filed a Pre-Emptory Writ of Mandate in the Imperial County Superior Court. (Exhibit 2.17).

26. Attendance sheet dated June 19, 1978. (Exhibit 2.18).

27. Letter from W.R. Hoffman to Tom Nassif, dated June 30, 1978. (Exhibit 2.19).

28. Attendance sheet dated July 13, 1978. (Exhibit 2.20).

29. Letter from Tom Nassif to Ann Smith, dated July 13, 1978. (Exhibit 2.21).

30. Letter from Tom Nassif to Ann Smith, dated August 1, 1978. (Exhibit 2.22).

31. Attendance sheet August 16, 1978. (Exhibit 2.23).

32. On August 23, 1978, an Order of Judgment denying Writ of Mandate was issued by the Honorable Don R. Work of the Superior Court of Imperial Valley. (Exhibit 2.24).

33. On September 15, 1978, the Respondent filed a Notice of Appeal of Order Denying Writ of Mandate. (Exhibit 2.25).

34. Letter from Richard Chavez to Tom Nassif, dated December 19, 1978. (Exhibit 2.26).

35. Attendance sheet dated January 19, 1979. (Exhibit 2.27).

36. Letter from Vicky Kellerman to Dolores Huerta, dated January 29, 1979. (Exhibit 2.28).

37. Attendance sheet dated February 1, 1979. (Exhibit 2.29).

38. Attendance sheet dated February 9, 1979. (Exhibit 2.30).

39. Attendance sheet dated February 16, 1979. (Exhibit 2.31).

40. Attendance sheet dated March 5, 1979. (Exhibit 2.32).

41. Letter from Tom Nassif to Dolores Huerta dated May 4, 1979. (Exhibit 2.33).

42. Letter from Dolores Huerta to Tom Nassif dated May 9, 1979. (Exhibit 2.34).

43. Letter from Tom Nassif to Dolores Huerta dated June 9, 1979. (Exhibit 2.35).

44. Letter from Dolores Huerta to Tom Nassif, dated June 13, 1979. (Exhibit 2.36).

45. Letter from Mary I. McCarthy to Tom Nassif, dated July 12, 1979. (Exhibit 2.37).

46. Letter from Vicky Kellerman to Dolores Huerta dated July 26, 1979. (Exhibit 2.38).

47. On August 16, 1979, the Court of Appeals issued its decision in Dessert Seed Co. v. Brown (1979) 96 Cal. App.3d 69, dated August 16, 1979.

48. Letter from Tom Nassif to Dolores Huerta dated September 19, 1979. (Exhibit 2.39).

49. On December 12, 1979, the Court of Appeals issued J.R. Norton Co., Inc. v. ALRB, 26 Cal.3d 1.

50. Letter from Ann Smith to Tom Nassif dated March 18, 1980. (Exhibit 2.40).

51. Letter from Ann Smith to Archie Dessert dated October 15, 1980. (Exhibit 2.41).

52. Letter from Archie Dessert to Ann Smith, dated October 21, 1980. (Exhibit 2.42).

53. Letter from Ann Smith to Tom Nassif dated November 14, 1980. (Exhibit 2.43).

54. Letter from Merrill Storms to Ann Smith , dated November 19, 1980. (Exhibit 2.44).

55. Letter from Tom Nassif to Ann Smith, dated November 25, 1980. (Exhibit 2.45).

56. Letter from Tom Nassif to Ann Smith, dated January 16, 1981. (Exhibit 2.46).

57. Mailgram to Tom McAffee dated January 31, 1982, from David Martinez. (Exhibit 2.47).

58. Mailgram to Ray Dessert from David Martinez, dated February 2, 1982. (Exhibit 2.48).

59. Letter from Merrill Storms to David Martinez dated February 3, 1982. (Exhibit 2.49).

60. Since December, 1971 to July, 1981, the agricultural employees of Dessert Seed Company were covered by the WGA Trust Plan 22 Group Medical Plan.

61. On August 1, 1982, the company implemented the ARCO New Ventures Medical Insurance Plan without notice to or bargaining with the United Farm Workers.

62. WGA MEDICAL PLAN 22 (Exhibit 2.50).

63. Dessert Seed Company benefits program, Medical Plan dated August 1, 1981. (Exhibit 2.51).

64. Medical Plan information dated January 1, 1982. (Exhibit 2.52).

DATED: 10/20/82

BY: _____
Merrill Storms, Esq.
Gray, Cary, Ames & Frye

AGRICULTURAL LABOR
RELATIONS BOARD
El Centro Regional Office

DATED: 10/20/82

BY: _____
Jose Antonio Barbosa
for the General Counsel

DATED: 10/20/82

BY: _____
United Farm Workers

STIPULATION III

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	CASE NOS. 80-CE-226-EC
	)	81-CE-36-EC
DESSERT SEED COMPANY,	)	81-CE-37-EC
	)	81-CE-79-EC
Respondent,	)	82-CE-94-EC
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	STIPULATIONS III
Charging Party.	)	

It is hereby stipulated by and among the General Counsel of the Agricultural Labor Relations Board (herein Board) and Dessert Seed Company (herein respondent or employer) that:

1. The following named inviduals first reported ~~were hired~~ for seasonal work in the company's warehouse operation during the designated payroll periods.

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Payroll Period Ending Date	Employee Name	Employee Number	Employee Social Security Number	W-2 Pay	Year to Date
06-03-80 5/28/80	Jesus S.Jimenez, Jr.	6767	559-53-2986	204.00	204.00
06-03-80 5/28/80	Jesus Jimenez, Sr.	6775	547-46-8076	262.50	262.50
06-03-80 5/28/80	Natividad R. Martinez	6759	563-53-4449	204.00	204.00
07-01-80 6/27/80	Jose Aguirre	6831	553-27-2853	155.13	155.13
07-01-80 6/27/80	Oscar Beltran	6849	550-82-4879	164.25	164.25
07-01-80 6/18 Y	Isabel De Leon	6807	571-38-5460	392.00	392.00
07-01-80 6/27/80	Florencio Medina	6815	564-44-9979	144.50	144.50
07-01-80 6/27/80	Roberto Zaragoza	6823	550-72-2601	155.13	155.13
07-15-80 6/27/80	Hector D. Castillas	6890	553-66-1240	259.25	259.25
07-15-80 7/9/80 Y	Cavazos Eliazar	7179	555-96-2521	72.00	72.00
07-15-80 7/14/80Y	Ascencion Contreras	7144	546-60-9117	76.50	76.50
07-15-80 7/14/80Y	Jesus Corrales	7195	550-82-2968	76.50	76.50
07-15-80 7/14/80Y	Victor Corrales	7153	558-64-5270	76.50	76.50
07-15-80 7/9/80	Enrique Q. Espinoza	6406	559-57-9999	259.25	259.25
07-15-80 7/9/80	Miguel P. Garcia	6922	550-06-5127	259.25	259.25
07-15-80	~~Frank Goldner~~	7088	567-08-6775	320.00	320.00
07-15-80 7/9/80	Manuel Lizaola	6930	563-48-7250	259.25	259.25
07-15-80 7/14/80Y	Antonio C. Lopez	7136	554-51-6185	72.00	72.00
07-15-80 7/14/80Y	Diego C. Lopez	7187	548-27-3186	72.00	72.00
07-15-80 7/14/80	Gilberto L. Lucero	7128	559-29-4269	72.00	72.00

Payroll Period Ending Date		Employee Name	Employee Number	Employee Social Security Number	W-2 Pay	Year to Date
07-15-80	7/9/80	Alfredo A. Meza	6948	573-27-7932	232.00	232.00
07-15-80	7/9/80	Heriberto Meza	6957	565-41-5676	232.00	232.00
07-15-80	7/9/80	Ruben R. Ortiz	6473	571-25-9428	244.00	244.00
07-15-80	7/9/80	Adolfo Ozuna	6965	559-66-8449	259.25	259.25
07-15-80	7/9/80	Luis Meza Padilla	7011	545-57-4070	232.00	232.00
07-15-80	7/9/80	Ruben R. Partida	7037	553-62-2239	259.25	259.25
07-15-80	7/10/80	Roberto Ibarra Perez	7102	565-59-1320	166.00	166.00
07-15-80	7/14/80Y	Raul Mungarro Pineda	7110	552-72-5367	72.00	72.00
07-15-80	7/9/80	Raul E. Ramirez	6914	570-49-7016	232.00	232.00
07-15-80	7/9/80	Nicolas G. Ramos	6981	565-15-0661	246.50	246.50
07-15-80	7/15/80Y	Juan M. Robles	7096	553-29-0598	38.25	38.25
07-15-80	7/9/80	Alberto Rodriguez	6999	545-08-9501	244.00	244.00
07-15-80	7/9/80	Miguel Rodriguez	7029	545-08-9493	184.00	184.00
07-15-80	7/9/80	Antonio Roldan	7003	552-31-8487	244.00	244.00
07-15-80	7/9/80	Jorge Sandoval	7045	557-90-7989	259.25	259.25
07-15-80	7/9/80	Esteban Z. Solano	7054	563-70-4882	259.25	259.25
07-15-80	7/7/80	Ismael Solano	7062	546-68-1778	247.50	247.50
07-15-80	7/14/80Y	Hector Valenzuela	7201	558-55-1473	76.50	76.50
07-15-80	7/14/80Y	Mario A. Vasquez	7161	566-57-5855	72.00	72.00
07-29-80		~~Andy Armenta~~	7252	561-51-4445	320.00	320.00

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In The Matter Of:	)	CASE NOS. 80-CE-226-EC
	)	81-CE-36-EC
DESSERT SEED COMPANY,	)	81-CE-37-EC
	)	81-CE-79-EC
Respondent,	)	82-CE-94-EC
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	STIPULATIONS IV
	)	

It is hereby stipuled by and among the General Counsel of the Agricultural Labor Relations Board (herein Board) and Dessert Seed Company (herein respondent or employer) that:

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1. The following named employees worked in the crew of Alberto Sanchez, at the Dessert Seed Agricultural operation during the years 1978 to 1981, as follows:

A. 1978 Work History

1) Jose L. Reyes worked the week of January 3, 1978 through the week of December 26, 1978. He was on vacation for the weeks ending August 8th, 15th, and 22nd.

2) Jesus Velasquez worked the week of January 3, 1978 through the week of December 26, 1978; he was on sick leave from week ending July 13 to August 29, 1978.

3) Magdaleno Rosales worked the week of February 28, 1978 through the week ending July 18, 1978.

B. 1979 Work History

1) Jose L. Reyes started working the week of January 2, 1979 and continued to work the entire year of 1979.

2) Jesus Velasquez worked from the week of January 2, 1979 until August 21, 1979. (Granted leave of absence). He worked the week of August 28, 1979. (Granted leave of absence). He did not work again in 1979.

3) Magdaleno Rosales started working the week of April 3, 1979 and stopped working the week of September 25, 1979. He did not work the rest of 1979.

4) Rogelio Sandoval was first hired at Dessert Seed Company the week of May 29, 1979 and continued working until the week of October 31, 1979. He did not work the rest of 1979.

C. 1980 Work History

1) Jose L. Reyes started working the week

of January 1, 1980 and stopped working the week of November 4, 1980. He did not work for Dessert Seed Company in 1981 nor 1982.

2) Jesus Velasquez started working the week of January 8, 1980. He stopped working the week of August 26, 1980. He did not work for Dessert Seed Co. after August 26, 1980, nor the years of 1981 and 19

3) Magadleno Rosales started working the week of March 25, 1980. He stopped working the week of September 30, 1980.

4) Rogelio Sandoval started working the week of March 25, 1980 and stopped working the week of October 28, 1980. He did not work for the Sanchez crew the entire year of 1981 or 1982.

5) New workers hired in Albert Sanchez crew in 1980: Rene Fimbres, Vicente Ramirez, and Carlos Gonzalez, (hired September 2, 1980).

D. 1981 Work History

1) Magadleno Rosales started working the week of February 17, 1981 and stopped working the week of September 29, 1981.

2) New workers hired in 1981: (Sanchez crew) Ruperto Gutierrez, hired August 11, 1981; Antonio Gutierrez, hired August 11, 1981; Armando Corona, hired August 11, 1981.

2. The following sheets constitute a summary of Joe Anaya's payroll records for the years 1980, 1981, and 1982, for work performed at Dessert Seed Company.[1/]

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1. ✓ means one crew worked that day.
✓✓ means two crews worked that day.
✓✓✓ means three crews worked that day.
✓✓✓✓ means four crews worked that day.
N: number on the right hand side means number, including forman, who worked at Dessert Seed Company on the designated date.

Desert Seed Co
80-CE-22L-EE, et al
AVAYA 1980 Payroll Records - 1980

JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUGUST
1		✓ 41					
2		✓ 41					
3		✓ 32					
4 ✓ 33	✓ 33	✓✓ 41, 34			✓ 35	✓ 34	
5 ✓ 33	✓ 33	✓ 41			✓ 37		
6	✓ 33	✓✓ 33, 41			✓ 32		
7 ✓ 33	✓ 31	✓✓ 33, 41			✓ 31		
8 ✓ 33	✓ 33	✓ 42					
9	✓ 33			✓ 13	✓ 35		
10		✓ 40		✓ 7	✓ 35	✓ 24	
11	✓ 33				✓ 37		
12	✓ 39	✓ 41		✓ 13	✓ 37		
13		✓ [illegible] 41		✓ 13	✓ 37		
14 ✓ 33		✓ 41		✓ 13	✓ 35		
15 ✓ 33		✓ 42		✓ 13			
16 ✓ 32				✓ 13			
17		✓ 40		✓ 13			
18		✓ 41					
19		✓ 41		✓ 13			
20 [illegible]				✓ 13			
21 [illegible]				✓ 13			
22 ✓ 33				✓✓ 33, 13			
23 ✓ 33				✓✓ 34, 13			
24 ✓ 34				✓✓ 30, 13			
25 ✓ 33				[illegible]			
26 ✓ 33	✓ 33			✓✓ 34, 13	✓ 35		
27	✓ 35			✓✓ 34, 13	✓ 39		
28 ✓ 33	✓ 40			✓✓ 34 13	[illegible]	[illegible]	
29 ✓ 33	✓ 41			✓ 13			
30				✓ 13			
31							
32 14 days	12 days	16 days	8 days	19 days	12 days	6	8
33		3 days (2x)		6 days (2x)			
34							
35							
36							
37							
38							
39							
40							

1980

	SEPT	OCT	NOV	DEC
1	✓	✓ 32	✓✓ 36, 36	✓ 34
2	✓	✓ 35		✓ 35
3			✓ 35	✓ 33
4			✓ 35	✓ 34
5			✓ 34	
6		✓ 31	✓ 35	
7		✓ 32	✓ 35	
8		✓ 34	✓✓ 39, 39	
9				
10		✓ 37		
11				
12				
13				
14		✓ 35	✓ 22	
15		✓✓ 34, 34		
16		✓✓ 36, 33		
17		✓✓✓ 34, 33, 36		
18		✓✓✓ 35, 33, 33	✓ 36	✓ 36
19			✓ 31	✓ 36
20		✓✓ 33, 30	✓ 33	✓ 36
21		✓✓ 35, 35		
22		✓✓ 34, 36		✓ 35
23		✓✓ 36, 33		✓ 38
24		✓✓ 36, 34		✓ 36
25				
26				✓ 34
27		✓ 37		
28		✓ 36		
29		✓✓ 35, 36		✓✓ 31, 33
30		✓✓ 36, 36		✓✓✓ 35, 34, 39
31		✓✓ 36, 35		✓✓✓ 34, 32, 32
32				
33		21 days	11 days	14 days
34		10 (2x)	2 days (2x)	1 (2x)
35		2 (3x)		2 (3x)
36				
37				
38				
39				
40				

Desert Seed Co. 1981 p.1
85-TE-226-EG et. al
Angus 1980 Payroll Records

	JAN	Feb	March	April	May	JUNE	JULY	August
1					✓ 35	✓✓ 18 36	✓✓ 21 33	
2	✓✓✓ 32 38 29	✓✓ 34 32				✓✓ 18 33		
3	✓✓✓ 35 34	✓ 34	✓✓ 35 35			✓✓ 18 27		
4	✓ 36	✓ 34	✓✓ 34 35			✓✓ 18 35		
5	✓✓ 34 34	✓ 35			✓ 36	✓✓ 29 38		
6	✓✓ 34 35	✓✓ 35 35	✓✓ 34 35		✓ 36	✓✓ 35 36		
7	✓✓✓ 35 34 36	✓✓ 37 21	✓ 35		✓ 36	✓✓ 20 28		
8	✓✓✓ 35 36 30				✓ 36	✓✓ 25 29		
9	✓✓ 33 36					✓✓ 34 36		
10		✓ 36				✓✓ 34 36		
11		✓ 34	✓ 35		✓ 11	✓✓✓ 33 38 36		
12		✓ 36	✓ 39		✓ 13	✓✓✓ 34 38 40		
13		✓ 36	✓ 38		✓✓ 26 14	✓✓✓ 25 34 36		
14		✓ 36	✓ 35		✓ 15	✓✓ 34 36		
15					✓ 15	✓✓✓ 32 33 38		
16		✓ 36			✓ 15	✓✓✓ 34 36 41		
17		✓ 36						
18		✓ 37	✓ 27		✓ 16			
19	✓ 35	✓ 36	✓ 34		✓ 14			
20	✓ 39	✓ 36	✓ 33	✓ 33	✓ 14	✓ 25		
21	✓✓ 35 32	✓ 36		✓ 35	✓ 14			
22	✓✓ 35 33			✓ 34	✓ 14			
23	✓✓ 32 35	✓ 36			✓✓ 34 14			
24	✓ 31	✓ 35			✓ 34		✓ 31	
25		✓✓ 34 36						
26	✓✓ 35 32	✓✓ 36 36			✓✓ 14 34			
27	✓✓ 31 34	✓✓ 35 36		✓ 33	✓✓ 14 34	✓ 29		
28	✓✓ 30 35	✓✓ 34 36		✓ 32	✓✓ 14 33			
29	✓✓ 32 36			✓ 32	✓✓ 18 33			
30	✓✓ 33 33			✓ 31	✓✓ 18 34	✓ 31		
31								
32	4 days	16 days	8 days	7 days	16 days	5 days	1 day	
33	12 days (2x)	7 days (2x)	3 days (2x)		7 days (2x)	10 days (2x)	1 day 2x	
34	3 days (3x)					4 days (3x)		
35								
36								
37								
38								
39								

Utah Seed Co.
SD-CE-226-EE, et al.
Analysis 1980, Payroll Records
1981

	Sept	Oct.	Nov	Dec
1				✓✓ 34 36
2			✓✓ 34 34	✓✓ 35 35
3			✓✓ 34 34	✓✓ 34 35
4			✓✓ 34 35	✓✓ 31 36
5		✓ 32	✓✓ 34 35	✓✓ 36 36
6		✓ 32	✓✓ 34 35	
7		✓ 32	✓✓ 34 35	✓✓ 34 35
8		✓✓ 31 32		✓✓ 34 36
9		✓✓ 33 35	✓✓ 34 34	✓✓ 33 35
10		✓ 34	✓✓✓ 34 35 35	✓✓ 34 34
11			✓✓✓ 34 35 35	✓✓ 34 35
12		✓ 34	✓✓✓ 34 35 36	✓✓ 34 36
13		✓ 34	✓✓ 34 35	
14		✓ 34	✓✓✓ 34 34 43 45	✓✓ 34 35
15		✓✓ 34 34	✓ 31	✓ 35
16		✓✓ 33 34	✓✓ 34 34	✓ 35
17		✓✓ 33 34	✓✓ 34 35	✓ 35
18			✓ 35	✓ 35
19		✓✓ 33 35	✓✓ 34 35	✓ 35
20		✓✓ 34 35	✓✓✓ 34 35 41	
21		✓✓✓ 34 40 35	✓✓✓ 34 34 41	
22		✓✓ 34 35		
23		✓✓✓ 29 34 34	✓✓✓ 34 34 35	
24		✓✓ 34 35	✓✓✓ 34 34 36	
25			✓✓ 34 37	
26		✓✓ 34 35	✓✓ 34 35	
27		✓✓ 34 37		
28		✓✓ 34 35	✓✓ 34 35	
29		✓✓ 34 36		✓ 35
30		✓✓ 34 35	✓✓ 34 34	✓ 35
31		✓✓ 34 34		✓ 35
32				
33		7 days	2 days	6 days
34		16 days (2x)	15 days (2x)	12 days (2x)
35		1 day (3x)	7 days (3x)	
36			1 day (4x)	
37				
38				
39				
40				

Desert Sea, 80-CE-22-6-EL, et al.

ANAYA 1982 PA. ROLL

80-CE-22-6-EL, et al.

	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUGUST
1		✓ 36	✓ 35			✓✓ 33, 15, 18		
2		✓ 35	✓ 36			✓✓ 38, 30		✓ 31
3		✓✓ 35, 42	✓ 34	✓ 35		✓✓ 31, 37		
4	✓ 35	✓✓ 42, 35	✓✓ 36, 36			✓✓ 35, 36		
5	✓ 34	✓✓ 36, 42	✓✓ 38, 35	✓ 26 ✓	38	✓✓ 33, 37		
6	✓ 35	✓✓ 42, 35	✓✓ 34, 35	✓ 26 ✓	34			
7	✓✓ 30, 36				✓ 35	✓✓ 28, 35		
8	✓✓ 35, 23	✓✓ 41 35	✓✓ 34, 34			✓✓✓ 37, 25, 34		
9	✓✓ 35, 35	✓✓ 42, 35	✓✓ 34, 34			✓✓✓ 34, 33, 36		
10		✓ 41	✓✓ 35, 36		✓	25 ✓✓✓ 35 29, 37		
11		✓ 41	✓✓ 35, 36		✓	20 ✓✓✓ 34, 35, 39		
12		✓ 41	✓✓ 25, 27		✓	29 ✓✓✓ 34, 35, 36		
13	✓✓ 35, 35	✓ 40	✓ 18		✓	41		
14	✓✓ 35, 36				✓	40		
15	✓✓ 35, 35	✓ 41	✓ 34	✓ 35	✓	40		
16	✓✓ 35, 35	✓ 41	✓✓ 35, 34	✓ 33			✓ 33	
17		✓ 41	✓ 36	✓ 35	✓	40	✓ 35	
18	✓✓ 35, 36	✓ 42	✓ 35		✓	41		
19	✓✓ 35, 36	✓ 34			✓	19	✓ 35	
20	✓ 35	✓ 36	✓ 36	✓ 25	✓	20	✓ 36	
21	✓ 34			✓ 25	✓	19	✓ 11	
22	✓ 36	✓✓ 36, 32	✓ 35		✓	18	✓ 36	
23		✓✓ 36, 35	✓ 34			✓ 36	✓ 35	
24		✓✓ 42, 35	✓ 37		✓	19 ✓ 36	✓ 36	
25	✓ 33	✓✓ 42, 35	✓ 38		✓✓ 23	20		
26	✓ 35	✓✓ 42, 35	✓ 36	✓ 25	✓✓ 35	18		
27	✓ 35	✓ 35		✓ 27	✓✓ 33	18		
28	✓ 34			✓ 37	✓✓ 34	18	✓ 34	
29	✓ 34		✓ 36	✓ 29	✓✓ 35	18 ✓ 32	✓ 33	
30			✓ 32	✓ 33		✓ 34	✓ 36	
31								
32								
33	20 days	24 days	24 days	13 days	21 days	15 days	11 days	1 day
34	9 (2x)	11 (2x)	9 (2x)		5 (2x)	5 (2x)		
35						6 (3x)		
36								
37								
38								
39								
40								

Desert Seed Company 80-CE-226-EC, et al.
ANAYA 1982 Payroll
80-CE-226-EC, et al.

SEPT	OCT	NOV	DEC.

✓ 12
✓ 21
✓ 21

3. Mr. Jose Reyes worked in Joe Anaya's crew while Joe Anaya was performing work for Dessert Seed Company, on the following dates:

In 1981: February 2, 6, and 7.
In 1982: June 8 and 9.

4. Mr. Jesus Velasquez worked in Joe Anaya's crew while Joe Anaya was performing work for Dessert Seed Company, on the following dates:

In 1981: February 2, 6, and 7.
In 1982: June 8 and 9.

5. Mr. Hipolito Perez - 1981 Work History

A. Mr. Hipolito Perez worked from September 30, 1981 through December 30, 1981.

B. Mr. Hipolito Perez - 1982 Work History

Mr. Hipolito Perez worked from January 1, 1982 through August 10, 1982.

1. The week of August 4 through August 10, 1982, Mr. Perez worked August 4, 5, and 6.

2. The week of August 11, through August 17, 1982, Mr. Perez did not work, his time sheet indicates he was on vacation for that week.

3. The General Counsel has no further record of Mr. Hipolito Perez' work record after August 17, 1982.

/

By: _____ 11/4/82

JOSE ANTONIO BARBOSA
for the General Counsel
AGRICULTURAL LABOR RELATIONS BOARD

DATED

By: _____ 11/4/82

Merrill Storms, Esq.
GRAY, CARY, AMES & FRYE

DATED

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In The Matter Of:	)	CASE NOS. 80-CE-226-EC
	)	81-CE-36-EC
DESSERT SEED COMPANY,	)	81-CE-37-EC
	)	81-CE-79-EC
Respondent,	)	82-CE-94-EC
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	STIPULATION IV
	)	
Charging Party.	)	
	)	

It is hereby stipulated by and among the General Counsel of the Agricultural Labor Relations Board (herein Board) and Dessert Seed Company (herein respondent or employer) that:

1. Hipolito Perez worked at Dessert Seed Company's agricultural research operation during the years 1979 through 1982, as follows:

A. 1979 Work History:

1979 Weeks Ending		
January 30, 1979	April 3, 1979	June 5, 1979
February 6, 1979	April 10, 1979	June 12, 1979
February 13, 1979	April 17, 1979	June 19, 1979
February 20, 1979	April 24, 1979	June 26, 1979
February 27, 1979	May 1, 1979	July 3, 1979
March 6, 1979	May 8, 1979	July 10, 1979
March 13, 1979	May 15, 1979	October 16, 1979
March 20, 1979	May 22, 1979	October 23, 1979
March 27, 1979	May 29, 1979	October 30, 1979

1979 Weeks Ending Cont.

November 27, 1979	December 18, 1979
December 4, 1979	December 25, 1979
December 11, 1979	

B. 1980 Work History:

1980 Weeks Ending		
March 4, 1980	May 27, 1980	September 30, 1980
March 11, 1980	June 3, 1980	October 7, 1980
March 18, 1980	June 10, 1980	October 14, 1980
March 25, 1980	June 17, 1980	October 21, 1980
April 1, 1980	June 24, 1980	October 28, 1980
April 8, 1980	July 1, 1980	November 11, 1980
April 15, 1980	July 8, 1980	November 18, 1980
April 22, 1980	July 15, 1980	November 25, 1980
April 29, 1980	July 29, 1980	December 2, 1980
May 6, 1980	September 9, 1980	December 16, 1980
May 13, 1980	September 16, 1980	December 30, 1980
May 20, 1980	September 23, 1980	

C. 1981 Work History:

1981 Weeks Ending		
March 10, 1981	April 28, 1981	June 16, 1981
March 17, 1981	May 5, 1981	June 23, 1981
March 24, 1981	May 12, 1981	June 30, 1981
March 31, 1981	May 19, 1981	July 7, 1981
April 7, 1981	May 26, 1981	July 28, 1981
April 14, 1981	June 2, 1981	September 15, 1981
April 21, 1981	June 9, 1981	September 29, 1981

1981 Weeks Ending Cont.

October 6, 1981	November 10, 1981	December 15, 1981
October 13, 1981	November 17, 1981	December 22, 1981
October 20, 1981	November 24, 1981	December 29, 1981
October 27, 1981	December 1, 1981	
November 3, 1981	December 8, 1981	

D. Mr. Hipolito Perez - 1982 Work History:

Mr. Hipolito Perez worked from January 1, 1982 through August 10, 1982.

BY: _____ 12/7/82
JOSE ANTONIO BARBOSA — DATED
FOR THE GENERAL COUNSEL
AGRICULTURAL LABOR RELATIONS BOARD

BY: _____ 11/29/82
Merrill Storms, Esq. — DATED
GRAY, CARY AMES & FRYE

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APPENDIX II

State of California Agricult· ıl Labor Relations Board

APPENIDIX II

EXHIBIT WORK SHEET
(Respondent Exhibits)

CASE NAME: DESSERT SEED CASE NUMBER(S): _____

RESP.	IDENT.	ADMIT/ REJECT.	DESCRIPTION	__/__/8 ALO	__/__/8 DOCKET CLERK	__/__/8 FILE ROOM	__/__/8 BOARD COUNSEL
A	10/22/ 82	10/22/ 82	7/11/80 declaration of Pacheco for impeachment purposes				
B	11/1/ 82	No.	NLRB charge 6/17/81-				
C	11/3/ 82	11/3/ 82	3-3-81 wkly. payroll record of Dessert Seed for R.Sandoval				
D	11/3/ 82	11/3/ 82	Dessert Seed wkly. P/R 1/8/80 Sanchez crew re.J.Velasquez				
E	11/4/ 82	11/4/ 82	6-13-78 Velasquez "sick" Dessert Seed P/R				
F	11/4/ 82	11/4/ 82	8-8-78 - J. Reyes - "on lv. Dessert Seed P/R				
G	11/4/ 82	with- drawn	8-21-79 Dessert Seed P/R WITHDRAWN				
H	11/4/ 82	11/4/ 82	9-4-79 Dessert Seed P/R re J. Velasquez - "on lv"-				
I	11/4/ 82	11/4/ 82	8-26-80 Dessert Seed P/R re J. Velasquez				
J 1-3	11/4/ 82	11/4/ 82	9-2-80 Dessert Seed Co. P/R re J. Velasquez-Name Not There				
K	11/4/ 82	11/4/ 82	11-4-80 Dessert Seed P/R J. Reyes - "Terminate" -				

DESSERT SEED COMPANY

APPENDIX I

GENERAL COUNSEL'S WITNESSES

	NAME	IDENTIFICATION	VOL. & PAGE #	DATE TESTIFIED
1.	ARCHIBALD "ARCHIE" DESSERT	V.P., DESSERT SEED CO.	Vol.I pp.56-134 Vol.II pp.1-56	10/19/82 10/20/82
2.	ALBERT SANCHEZ	FOREMAN	Vol.II p.57-124	10/20/82
3.	VICTOR GLORIA	SUPERVISOR & ASSISTANT MANAGER	Vol.II pp.124-156	10/20/82
4.	RUSSELL WAGONER	ASSISTANT MANAGER	Vol.II pl.156-171	10/20/82
5.	JOSE REYES	FORMER WORKER - ALLEGED DISCRIMINATEE	Vol.III pp.2-87	10/21/82
6.	JESUS VELASQUEZ	FORMER WORKER - ALLEGED DISCRIMINATEE	Vol.III p.88 Vol.IV pp.4-20	10/21/82 10/22/82
7.	ROGELIO SANDOVAL	FORMER DESSERT SEED WORKER	Vol.IV pp.21-32	10/22/82
8.	RICARDO GORDILLO	CURRENT WORKER WITH DESSERT SEED	Vol.IV pp.33-51	10/22/82
9.	VICENTE RAMIREZ	CURRENT WORKER WITH DESSERT SEED TESTIMONY IS STIPULATED TO	Vol.IV pp.50-52	10/22/82
10	FRANCISCO SANDOVAL	FORMER DESSERT SEED WORKER	Vol.IV pp.53-58	10/22/82
11	RAUL PACHECO	ALLEGED DISCRIMINATEE	Vol.IV pp.59-101	10/22/82
12	LUIS MONTERRO	COLACE BROTHERS AGRICULTURAL WORKER	Vol.IV pp.102-114	10/22/82
13	JOSE DE JESUS TAPIA	FORMER DESSERT SEED EMPLOYEE - ALLEGED DISCRIMINATEE	Vol.V pp.5-106	11/1/82
14	RAFAEL ROCHA	NEIGHBOR OF JOSE TAPIA	Vol.V pp.100-116	11/1/82

15	JON VESSEY	GROWER, GENERAL MANAGER VESSEY & CO.	Vol.VI pp.2-28	11/1/82

RESPONDENT'S WITNESSES

1.	JOE COLACE, JR.	GENERAL MANAGER COLACE BROTHERS	Vol.VI pp.29-64	11/2/82
2.	MIKE YSLAVA	GENERAL SUPERVISOR DESSERT SEED CO.	Vol.VI pp.64-92 pp.157-165	11/2/82
3.	ALBERTO GONZALEZ	DESSERT SEED FOREMAN	Vol.VI pp.93-156	11/2/82
4.	ARCHIE DESSERT (RECALLED)	V.P. OF DESSERT SEED	Vol.VI pp.166-194	11/2/82
			Vol.VIII pp.2-15	11/4/82
5.	VICTOR GLORIA (RECALLED)	SUPERVISOR - ASSISTANT MANAGER	Vol.III pp.6-29	11/3/82
6.	ALBERTO SANCHEZ (RECALLED)	FOREMAN	Vol.VII pp.30-62	11/3/82
			Vol.VIII pp.16-48	11/3/4/82

State of California Agricultural Labor Relations Board

APPENDIX II

EXHIBIT WORK SHEET
(General Counsel Exhibits)

80-CE-226-EC
81-CE-36-EC
81-CE-37-EC
81-CE-79-EC
82-CE-94-EC

CASE NAME: DESSERT SEED CO. CASE NUMBER(S):

G.C.	IDENT.	ADMIT/ REJECT.	DESCRIPTION	__/__/8 ALO	__/__/8 DOCKET CLERK	__/__/8 FILE ROOM	__/__/8 BOARD COUNSEL
1	10/19/82	10/19/82	Moving Papers				
2 2.1-2.52	10/19/82	11/1/82	Papers and Documents Part of Stipulation				
3	10/20/82	10/20/82	8-29-79 Lv. of Absence form to Jesus Velasquez				
4	10/21/82	10/21/82	4-27-81 Employment Applic.of Jose Reyes				
5	10/21/82	10/21/82	4-27-81 Employment Applic.of Jesus Velasquez				
6	11/1/82	11/1/82	6/78 Personnel Record of Dessert Seed Co. for Jose Tapia				
7 A B C	11/1/82	11/1/82	3 photos of Mr. Jose Tapia				
8	11/1/82	11/1/82	2-9-80 letter Vessey & Co. to UFW				
9	11/1/82	11/1/82	1981 Dessert Seed applic. for Jose Tapia				
10	11/4/82	11/4/82	8-21-79 Dessert Seed Co. P/R 'term" w/word quit for Jiminez				
11	11/4/82	11/4/82	5-29-79 Dessert Seed Co. P/R Pedro Medina - "Quit"				

DOCKETING INFORMATION

CASE NAME: Dessert Seed CASE NUMBER(S): 81-EC-226-EC

1. Were any charges consolidated at hearing? ☐ Yes ☒ No
   If your answer is yes, list charges that were consolidated at hearing.

2. Were any charges severed at hearing? ☐ Yes ☒ No
   If your answer is yes, list charges that were severed at hearing.

3. Were any charges dismissed or withdrawn at hearing? ☐ Yes ☒ No
   If your answer is yes, list charges that were dismissed or withdrawn.

4. Were any charges settled at hearing? ☐ Yes ☒ No
   If your answer is yes, list charges that were settled at hearing.