STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CLAEYS LUCK, S.A., INC., and NEUMAN SEED GROWERS, INC., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, and MARGARITA VELASCO, Charging Parties.	Case No. 81-CE-50-EC 9 ALRB No. 52

DECISION AND ORDER

On April 18, 1983, Administrative Law Judge (ALJ) Arie Schoorl issued the attached Decision in this proceeding. Thereafter Respondent timely filed exceptions to the ALJ's Decision and a supporting brief. General Counsel timely filed a reply brief.

Pursuant to the provisions of Labor Code section 1146,[1/] the Agricultural Labor Relations Board (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,

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

and has decided to affirm the ALJ's rulings, findings[2/] and conclusions.[3/]

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act, the Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated: September 14, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

[2/] We find that the ALJ's analysis regarding the sale of stock in Respondent Neuman Seed Growers, Inc., from Harry I. Neuman to Amseed Corporation, a holding company wholly owned by Claeys Luck, S.A., Inc., is supported by the relevant evidence. It is therefore unnecessary to address the ALJ's alternative analysis regarding the applicability of successorship principles. (Morco Inc. d/b/a Towne Plaza Hotel (1981) 258 NLRB 69 [108 LRRM 1126]; TBK International Corp. t/a Hendricks-Miller Typographical Co. (1979) 240 NLRB 1082 [100 LRRM 1426].)

[3/] In light of our conclusion that Respondent has not been shown to have violated section 1153(e) of the Agricultural Labor Relations Act by failing to bargain in good faith with the United Farm Workers of America, AFL-CIO, Respondent's exceptions regarding the failure of the General Counsel to name or serve Amseed Corporation or serve Claeys Luck, S.A., Inc. with the appropriate pleadings are declared moot.

CASE SUMMARY

Claeys Luck, S.A., Inc., and
Neuman Seed Growers, Inc. (UFW)

9 ALRB No. 52
Case No. 81-CE-50-EC

ALJ DECISION

The ALJ found that there had been a sale of the stock in Respondent Neuman Seed Growers, Inc. from the sole shareholder Harry I. Neuman to Amseed Corporation, a holding company wholly owned by a French corporation, Claeys Luck, S.A. Since Neuman Seed Growers, Inc. continued its corporate existence and operations unchanged, the ALJ ruled that it had a continuing obligation to bargain with the UFW, notwithstanding the sale of stock. Alternatively, the ALJ found that the Claeys-owned corporation called Neuman Seed Growers, Inc. was the successor to the Harry I. Neuman-owned corporation.

However, the ALJ found that Respondent had not violated the Act by its implementation of a pay raise. Rather, the ALJ found that Respondent negotiated with the only active representatives of the UFW, the local negotiating committee, prior to implementation and had reached an agreement with that representative of the UFW. The UFW, by its inaction and prior authorization of the negotiating committee, was estopped to complain of Respondent's actions.

BOARD DECISION

The Board adopted the rulings, findings and conclusions of the ALJ and ordered that the complaint be dismissed. The Board specifically adopted the ALJ's sale of stock analysis and found Respondent's other objections regarding the failure of service by General Counsel to be moot.

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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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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

Agricultural Labor Relations Board
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Exec. Secretary

In the Matter of: CLAEYS LUCK, S.A., and NEUMAN SEED GROWERS, INC., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, and MARGARITA VELASCO, Charging Parties.	)	Case No. 81-CE-50-EC

APPEARANCES:

Darrell Lepkowski, Esq.
for General Counsel

William F. Macklin, Esq.
Ewing, Kirk & Johnson
for Respondent

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ARIE SCHOORL, Administrative Law Judge: This case was heard by me on January 17, 19 and 20, 1983, in El Centro, California. A complaint issued on October 30, 1981, based on charges 81-CE-50-EC, 81-CE-51-EC and 81-CE-67-EC filed by the United Farm Workers of America, AFL-CIO (hereinafter referred to as UFW) and duly served on Neuman Seed Growers, Inc. (hereinafter referred to as Respondent) alleged that Respondent had committed various violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). The UFW filed a Notice of Intervention on November 4, 1981, but was not represented at the hearing. Respondent filed an answer on November 9, 1981, denying the violations alleged in the complaint. General Counsel amended the complaint on March 3, 1982, to allege an additional violation of the ALRA based on a charge (81-CE-73-EC) filed by employee Margarita Velasco. General Counsel further amended the complaint on December 8, 1982, requesting that interest on any back pay, that might be awarded, be compiled according to the rate prescribed by the Board in Lu-Ette Farms (1982) 8 ALRB No. 55. Previous to the opening of the hearing herein the parties reached a settlement of the issues in Cases Nos. 81-CE-51-EC, 81-CE-67-EC and 81-CE-73-EC. Consequently, the hearing was held only in respect to the allegations based on the charges in Case No. 81-CE-50-EC.

The General Counsel and Respondent were represented at the hearing and timely filed briefs after the close of the hearing. Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs submitted by the parties, I make the following findings of fact:

I. Jurisdiction

Respondent admits in its answer and I find that Respondent is an agricultural employer within the meaning of section 1140.4(c) of the Act, and the UFW is labor organization within the meaning of section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practice

General Counsel alleges that on or about March 1981, Respondent by and through its agent Brian Conway implemented a unilateral wage increase (25¢ per hour) for the employees without giving the UFW prior notice thereof or an opportunity to request bargaining about said increase, and thereby violated section 1153(e) and (a) of the Act. Respondent denies it so violated the Act and contends it gave notice to and bargained with the UFW since it negotiated the raise with the UFW's negotiating committee. However, the negotiating committee was made up of Respondent's employees and Respondent admits it failed to give prior notice of the raise to the UFW negotiator Ann Smith.

Respondent contends that even if it be found that it failed to notify and bargain with the UFW officials in respect to the March 1981 wage raise, it did not violate the ALRA because it was not the successor to the Newman Seed Growers Inc., the agricultural employer whose employees elected the UFW as their collective bargaining representative in 1978 and therefor it had no duty to bargain with the UFW after the stock purchase by Claeys-Luck S.A.[1/] on August 1, 1980.

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1. A French-owned corporation. S.A. are the initials for Societe Autonome which signifies a corporation in French.

I shall first decide whether the Claeys-owned Neuman Seed Growers Inc. was the successor to Neuman Seed Growers Inc. and therefore had an obligation to bargain with the UFW in March 1981 and shall then determine whether, if there was such an obligation, Respondent complied with that obligation.

III. Respondent's Defense That it is Not a Successor and Therefore has no Obligation to Bargain with the UFW

A. Facts

Respondent argues that even if I find that it unilaterally changed its employees' wage rates without prior notice to, or bargaining with, the UFW, it has not violated section 1153(e) of the Act since it was not the successor to Neuman Seed Growers, Inc., the entity whose employees elected the UFW as their bargaining representative, and therefore had no obligation in March of 1981 to bargain with the UFW.

Neuman Seed Growers Inc. is a California corporation which was incorporated in January 1958. Prior to August 1, 1980, its only shareholder was Harry I. Neuman. The directors were Harry I. Neuman, his wife, Ida Ruth Neuman and a Ronald D. Sharer. Harry I. Neuman managed the corporation business in conjunction with other corporations, similar to Neuman Seed Growers in ownership and mode of operation. The other corporations were the Neuman Seed Co., Inc., the Neuman Seed Cleaners Inc. and the Seed Export Corporation.

Before and after the changeover in stock ownership, Neuman Seed Growers planted, cultivated and harvested vegetable seed, Neuman Seed Cleaners Inc. cleaned and packaged the seed, Neuman Seed Company Inc. sold the seed to domestic customers and Seed Export Corporation sold the seed to foreign customers.

On August 1, 1980, Amseeds Corporation, a holding company entirely owned by Claeys purchased all of the stock in the four above-named corporations from Harry I. Neuman. On the day preceding, July 31, 1980, Harry Neuman, as the sole stockholder of Neuman Seed Growers named the following Directors and Officers of Neuman Seed Growers: Philippe Claeys, Chairman of the Board, Chief Executive Officer; Jean-Marie Poupard, Director, Treasurer and Secretary; Claude Mahieux, Director and Assistant Secretary; Harry I. Neuman, President and Chief Operating Officer; and Thomas L. Phillips, Assistant Secretary.

Subsequent to August 1, 1980, Harry I. Neuman continued to manage the Neuman Seed Growers until September 1981[2/] when he began his duties as a consultant for the Neuman Seed Company in sales work, working approximately 1½ days per week. After August 1, 1980 Bryan Conway continued to be the production manager for Respondent and Ignacio Flores, Rafael Solis, Natividad Solis, Francisco Solis and Arturo Solis continued to be the foremen.[3/]

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2. There was no direct testimony regarding who managed Respondent's operations from August 1, 1980, to September 1981 but it would appear to be Harry I. Neuman. Harry I. Neuman was named chief operating officer at the time Claeys purchased the stock. There was no evidence that Conway extended his plant production managerial duties to include the overall management of the four Neuman corporations and, moreover, Attorney Macklin marked down on his notes taken during the meeting with the UFW of November 1980 that "Harry runs" and when the negotiating committee asked Conway for transportation in March 1981, he answered that he would check with Mr. Neuman.

3. At the date of the hearing in January 1983 there had been only one change in the foremen and that was Joe Hernandez who had replaced Natividad Solis.

In September 1981 Tim McCabe began to work as the controller of Respondent's operations and the operations of the other three Neuman corporations. He replaced Harry I. Neuman in that capacity and took over from Bryan Conway the management of labor relations. Conway continued to administer labor relations on a day- to-day basis.

At no time after August 1, 1980, did Respondent make any attempt to terminate, layoff or replace any of the agricultural employees who were working for Neuman Seed Growers prior to that date. Fifty-nine of the eighty-three employees working on October 15, 1981, the date the UFW requested bargaining with Respondent were pre-August 1, 1980 employees.

The work performed by unit employees after August 1, 1980, was essentially the same as the work performed before that date. The vast majority of the workers are tractor drivers and general laborers (many of the latter involved in irrigation work), who continued to prepare and irrigate the soil for the vegetable crops, to plant, cultivate, and thin the vegetable plants, and later to harvest them, in the same way they did before the August 1980 changeover. After the changeover two new crops, wheat and cotton,[4/] were added but those crops are not labor-intensive and mainly required the tractor drivers and irrigators (general laborers) to perform the same kind of work they were doing and had previously done in respect to the vegetable seed crops.

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4. Respondent raised these two crops not for seed production but to market as a commodity.

Thus, Respondent continued to raise substantially the same vegetable seed crops after the changeover as before. Before August 1980 Respondent mainly raised onion seeds and bulbs and some other vegetable seed crops. After that date, it continued to mainly raise onion seeds and bulbs,[5/] an assortment of other vegetable seeds and some wheat and cotton for market. It must be kept in mind that the Respondent's principal line of business was to raise vegetable seed and that it decided to plant wheat and cotton as a temporary measure in order to increase the cash inflow. It is noteworthy that in the current year Respondent has reduced its production of wheat to 48 acres of a total of 515 acres under cultivation and eliminated its production of cotton completely.

After the 1980 changeover, Respondent continued to sell the same product as its predecessor, i.e. vegetable seeds to most of the pre-August 1980 customers and to a substantial number of new customers. More specifically, Respondent retained 223 of the 356 pre-changeover domestic customers and added 206 new ones, and retained 142 of the 245 pre-changeover foreign customers and added 159 new ones.

Neuman Seed Growers owned no land before or after the changeover. It leased land for its farming operations both before and after the changeover, usually leasing for a period of 6 to 12 months, various and different fields in the El Centro and Hemet

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5. Commencing about the date of the changeover, Respondent progressively increased its production of onion seeds as compared to bulbs, because production costs are lower for seeds than bulbs.

areas.[6] There were a few fields that Neuman Seed Growers rented virtually every year but the vast majority were different tracts of land from different owners.

The Claeys-owned Neuman Seed Growers increased substantially the acreage farmed during the two years following the changeover. In conjunction with that expansion in its operations, it purchased additional agricultural equipment and machinery. It also began to do fertilizing work with its own employees rather than to contract out such work, and purchased additional equipment for that purpose.

B. Analysis and Conclusion

General Counsel in his post hearing brief has pointed out that the first issue to be treated is not successorship but whether a mere stock transfer took place which would not have any effect on the obligations of the corporation with respect to its bargaining duties with the UFW. General Counsel cites certain NLRB cases that hold that a mere stock transfer is different from a firm taking over the business operations of another firm and the question of successorship is only relevant in the latter situation.

I agree with General Counsel's analysis. In the instant case Claeys did not purchase the assets of the Neuman Seed Growers Inc. and continue to operate the business, it merely purchased the stock in a corporation and the latter entrepreneurial concern continued to operate by and large in a similar manner as prior to the stock purchase.

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6. There was one tract of land, the corporation leased for a period of 5 years.

The NLRB in TBK International Corporation t/a Hendricks-Miller Typographical Co. (1979) 240 NLRB 1082, 100 LRRM 1426, stated:

> The concept of "successorship" as considered by the United States Supreme Court in N.L.R.B. v. Burns International Security Services, Inc., et al., 406 U.S. 272 (1972), and its progeny, contemplates the substitution of one employer for another, where the predecessor employer either terminates its existence or otherwise ceases to have any relationship to the ongoing operations of the successor employer. Once it has been found that this "break" between predecessor and successor has occurred, the Board and courts then look to other factors to see how wide or narrow this disjunction is, and thus determine to what extent the obligations of the predecessor devolve upon its successor. We have stated in Miami Industrial Trucks, Inc. and Bobcat of Dayton, Inc., 221 NLRB 1223, 1224 (1975), that the "keystone in determining successorship is whether there is substantial continuity of the employing industry. . . . the Board looks to several factors [in this regard]. . . . These factors include whether there is a substantial continuity in operations, location, work force, working conditions, supervision, machinery, equipment, methods of production, product, and services." Citing Georgetown Stainless Mfg. Corp., 198 NLRB 234 (1972). Having examined these factors, the Board then decides whether or not the break between the predecessor and successor entities can be bridged.
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> The stock transfer differs significantly, in its genesis, from the successorship, for the stock transfer involves no break or hiatus between two legal entities, but is, rather, the continuing existence of a legal entity, albeit under new ownership.
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> It is true that the "secondary characteristics" of a successor are often identical to those of a stock transfer: continuity in operations, location, work force, conditions of employment, supervision, machinery, equipment, methods of production, produce, and/or services. It is therefore, essential that any consideration of the nature of such a transaction begin with an examination of its "primary characteristics." Thus, when the Administrative Law Judge determiend TKB and Hendricks-Miller to be in a successor relationship, she considered those secondary factors relevant thereto, but failed to begin her analysis at the proper starting point: did the two entities in question cease to have any relation, one to the other, or did ownership of the initial entity merely pass into new hands?

Accordingly, I shall begin my analysis at the proper starting point: did the two entities in question cease to have any relation, one to the other or did ownership of the initial entity merely pass into new hands?

In Morco Inc. d/b/a Towne Plaza Hotel (1981) 258 NLRB 69, 108 LRRM 1126, the Administrative Law Judge cited the TKB International Corporation t/a Hendricks-Miller Typographical Company, supra, case and stated:

> Both the arguments of counsel for the General Counsel and Respondent have missed the point. This case involves the purchase of stock in a corporate entity which continued to exist after the purchase, albeit under different management and without any hiatus in operation. Therefore, what is involved herein is "a stock transfer rather than a successor relationship."

In the instant case, the initial entity, the Harry I. Neuman-owned Neuman Seed Growers, Inc. did not terminate its existence or cease to have a relationship with the ongoing operation of the "successor" employer. The initial entity, the Neuman Seed Growers Inc., continued its corporate existence and its operations unchanged, raising vegetable seeds as part of the integrated operation with the other Neuman seed corporations, albeit under a new ownership, as only its stock changed hands as it continued to operate the same business.

Moreover, the stock transfer from Harry I. Neuman to Claeys involved no break or hiatus between two legal entities, which is a common phenomena in the classical "successorship" cases with the attendant factors that must be considered: substantial continuity in work force, operations, location, working conditions, supervision, machinery, equipment, methods or production, product

and services.

Under applicable NLRB precedent, the uninterrupted nature of the corporate entity and its operations is the principal criterion in a stock transfer case while work force continuity is the primary criterion in a predecessor/successorship case.[7/] Of course, in ALRB successor cases the criteria consist of all the aforementioned factors without the prerequisite of continuity of work force because of the frequent turnover, seasonality, and the great mobility of the work force in agriculture.

Where a corporate structure remains intact after a sale of stock and there is a general continuity in the business operations, although not necessarily the continuance of all the prior owner's functions, the NLRB finds that the criteria of successorship are inapplicable and imposes a continuing obligation to negotiate.

In the case herein, Neuman Seed Growers Inc. has continued to exist as a corporate entity since its incorporation in 1958. The management decision by its new shareholders after August 1980 with regard to expansion of production, increasing overseas sales, and the initiation of plant research are not determinative in view of the continuity of the corporation. Thus, as the corporation did not cease to exist as a result of the Amseeds purchase of the stock of the Neuman Seed Growers Inc., the corporation's duty to bargain with the UFW continued and I so find.

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7. In Western Boat and Shoe (1973) 205 NLRB 999, 84 LRRM 1140, the NLRB stated that: Charging Party in its brief correctly urges that it is a fundamental principle of corporate law that the transfer of stock does not affect the liabilities of a corporation. A corporation is a legal person or entity, recognized as having an existence separate from that of its shareholders.

In the event the Board disagrees with the above analysis and finds that there was a hiatus or a break between the "predecessor" and "successor", I shall proceed to consider the secondary characteristic to determine the extent of this disjuncture and therefore decide whether the Claeys-owned corporation would be the successor to the Harry I. Neuman-owned corporation.

In respect to resolving issues of successorship, the ALRB has followed the precedents of the NLRB and accordingly held in Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54, that in the event an agricultural employer takes over the operations of another agricultural employer, and there is a continuity of the same business operations, the new employer will be held to be a successor to the former employer and to be under the same obligation to bargain with the certified bargaining representative of the agricultural employees of the predecessor employer.

In resolving the question of business continuity both the NLRB and the ALRB consider whether the predecessor and successor utilized: same work force and job classifications, same or similar management, same machinery and equipment, same product or services, same customers, and same land or physical location. Because of the seasonal nature of agriculture and its constantly changing work force the ALRB, unlike the NLRB, does not consider that a substantial continuity of the work force is a prerequisite to finding that a successorship exists.[8/] Rather, the ALRB considers the continuity of the work force as just one of the factors to be

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8. See Highland Ranch and San Clemente Ranch, Ltd., supra.

considered and that a substantial changeover in personnel is so commonplace in agriculture that it does not constitute or evidence a material change in the nature of the business operation.

It is clear that no essential changes have occurred in the operations of Neuman Seed Growers subsequent to its takeover by Claeys on August 1, 1980. Its main line of business continued to be raising vegetable seeds (seeds and bulbs in the case of onions) for sale in the domestic and foreign markets. The wheat and cotton crops added by the Claeys-owned Neuman Seed Growers were incidental to the principal crops and in fact have been reduced to less than 10% of the acreage being farmed by Respondent.

The work force continues to be made up of the same permanent, year-round, top seniority employees and the same large annual turnover exists among the lower-seniority employees as before the changeover. On October 15, 1980, the date the UFW requested bargaining with Respondent 59 of the 83 employees had been employed at Neuman Seed Growers before the changeover, a clear majority. So even according to the NLRB criteria of continuity of work force, Respondent would be found to be the legal successor to the Harry I. Neuman-owned Neuman Seed Growers.

Respondent's management personnel did not change during the year following the takeover. Harry I. Neuman continued to manage the seed growing operation and Bryan Conway continued as the production manager and the same five foremen directed the crews. It was not until after September 1981 that Harry I. Neuman became a consultant and Tim McCabe took over Neuman's previous direction of the corporations' farm operations. Thus, even after September 1981,

the management team remained essentially the same, with only two variations the aforesaid substitution of McCabe for Neuman and a change of one of the five foremen.

The Claeys-owned Neuman Seed Growers continued to sell to the majority of the corporation's pre-August 1980 customers. The fact that the Claeys-owned corporation has many new customers attests to its success in sales and marketing rather than any fundamental change in the nature of its operations.

Respondent argues that since August 1980 it has grown its crops on newly leased land and that constitutes an essential change. The record clearly indicates that Respondent merely continued the pre-changeover pattern of leasing different fields from different landowners in the Imperial Valley on a semi-annual and annual basis.

Respondent did purchase additional equipment and machinery after the changeover, but it continued to use the same machinery that the Harry I. Neuman-owned corporation used before August 1980. As previously stated, the reason for Respondent's purchase of additional equipment and machinery was that it had expanded the corporation's farm operations two to three fold. But once again, there is no evidence of a fundamental change in the mode of operation after the changeover.

In view of the foregoing facts, I find that the Claeys-Luck S.A. owned Neuman Seed Growers Inc. was and is a successor to the Harry I. Neuman-owned Neuman Seed Growers Inc. and has had an obligation to bargain with the UFW from October 15, 1980, the date on which the Union requested bargaining.

IV. The Alleged Illegal Unilateral Wage Raise

A. Facts

On April 12, 1978, the Agricultural Labor Relations Board conducted a representation election among the agricultural employees of Neuman Seed Growers Inc. The United Farm Workers won the election and on July 3, 1978 was certified by the Board as the exclusive collective bargaining representative of Respondent's agricultural employees.

Cesar Chavez, president of the UFW, sent a letter on July 13, 1978 informing Respondent that the union planned to proceed with bargaining and requested information relevant to the contemplated negotiations. Respondent provided the requested information within a matter of 4 weeks. However, the UFW failed to set up a negotiation meeting with Respondent until February 26, 1979. During the period from that date until August 23, 1979, the UFW and Respondent engaged in collective bargaining on 16 occasions.

Ronald Hull, manager of the Imperial Valley Vegetable Growers Association, was Respondent's chief negotiator. Bryan Conway, Respondent's general manager participated at 6 meetings. Jose Castorena was the negotiator for the UFW while Manuel Duron and Ramon Martinez, two of Respondent's employees and members of the UFW negotiating committee for Respondent's agricultural employees, attended all 16 sessions. The negotiations were conducted in English. Neither Duron or Martinez were conversant in English so they did not fully understand or participate in the negotiating discussions. However, Castorena frequently informed them in Spanish of the subject matter of the negotiations and consulted with them

about their thoughts about the negotiations. Martinez testified that neither he nor Duron formulated the UFW's offers, since that was Castorena's role, but stated that they played a part in deciding about offers and acceptances during the give-and-take of negotiations.

The negotiations ended in August 1979 when Jose Castorena ceased to serve as the UFW negotiator and failed to make any arrangements with Respondent for any further negotiating sessions. Shortly thereafter, Respondent filed a charge with the Board alleging that the UFW was guilty of bad faith bargaining.

In December 1979, Respondent notified the UFW by letter that although the Union had failed to make any request for further bargaining, Respondent stood ready to cooperate. In February 1980 the UFW agreed to settle the bad faith bargaining case and as part of the settlement agreement the UFW promised to reinitiate negotiating. On March 18, 1980, the UFW notified Ronald Hull by letter that Ann Smith was the new negotiator and that the Union was reviewing its position and it would contact Respondent when it was prepared to go forward. On March 26, 1980, Hull sent a letter to Ann Smith, calling her attention to the Respondent's August 1979 and December 1979 requests by letter to recommence bargaining and asked Smith to inform him whether the UFW was still interested in representing Respondent's employees, and also called to her attention Respondent's past practice of raising employees' wages in the Spring of every year. Hull went on to say that Respondent was prepared to implement the most recent wage increase it had proposed to the union in the 1979 negotiations. At approximately the same

date, Respondent's production manager Bryan Conway, at the employees' request, met with the negotiating committee and Ranch committee members, Duron, Martinez, Velasco, and Alvarez respectively and discussed a 25¢ an hour raise. On or about March 27, 1980, Respondent implemented that raise increase. On April 4, 1980, Ann Smith informed Hull that she had learned that the wage increase was implemented before she had received his March 26 letter and pointed out that during a March 31 telephone conversation he had told her that Respondent had already effected the raise to $4.00 per hour, which had been Respondent's most recent proposal for general labor. She added that she couldn't understand Hull's expression of "nagging doubts" and pointed out that the Union's negotiating committee had been active both prior to and since the most recent bargaining sessions and company representatives had consulted with members of that committee as necessary with regard to seniority and other problems. Nevertheless, Ann Smith made no mention or request as to resuming bargaining sessions.

On May 1, Hull wrote to Ms. Smith that his doubts still persisted because it appeared that the Union was no longer willing to discuss any collective bargaining issues, either economic or noneconomic. Hull added that the Union's self-imposed impasse or inaction had frustrated Respondent's operations and desire for smooth labor relations but that Respondent was nevertheless always available to meet.

On May 8, Ann Smith answered Hull's letter protesting his characterization of the Union's conduct and demanding more specific information with respect to his reference to the Union's

"self-declared impasse or inaction". Once again, Ms. Smith made no request for, or mention of, resuming negotiations.

In August 1980 a French company named Claeys Luck, S.A. purchased the stock in Neuman Seed Growers, Inc.

On or about October 15, 1980, the Union requested a negotiations meeting and on November 7, 1980, a meeting was held between Respondent and the UFW. William Macklin, Ronald Hull, Bryan Conway, Ann Smith, Manuel Duron and Ramon Martinez attended. At the meeting the parties discussed the question of whether Neuman Seed Growers Inc. had changed its operations since it had been purchased by the French company, and whether Respondent was a successor to the former owners of Respondent whose employees in 1978 had elected the UFW as their certified bargaining representative. Respondent furnished the UFW with copious information about the factors affecting successorship, e.g. change in crops, mechanization, leasing new land, new customers, etc. Subsequent to the meeting the UFW failed to contact Respondent either about the question of successorship or a date to recommence negotiations for a contract.

Four months later in early March 1981, negotiating committee members Duron and Martinez and ranch committee members Velasco and Alvarez asked to meet with Conway about a wage raise and transportation to work from Calexico.[9/] They met in Conway's office after work one afternoon and discussed these two issues for

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9. Ramon Martinez testified that the negotiating committee contacted Respondent directly rather than through the regular UFW negotiator because they had asked the negotiator to request negotiations but the negotiator had declined to do so and explained that the UFW was waiting for Respondent to notify them first.

approximately two hours. Conway agreed that he would consult the management about two possible alternatives, i.e. a 25¢ per hour raise with transportation or a 50¢ per hour raise without transportation. Two to three weeks later Respondent implemented a 25¢ an hour raise.

On March 16, 1981, Respondent's attorney William Macklin sent a letter to Ann Smith calling her attention to the fact that a considerable period of time had elapsed since their meeting on November 7, 1980. He explained to her Respondent's position that because there had been a 100% changeover in the ownership of "the company" that the French-owned Neuman Seed Company was not a successor employer and suggested to her that the most expeditious solution would be for the Union to file a petition for a representation election and, to facilitate that action, Respondent would be willing to notify the Union of the date of peak employment. On April 17, not having hearing from the UFW, Macklin sent another letter to Ms. Smith, calling her attention to the March 16 letter and renewing the suggestion that the Union petition for a new representation election.

On April 23, 1981, the members of the employees' negotiating and ranch committees, (Duron, Martinez, Velasco and Alrvarez) plus another employee Jesus Magallanes, met with Conway in his office and presented him with a petition, signed by 42 of the employees and requesting: (1) transportation; (2) a medical plan; (3) the same wages and benefits provided by companies under contract with the UFW; (4) vacations; (5) retroactive wages when a contract is signed with the UFW; and (6) direct negotiations with the UFW to

secure a contract. Conway told them he would talk to the company officials about their demands.

On May 1, David Martinez, a UFW regional manager, answered Respondent's March 16 and April 17 letters. Martinez informed Macklin that he would be the new UFW bargaining representative as Ann Smith would no longer represent the UFW due to illness and a resultant reduced work assignment. Martinez added that the UFW had not received specific information indicating conclusively that the new entity was not a successor or that Neuman Seed Growers, Inc. was no longer required to bargain with the UFW. Martinez concluded the letter by requesting the company meet for negotiation sessions and suggested three dates, May 11, 26 and 27. Upon receipt of that letter, Macklin telephoned Martinez and left word for him to return his call. As Martinez did not return the call, Macklin responded to Martinez's letter on May 6 refuting Martinez's assertion that Respondent had not supplied specific information with respect to the issue of successorship, and reiterated the suggestion of a new representation election. Macklin added that Respondent believed that the new entity was not a successor to the original Neuman Seed Growers Inc. and therefore had no affirmative obligation to bargain with the UFW.

Later on in May Respondent began to supply its employees with transportation from Calexico to the work sites.

Almost a year passed without any communications between Respondent and the UFW. On April 21, 1982, UFW representative, David Martinez, sent a letter to Macklin requesting a resumption of bargaining between the parties and that Respondent provide all of

its corporate records relating to the issue of successorship status.

On July 20, 1982, Macklin responded to the Martinez letter and contended that the UFW had not accepted Respondent's offer of two years' duration to sit down and review all the pertinent information and to come to some sort of agreement on the question of successorship. Macklin also pointed out to Martinez that after writing letters to the UFW he had never received a reply by telephone from either Martinez or any other UFW representative but usually a written reply some months later. Macklin concluded by suggesting that if they talked directly that they could clear up the confusion and reach a solution. The UFW failed to respond to this letter.

In August 1982 Art Mendoza replaced Martinez as the UFW representative but never responded to any of Macklin's letters or telephone calls. At the time of the hearing Respondent and the UFW had met once, in January 1983 to discuss successorship and/or a possible contract.

B. Analysis and Conclusion

Respondent did not make a unilateral change when it implemented a wage increase in March 1981 because it did consult and bargain about this subject with the UFW, through the union's negotiating committee.

In early March 1981, the UFW negotiating committee, Manuel Duron and Ramon Martinez, accompanied by ranch committee members, Margarita Velasco and Manuel Alvarez, asked Respondent to bargain. As the UFW is the certified bargaining representative of Respondent's employees, Respondent had the obligation to bargain

with the union once the union made such a request. Respondent complied with that obligation and production manager Bryan Conway met and bargained with the four members of the two committees for two hours. At the meeting the committee members asked for either a 25¢ per hour raise with transportation of a 50¢ per hour raise without transportation.

A few weeks later, Respondent accepted the first of the two alternatives and implemented a 25¢ an hour raise. Approximately one month thereafter, Respondent implemented the furnishing of the transportation.

General Counsel argues in his post-hearing brief that the UFW's negotiation committee was not the authorized agent of the union and therefore Respondent was bypassing the union and dealing directly with the employees thereby failing and refusing to bargain with the UFW in violation of section 1153(e) and (a). However, I find that the record evidence clearly indicates that such was not the case.

A year before in March 1980, after bargaining with the negotiating committee, made up of members of the bargaining unit, Respondent by letter notified the UFW negotiator, Ann Smith, of a proposed wage increase. In the same letter, Hull informed Smith that she had not contacted Respondent for months and asked whether the UFW was still interested in representing the workers. In her reply letter, Ms. Smith called his attention to the fact that the UFW negotiating committee had been active at the ranch in respect to seniority and other problems. Although her reply, by itself, may not constitute a ratification or approval of the wage negotiations

only the question of successorship with no mention of negotiating wages, hours and working conditions. Thereafter, the UFW did not contact Respondent either about the question of successorship or a date to resume contract negotiations.

In March 1981, approximately 4 months after Respondent's last contact with the UFW negotiator, members of the UFW negotiating committee approached Respondent and requested a negotiating session about wages and transportation. Respondent was aware that the UFW negotiator Ann Smith knew about its annual wage increase as Hull had mentioned it to her in his March 26, 1980, letter. Respondent reasonably believed that the UFW had ratified the negotiating committee's bargaining for and securing a wage increase the previous year. For the entire year after that last wage increase, the UFW had only requested only one bargaining session, and there is no record evidence that the UFW representatives mentioned anything about the subject of wages at the meeting. Accordingly, Respondent had every right to believe that the negotiating committee had the authority to negotiate a wage increase.

In his post-hearing brief General Counsel contends, that Respondent, by "implementing a unilateral change" in wages undermined the Union. However, in the instant case, the effect was the opposite. By negotiating a wage increase with the UFW negotiating committee, Respondent bolstered the Union's image with

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between Respondent and the negotiating committee, the statements in the letter and the additional correspondence between the parties definitely amount to such a ratification or approval.

During April and May, UFW negotiator Ann Smith and Respondent's negotiator Ronald Hull exchanged letters. In that correspondence Ms. Smith did not request Respondent to meet and negotiate about that wage increase or any other subject. Moreover, the UFW raised no objection about the raise and did not file a refusal-to-bargain charge with the ALRB based on Respondent's granting the raise. In its totality, the UFW's conduct amounted to a ratification of the actions of its negotiation committee in bargaining for and securing a wage increase in March of 1980.

It is interesting to note that in her letters to Hall, Ms. Smith appeared to be interested in defending the Union against Respondent's well-founded doubts that the UFW was still interested in representing its employees rather than in protesting about the wage increase which was negotiated by its own negotiation committee or requesting Respondent to resume negotiating talks with the union about wages or any other subject of bargaining. Significantly, the only concrete action the UFW could cite in its defense against Respondent's accusations of its indifference was the activity of the negotiating and ranch committees.

Between the dates of the exchange of the letters between Smith and Hull in the Spring of 1980 and the wage increase in March 1981, the only contract between UFW negotiator Ann Smith and Respondent was in October and November 1980, when the UFW requested a negotiating session and the parties met in November but discussed

the members of the bargaining unit.[10/] For over a year and a half the principal UFW negotiator and the UFW hierarchy in La Paz, had done nothing for the workers except to arrange one bargaining meeting in November of 1980 at which, so far as the record shows, there was no negotiation regarding wages, hours, or working conditions, but only a discussion of successorship.[11/] By bargaining with the negotiating committee and granting the requested wage increase, Respondent's course of action in effect enhanced the UFW's image. That was so because for all intents and purposes, the negotiating committee of Duron and Martinez was the Union. And since the UFW negotiating committee secured the raise it sought, the UFW received the credit and there was no indication of any adverse effect on the Union.

General Counsel argues that the UFW would never authorize a mere negotiating committee to negotiate a complete collective bargaining contract with Respondent and therefore the negotiating committee herein had no authority to do so. General Counsel contends that the main reason for employees to have a union representation is so they will have the expertise and experience of

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10. The NLRB stated in Union Electric Co. (1972) 196 NLRB 830, 80 LRRM 1110, "Where the impact of the employer's conduct does not have the effect of undermining the business agent, a violation will not be found" and in Safeway Trails Inc. (1977) 233 NLRB No. 171, 96 LRRM 614, the NLRB stated, "When, however, the effect of bypassing is to denigrate the union and undermine its bargaining position, a violation will be found."

11. The only representatives of the Union who were active and serving the bargaining unit members during that period were members of the negotiating and ranch committees. They were active in bargaining about a seniority system and its application and about a grievance-handling procedure.

the union negotiator(s) working on their behalf to secure a comprehensive collective bargaining contract.

However, Respondent does not contend that the union granted such a broad authority to the negotiating committee. All Respondent contends is that the UFW bestowed upon the negotiating committee the authority to negotiate the wage raise. The negotiating committee itself and the other members of the bargaining unit did not claim to have any broader authority as was manifested by the April 1981 petition signed by the members of the negotiating committee and 40 other employees since in the petition they requested Respondent to bargain with the UFW representative about other aspects of a collective bargaining contract.

It was clearly reasonable for Respondent to believe that the negotiating committee had authority to negotiate a wage increase in March 1981. By virtue of Ms. Smith's April 4, 1980, letter the UFW had already ratified the negotiating committee's authority to bargain for and administer a seniority system. So it follows that a UFW authorization for the negotiating committee to negotiate a simple wage raise was in keeping with its limited authorization in respect to the above-mentioned seniority system.

It can be argued that it is evident from Respondent's correspondence with the UFW in March of 1981, the month of the wage increase, that it considered itself no longer obligated to negotiate with the UFW in view of its contention that it was not a successor. Regardless of that contention, the fact remains that Respondent did negotiate the wage increase with the UFW, i.e. the employees' negotiating committee.

As I find that Respondent met and bargained in good faith with the UFW about the wage increase it implemented in March 1981, I hereby recommend that the complaint be dismissed in its entirety.

DATED: April 18, 1983.

ARIE SCHOORL
Administrative Law Judge