STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

THOMAS S. CASTLE FARMS, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 82-CE-7-SAL 82-CE-7-1-SAL 9 ALRB No. 14

DECISION AND ORDER

Pursuant to Title 8, California Administrative Code, section 20260, the parties have filed a Stipulation of Facts and briefs directly with the Agricultural Labor Relations Board (ALRB or Board). The parties have agreed that the Stipulation of Facts, along with documents incorporated therein by reference, shall constitute the entire record herein and that, as there is no conflict in the evidence, a hearing has been waived.

Pursuant to provisions of Labor Code section 1146,[1/] the Board has delegated its authority in this matter to a three-member panel.

THE TECHNICAL REFUSAL TO BARGAIN

Findings of Fact

On August 20, 1980, Board agents conducted a representation election among Respondent's agricultural employees. The United Farm Workers of America, AFL-CIO (UFW) won the election by a

[1/] All section references herein are to the California Labor Code unless otherwise noted.

two to one margin.[2/] Thereafter, Respondent Thomas S. Castle Farms, Inc. timely filed 24 post-election objections. The Board set five of those objections for hearing. After an investigative hearing was held, and upon the recommendation of the Investigative Hearing Officer (IHE), the Board, on February 23, 1982, dismissed the post-election objections and certified the UFW as the exclusive collective bargaining representative of Respondent's agricultural employees.

On the same day, February 23, 1982, the UFW sent a request to bargain to Respondent. On April 7, 1982, Respondent, by letter, advised the UFW of its refusal to bargain.

Conclusions of Law

This Board has adopted the National Labor Relations Board's (NLRB) proscription against relitigation of previously resolved representation issues in subsequent related unfair labor practice proceedings, absent a showing of newly discovered or previously unavailable evidence, or other extraordinary circumstances. (Ron Nunn Farms (1980) 6 ALRB No. 41.) As Respondent has not presented any newly discovered or previously unavailable evidence and has claimed no extraordinary circumstances, we shall not reconsider the representation issues in this proceeding. Accordingly, we conclude that Respondent violated section 1153(e) and (a)

[2/] The Tally of Ballots showed the following results:

UFW	122
No Union	61
Challenged Ballots	28
	211
Void Ballots	5
Total	216

by its failure and refusal to meet and bargain collectively in good faith with the UFW at its request.

Remedy

We now turn to a consideration of whether makewhole should be awarded to the employees in the bargaining unit in order to remedy Respondent's unlawful refusal to bargain. When an employer refuses to bargain with a labor organization in order to gain judicial review of a Board certification, as in the instant matter, we consider the appropriateness of the makewhole remedy on a case-by-case basis. (J. R. Norton Company v. Agricultural Labor Relations Bd. (1979) 26 Cal.3d 1.) The Supreme Court in Norton directed us to examine whether the employer's litigation was based on a reasonable and good faith belief that conduct occurred which infringed on employee free choice or that misconduct occurred which tended to affect the results of the election. We have interpreted that to mean

> ... that the employer's litigation posture must have been reasonable at the time of the refusal to bargain, and that the employer must have acted in good faith.
> (J. R. Norton (1980) 6 ALRB No. 26.)

In our analysis of whether Respondent's litigation posture was reasonable, we shall consider two separate lines of inquiry: the reasonableness of Respondent's reliance on its post-election objections and the reasonableness of its reliance on the litigation challenging the showing of interest.

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The Post-election Objections.[3] As previously stated, Respondent timely filed 24 post-election objections. The Board set five for hearing and dismissed the remainder.[4] After an administrative hearing, the Board adopted the recommendation of the IHE, dismissed the five objections, and certified the UFW. (Thomas S. Castle Farms, Inc. (1982) 8 ALRB No. 13.) The five dismissals were based upon credibility resolutions and a finding that Respondent failed to prove its contentions. The issues did not involve any novel legal theories.[5] As we do not consider the issues raised by the post-election objections to be close cases or meritorious challenges, and noting the wide margin of victory by the UFW, we find that it was not reasonable for Respondent to refuse to bargain with the UFW on the basis of the post-election objections. (C. Mondavi, dba Krug Winery (1980) 6 ALRB No. 30; George Arakelian (1980) 6 ALRB No. 28; Ron Nunn Farms (1980) 6 ALRB No. 41.)

The Showing of Interest. Section 1156.3(a) of the Agricultural Labor Relations Act (Act) requires that an election

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[3] Respondent's post-election objections numbers 1 and 2 alleged an inadequate showing of interest. The Board affirmed the Executive Secretary's dismissal of those objections, which were the subject of litigation between the parties. We shall discuss that issue in the following section on this opinion.

[4] Each of those dismissals was based on the absence of an adequate supporting declaration or the insufficiency of the underlying legal theory. (Dessert Seed v. Brown (1979) 96 Cal.App.3d 69 [157 Cal.Rptr. 598]; J. R. Norton Co. v. ALRB, supra.)

[5] The Board's findings were grounded on purely factual determinations, for example: that the ballot box was not left unattended; that a UFW observer did not electioneer in the balloting area; and that there was no evidence of fraud in the voting.

petition be accompanied by a showing of interest by a majority of the employer's currently employed agricultural employees, and the Board's Regulations set forth the procedure to be followed. (Regulation 20300(g) and 20300(j).)

Pursuant to Regulation 20300(j)(2), the Board agent gave the UFW an additional 24 hours to submit more authorization cards because there was an insufficient showing of interest filed with the petition. It is uncontested that additional authorization cards, sufficient to constitute the required majority showing of interest, were subsequently submitted by the UFW. However, those additional cards were delivered "some hours" after the 24-hour deadline and were delivered to a Board agent in Hollister rather than at the Board's Salinas Regional Office. Respondent asserts that its refusal to bargain based on the above technical violations of the Regulations was reasonable.[6/] In Respondent's words, the Regional Director was acting ultra vires, i.e., beyond his powers, in directing the election as there was no timely and adequate showing of interest.

Respondent further argues that its litigation posture, even if in error, must have been reasonable since a superior court judge agreed with it. We find no merit in either argument.

On October 23, 1981, the Superior Court of San Benito County issued a writ of mandate ordering the Regional Director to

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[6/] The only departure from the Regulation we find is the delivery of the cards some hours after the 24 hour deadline. We do not believe the Regulations require that such cards be delivered only at the regional office. However, we do not find this interpretation of the Regulations to be necessary to our resolution of this case.

dismiss the election petition on the basis that he had acted ultra vires by directing an election upon an inadequate showing of interest. On October 30, 1981, the ALRB filed an appeal of the writ which automatically stayed the action of the superior court. On February 9, 1983, the Court of Appeal reversed the judgment of the superior court.

The Regulations clearly state that the showing of interest determination is not reviewable:

> The regional director's determination of the adequacy of the showing of interest to warrant the conduct of an election shall not be reviewable. (Reg. 20300(j)(5).)

Since 1979, our Decisions have held that the adequacy of the showing of interest is not a litigable matter and is not reviewable as a post-election objection. (Jack or Marion Radovich (1976) 2 ALRB No. 12; John V. Borchard Farms (1976) 2 ALRB No. 16; Jerry Gonzales Farms (1976) 2 ALRB No. 33; Skyline Farms (1976) 2 ALRB No. 40; Gonzales Packing Company (1976) 2 ALRB No. 48; Louis Delfino, Co. (1977) 3 ALRB No. 2; Napa Valley Vineyards (1977) 3 ALRB No. 22.)

In so holding, we have followed the policy and practice of the NLRB. (S&H Kress & Co. (1962) 137 NLRB 1244 [50 LRRM 1361], revd. on other grounds, 317 F.2d 225 [53 LRRM 2024]; NLRB v. Air Control Products of St. Petersburg, Inc. (5th Cir. 1964) 335 F.2d 245 [56 LRRM 2904].)

A superior court does not have jurisdiction to review the Board's dismissal of post-election objections as such action does not constitute a final order of the Board. (Radovich v. ALRB (1977) 72 Cal.App.3d 36; Nishikawa Farms, Inc. v. Mahenly, et al (1977)

66 Cal.App.3d 781.) The court in Nishikawa found specifically that the showing of interest was purely an administrative matter, not jurisdictional, and not reviewable:

> Showing of interest serves the same purposes under the ALRA as it does under the NLRA; it permits the agency to devote its time and resources to those cases where there is some reasonable expectation that a bargaining agent will be selected. ... As stated in NLRB v. National Truck Rental Co. (D.C. Cir. 1956) 239 F.2d 422, 424-425 cert. den. 352 U.S. 1016 [1 L.Ed. 2d 547, 77 S.Ct. 561], "It is not essential to the Board's jurisdiction to order an election ... that a formal showing be made that the unions have been designated by a substantial number of employees. Rather than being jurisdictional these requirements are merely steps in the screening process by which the Board determines whether the claims of representation, prima facie, warrant the expense and effort of an election .... As to the showing of substantial employee interest by the petitioning unions prior to the election, there is no reason for permitting litigation of the issue by the parties; the purpose of the requirement is to make Board operations more efficient and compliance with the requirement is a matter solely for administrative determination." (See NLRB v. Air Control Products of Petersburg, Inc., supra, F.2d 245; Kearney & Trecker Corp. v. NLRB, supra, 209 F.2d 782, 787-788; NLRB v. White Const. and Eng. Co., supra, 204 F.2d 950, 953.)

Respondent has tried to distinguish the instant matter from Nishikawa, supra, arguing that it is not contesting the adequacy of the showing of interest, but the timing. Even if this were a material distinction, neither the Act nor the Regulations proscribe elections for a late-filed showing of interest where the petition is timely filed, and the courts have held that election time limits are directory, not mandatory. Although the Act states that elections "shall be directed... within a maximum of seven days" (section 1156.3(a)), that language has been interpreted as directory, rather than jurisdictional, and the Board's certification of the results of an election held on the ninth day after the petition was

filed was held not to be an abuse of discretion. (Radovich v. ALRB (1977) 72 Cal.App.3d 36.)

We have been unwilling to order makewhole for technical refusals to bargain where the employer's refusal to bargain is based upon a reasonable litigation posture that is lodged in good faith. (J. R. Norton Co. (1980) 6 ALRB No. 26, Rev. den. by Ct.App., 4th Dist., Div. 1, Jan. 8, 1981.) However, as we find that Respondent's refusal to bargain was based on an unreasonable litigation posture, we shall order Respondent to make its employees whole for a period commencing on the date of the UFW's first post-certification request to bargain with Respondent.

Respondent's objections do not raise any novel issues. National Labor Relations Act (NLRA) precedent is and had been available, and ALRA precedent is consistent with that of the NLRA holding that the showing of interest is not a jurisdictional requirement for an election. Courts of Appeal had affirmed these ALRB Decisions, prior to the date of Respondent's refusal to bargain, and had also held that a trial court has no jurisdiction to review the Board's direction of an election. In a case where an employer had refused to bargain, in part, on the basis of a purported inadequate showing of interest, this Board found that the employer's position challenging the showing of interest was an unreasonable litigation posture. (Ron Nunn Farms (1980) 6 ALRB No. 41.) The instant matter differs from Ron Nunn Farms only in that the San Benito Superior Court issued the writ prior to Respondent's refusal to bargain, a fact to which we attach no

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great significance.[7/] We find that Respondent's challenge of this long-standing and well-established precedent regarding the non-reviewability of the showing of interest is unreasonable.

UNILATERAL CHANGES AND DIRECT DEALING

The Complaint alleges that Respondent made unilateral changes in its employees' working conditions in violation of section 1153(e) and (a) of the Act, during the period from February 11, 1982, through March 3, 1982. We certified the UFW on February 23, 1982.

The NLRB holds that an employer must maintain the status quo between the election and the Board's resolution of the certification issue where it appears a union might be certified. (Presbyterian Hospital in the City of New York (1979) 241 NLRB 996 [101 LRRM 1001]; Mike O'Connor Chevrolet (1974) 209 NLRB 701 [85 LRRM 1419].) The ALRB, in adopting that rule in Highland Ranch & San Clemente Ranch, Ltd (1975) 5 ALRB No. 54, stated as follows:

> While there is no legal obligation to enter into the comprehensive negotiations contemplated by section 1155.2(a), "absent compelling economic considerations for doing so, an employer acts at its peril in making changes" in existing terms and conditions of employment while the certification issue is pending before the Board. Thus, information to and consultation with the union prior to such changes may be found to have been required by a subsequent certification of the union at the exclusive bargaining agent. (pp. 7-8.)

[7/] We find that a superior court decision which is contrary to all established precedent does not alter the character of an unreasonable litigation posture. In any event, Respondent could not argue that it was relying on said writ as it was stayed at the time of Respondent's refusal to bargain.

The Complaint alleges that Respondent unilaterally changed its method of payment for pruning work on February 11, increased the pay rate from February 20 through March 3 in response to employee requests, and changed the composition of its work force by using employees provided by a labor contractor on February 23 and 24. Respondent denied those allegations in its Answer. The only facts before us are contained in the Stipulation of Facts signed by the parties and submitted to us. The stipulation provides:

> On or about February 11, 1982, because its pear trees were mature enough to justify it; because of prevailing area practices in pear pruning and to expedite pruning in order to prevent tree damage and production loss, Respondent changed the method of pay from hourly rate to piece rate. Subsequently on February 20, 1982, in response to workers' requests, Respondent increased the piece rate to compensate for the greater amount of time necessary to prune each tree, through March 3, 1982. These changes were made without notice to the UFW and without giving the UFW the opportunity to negotiate regarding them.
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> On or about February 23, and 24, 1982, because of an inability to hire sufficient numbers of experienced pruners directly from the local area; because of late rains which slowed the pace of the work; and because of the unavailability of funds to pay workers on a direct basis, Respondent supplemented its pruning work force by hiring labor contractor Santiago Campos. The decision to hire labor contractor Campos was made without notice to the UFW and without giving the UFW the opportunity to negotiate regarding it.

As changes in the method and rate of pay and in the hiring procedure are mandatory subjects of bargaining, as Respondent has admitted making such changes without notice to or consultation with the UFW, and as Respondent had an "at its peril" duty to do so at the time, Respondent will be found to have violated

section 1153(e) and (a) of the Act by making those changes unless "compelling economic considerations" existed for effecting the changes. The issue as to whether an employer had compelling economic reasons for instituting such unilateral changes is decided on a case-by-case basis.

Having an economic reason for making a change is not necessarily the equivalent of a business necessity that would justify making a change in employees' working conditions without giving the union notice or an opportunity to request bargaining about the change. Even if there is a legitimate business or economic reason that justifies a change, that alone does not justify an employer's effecting the change without prior notice thereof to the union. In such situations, the employer must give the union prior notice and a reasonable opportunity to request bargaining about the matter, to the extent possible under the circumstances. (Joe Maggio, Inc., Vessey & Company, Inc., & Colace Brothers, Inc. (1982) 8 ALRB No. 72.)

Based on the facts contained in the stipulation, we find there is insufficient evidence of such compelling economic circumstances as would justify Respondent's change from an hourly wage to piece rate payment for the pruning work. Accordingly, we conclude that the above change constituted a violation of section 1153(e) and (a), noting that no facts were presented explaining or justifying why prior notice could not have been given to the UFW. Even where a change in employees' working conditions is based on compelling economic reasons, an employer must still give the union prior notice and an opportunity to request bargaining about the proposed

change(s). (Joe Maggio, et al, supra; Dilene Answering Service, Inc. (1981) 257 NLRB 284 [107 LRRM 1490].)

We find that the unilateral increase in piece rate was not justified by the reasons given by Respondent; i.e., that the workers requested it and that a greater amount of time was necessary to prune each tree. As neither reason constituted a compelling economic basis, Respondent's unilateral action constituted an improper circumvention of the exclusive representative and a per se violation of section 1153(e) and (a). (Kaplans Fruit and Produce Co. (1980) 6 ALRB No. 36.)

There is no evidence in the Stipulation or elsewhere in the record that Respondent effected any change from its prior practice or policy by engaging the services of labor contractor Campos. The Stipulation establishes only that Respondent decided to hire Campos without giving the UFW prior notice or "... the opportunity to negotiate about [the decision]." As the General Counsel has not established that either the decision to hire, or the hiring of, a labor contractor represented a change from Respondent's prior practice when it had need of additional employees, we conclude that General Counsel has not met its burden to prove a prima facie violation. Accordingly, that allegation of the complaint is hereby dismissed.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent Thomas S. Castle Farms, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith, as defined in section 1155.2(a) of the Act, with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of its agricultural employees.

(b) Making any change(s) in its employees' terms or conditions of employment without giving the UFW prior notice and an opportunity to bargain with Respondent about the proposed changes(s).

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees and, if an agreement is reached, embody the terms thereof in a signed contract.

(b) If the UFW so requests, rescind the unilateral changes Respondent unlawfully effected in its employees' wages and working conditions from February 11, 1982, to March 3, 1982, inclusive.

(c) Make whole all agricultural employees employed by Respondent at any time during the period commencing on February 23, 1982, the date the UFW formally requested bargaining with Respondent, until July 28, 1982, the date the parties

stipulated to facts to be submitted to the Board, and from July 29, 1982, until the date on which Respondent commences good faith collective bargaining with the UFW which leads to a contract or a bona fide impasse, for all losses of pay and other economic losses they have suffered as a result of Respondent's failure and refusal to bargain, in good faith with the UFW, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(d) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and otherwise copying, all records in its possession relevant and necessary to a determination, by the Regional Director, of the makewhole period and the amounts of makewhole and interest due employees under the terms of this Order.

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

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

(g) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by

Respondent at any time during the period from February 11, 1982, until the date on which the said Notice is mailed.

(h) Provide a copy of the attached Notice in the appropriate language, to each agricultural employee hired by Respondent during the 12-month period following the date of issuance of this Order.

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

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

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's agricultural employees be, and it hereby is, extended for a period of one year

commencing on the date on which Respondent commences to bargain in good faith with the UFW.

Dated: March 23, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

A representation election was conducted by the Agricultural Labor Relations Board (Board) among our employees on August 20, 1980. The majority of the voters chose the United Farm Workers of America, AFL-CIO (UFW), to be their union representative. The Board found that the election was proper and officially certified the UFW as the exclusive collective bargaining representative of our agricultural employees on February 23, 1982. When the UFW asked us to begin to negotiate a contract, we refused to bargain so that we could ask the court to review the election. The Board has found that we have violated the Agricultural Labor Relations Act by refusing to bargain collectively with the UFW. The Board has told us to post and publish this Notice and to take certain additional actions. 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 that you have these rights, we promise that:

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

WE WILL NOT make any changes in your wages, working hours, or other working conditions without first notifying the UFW and giving the UFW an opportunity to bargain with us about such proposed changes.

WE WILL make whole each of the employees employed by us since February 23, 1982, the date when we first refused to bargain, plus interest on such makewhole amounts.

Dated:

THOMAS S. CASTLE FARMS

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 112 Boronda Road, Salinas, California, 93907. The telephone number is (408) 443-3161.

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

Thomas S. Castle Farms, Inc.
(UFW)

9 ALRB No. 14
Case Nos. 82-CE-7-SAL
82-CE-7-1-SAL

BACKGROUND

On August 20, 1980, an election was held at Thomas S. Castle Farms (Respondent), which the UFW won by vote of 122 to 61. Respondent filed 24 objections to the election and 5 were set for hearing. Prior to the hearing Castle sought and obtained a Peremptory Writ ordering the ALRB to dismiss the election petition and to desist from further action based thereon. The writ, issued by San Benito Superior Court, was based on the theory that the ALRB had no jurisdiction to conduct an election, since the showing of interest requirement was not properly met.

The stipulated facts are as follows: At approximately 11:00 a.m. on August 15, 1980, the Board agent gave the UFW an additional 24 hours to submit supplementary authorizational cards pursuant to Regulation 20300(j)(2). The additional cards were submitted "some hours" after 11:00 a.m. on August 16, 1980, and were given to the Board agent in Hollister, rather than the Salinas Regional Office. The superior court found that the election petition was invalid as there was an inadequate accompanying showing of interest, and as the Regional Director acted beyond his powers in directing an election.

Based on its opinion that the superior court lacked jurisdiction to review representation matters, the Board proceeded with its hearing on the five post-election objections. The objections pertaining to the irregularities and inadequacy of showing of interest had been dismissed by the Executive Secretary and the dismissals were affirmed by the Board on the basis that the showing of interest is not reviewable.

The Board, adopting the recommendation of the IHE, dismissed the objections and certified the UFW on February 23, 1982 (8 ALRB No. 13). Respondent refused to bargain in order to test the certification.

The record was submitted to the Board upon a stipulation of facts and the incorporation of the records in the representational case and the pending court case.

BOARD DECISION

The Board concluded that Castle violated its duty to bargain with the UFW and awarded makewhole. The Board found that it was not reasonable for Respondent to refuse to bargain either on the basis of the showing of interest litigation or the remaining post-election objections.

The Board, referring to both its own and NLRB precedent, held that the showing of interest determination is not reviewable, noting that a superior court has no jurisdiction to review election matters since they are not "final orders." Citing Nishikawa (1977) 66 Cal.App. 781, the Board found that the showing of interest is purely an administrative matter for the benefit of the Board, and not jurisdictional. Its sole purpose is to allow the Board to decide whether there is sufficient

interest to justify expending Board resources in conducting an election. As this law is well established, the Board found Respondent's contest of it unreasonable.

Regarding the remaining objections, the Board found Respondent's reliance on them unreasonable as they were matters which had been decided by the Board in its certification decision and were based on credibility resolutions and/or a failure of proof by Respondent. The Board found them not to be close cases or meritorious objections.

Unlawful unilateral acts had been alleged in the consolidated complaint and the parties submitted those issues to the Board directly upon stipulated facts. The stipulation contained the following facts: that Respondent changed the amount and method of its pay for pruning pear trees without notice to or negotiations with the UFW; that Respondent engaged the services of a labor contractor without notice to or negotiations with the UFW; that the rate of pay was increased pursuant to requests from employees; that the method of pay was changed for business reasons and to prevent losses; that the labor contractor was utilized for business reasons.

The Board found that the wage changes were mandatory subjects of bargaining and that Respondent violated the act by making the changes because there was insufficient evidence of compelling economic considerations. Noting that there was an obligation to bargain to the extent possible under the circumstances and no explanation by Respondent as to why the time constraints prohibited notice to the UFW, the Board found the wage changes were unlawful. However, as the record did <u>not</u> establish that Respondent's engagement of a labor contractor represented a <u>change</u> from Respondent's prior practices, the Board dismissed that allegation of the Complaint.

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

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