Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

W. G. PACK, JR. , Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO , Charging Party.	)	Case No. 82-CE-72-SAL 10 ALRB No.22

DECISION AND ORDER

On January 28, 1983, the Agricultural Labor Relations Board (ALRB or Board) received a stipulation and statement of facts entered into by all parties to this matter, including General Counsel, Respondent W. G. Pack, Jr., and Charging Party United Farm Workers of America, AFL-CIO (UFW) , wherein the parties agreed to transfer this matter to the Board for findings of fact, conclusions of law, decision, and order, pursuant to California Administrative Code, title 8, section 20260. In their stipulation, the parties agreed, inter alia: that the charge, complaint, answer, and the stipulation and statement of facts with the exhibits attached thereto, constitute the entire record in this case; and that all parties waive a hearing before an Administrative Law Judge (ALJ), findings of fact and conclusions of law by an ALJ, and the issuance of an ALJ ' s decision.

After preliminary consideration of the issues presented in the pleadings and briefs of the parties, the Board, on July 19, 1983, remanded this case to the Regional Director of the Salinas

Regional Office for further evidentiary proceedings. A hearing was held on September 26, 1983, before ALJ Marvin J. Brenner at which testimony was taken on the circumstances of Respondent's decision to terminate its agricultural operations. Respondent filed a post-hearing brief which is hereby incorporated in the record herein.

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

The Board has considered the record in light of the pleadings and briefs of the parties and makes the following findings of fact and conclusions of Law.

Findings of Fact

1. Respondent W. G. Pack, Jr. was engaged in agriculture in San Benito County through August 1981 and was an agricultural employer within the meaning of section 1140.4(c) of the Agricultural Labor Relations Act (ALRA or Act) through January 1981.

2. Charging Party UFW is now and at all times material herein has been a labor organization within the meaning of section 1140.4(f) of the Act.

3. On September 22, 1980, the UFW filed a Petition for Certification as exclusive collective bargaining representative for all agricultural employees of Respondent in the State of California.

4. On September 29, 1980, the ALRB conducted an election among Respondent's agricultural employees and a majority of the

[1/] Unless otherwise indicated, all section references herein are to the California Labor Code.

votes were cast for the UFW.

5. On April 16, 1982, the ALRB certified the UFW as the exclusive collective bargaining representative of Respondent's agricultural employees in the State of California.

6. On April 21, 1982, Paul Chavez, Director of the UFW Hollister office, sent a letter to Respondent requesting negotiations;

7. On June 28, 1982, W. G. Pack, Jr. sent a letter to the UFW in which he explained that the company was refusing to negotiate because he did not believe that the certification the Board issued was valid.

8. Respondent last employed agricultural employees in January 1981 and ceased all agricultural operations in August 1981.

9. Respondent did not notify the UFW in any manner of its intention to close its operations prior to such closure.

10. Respondent first notified the UFW of the closure of its operations when it alleged such closure in answer to the instant complaint on September 27, 1982.

11. Respondent decided to close its operations on or about October 20, 1980. At the time of that decision, Respondent had twenty-two workers on its payroll.

12. On July 19, 1982, the UFW filed with the Salinas Regional Office of the ALRB, and duly served on Respondent, unfair labor practice charges alleging that Respondent had refused to bargain.

13. On September 8, 1982, General Counsel issued the complaint in this matter which was duly served on Respondent. Said

complaint alleged that Respondent violated section 1153(e) and (a) by its refusal to bargain with the UFW.

14. On September 27, 1982, Respondent filed and served its answer to the complaint in this matter, in which it denied that it had violated section 1153(e) and (a) by its refusal to bargain and contended that the UFW certification should be set aside.

15. On January 19, 1983, General Counsel issued a First Amended Complaint which alleged that Respondent violated section 1153(e) and (a) by terminating its operations without notice to the UFW.

Representation Proceedings

On September 29, 1980, an election was conducted among Respondent's agricultural employees. The UFW won that election by a vote of 21 to 6 for no-union. Respondent filed a timely objection to the election, alleging that 80 garlic harvest workers who were not working at the time the election petition was filed were Respondent's agricultural employees and therefore Respondent was not at fifty percent of peak employment at the time the petition was filed.[2/] This objection was heard by an Investigative Hearing Examiner (IHE) on June 17, 1981. On December 22, 1981, the IHE issued her Decision recommending that Respondent's objection be dismissed. After considering Respondent's exceptions to the IHE's

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[2/] Labor Code section 1156.4. states that, in order to assure that an election is conducted at a time when a representative work force is employed, an election petition is untimely if the number of employees employed during the payroll period preceding the filing of the petition is less than fifty percent of the number of employees employed during the employer's period of peak employment for that calendar year.

Decision, the Board issued a Decision on April 16, 1982, in which it concluded that Respondent was not the employer of the garlic harvest workers and certified the UFW as the exclusive collective bargaining representative of all Respondent's agricultural employees. (W. G. Pack, Jr. (1982) 8 ALRB No. 30.)

Respondent's Duty to Bargain

Respondent decided to close its agricultural operations within weeks after the election in this case. Although the election tally indicated that Respondent's employees had chosen to be represented by the UFW, Respondent did not notify the UFW of its intention to close down. Rather, Respondent filed and litigated objections to the validity of the election and, after Board certification of the UFW, refused to bargain with the UFW. Respondent did not, in fact, notify the UFW of the closure of its operations until it answered the General Counsel's complaint on September 27, 1982, two years after the decision to close was made.

In Highland Ranch v. Agricultural Labor Relations Bd. (1981) 29 Cal. 3d 84-8, the California Supreme Court upheld this Board's application of the National Labor Relations Board (NLRB) rule which states that an employer refuses to bargain "at its peril" during the period between an apparent union election victory and the union's certification as exclusive representative of the employer's employees. (See Highland Ranch and San Clemente Ranch, Ltd. (1979) 5 ALRB No. 54, citing Mike O'Connor Chevrolet (1974) 209 NLRB 701 [85 LRRM 14-19].) Under NLRB precedent, where an employer unilaterally changes its employees' working conditions during that period without giving the union notice or an opportunity to bargain over

the changes, and the union is subsequently certified, the employer's unilateral action violates Labor Code section H53(e) and (a). (W. R. Grace Co. v. NLRB (5th Cir. 1978) 571 F.2d 279 [98 LRRM 2001], enforcing (1977) 230 NLRB 617 [95 LRRM 1459].)

In affirming the Board's holding, the Highland Court rejected the employer's contention that Labor Code section H53(f), which makes it unlawful to recognize or bargain with an uncertified union, absolutely prohibits any bargaining prior to certification by the Board. The Court agreed with the Board's reasoning that section H53(f) was principally intended by the Legislature to prevent voluntary recognition of unions by employers, a practice with a long history of abuse in agricultural labor relations. (See Highland Ranch v. Agricultural Labor Relations Bd., supra, 29 Cal.3d 858-860; Englund v. Chavez (1972) 8 Cal.3d 572; Levy, "The California Labor Relations Act of 1975 - La Esperanza de California Para el Future" (1975) Santa Clara L. Rev. 783, 789-790.)

The Court suggested, however, that sections 1153(f) and 1156.3(c) (allowing for post-election objections) also expressed a legislative intent to protect the right of employees to freely choose representation or no representation through valid secret-ballot elections. The Court therefore suggested that this Board limit the NLRB's "at its peril" doctrine by stating that:

> ...when employees or an employer level objections at an election that are sufficiently serious to cast reasonable doubt upon whether a union's initial victory will ultimately be sustained, section 1153, subdivision (f) may bear upon the situation. When the employer can establish that it entertained a good faith, reasonable doubt as to the representative status of a union that has not yet been formally certified by the ALRB, the proscriptions of section

> 1153, subdivision (f) may preclude a ruling that the employer acted "at its peril" in refusing to bargain with a presumptively victorious union during the period of an election challenge. (Cf. J.R. Norton Co. v. Agricultural Labor Relations - Bd., supra, 26 Cal.3d 1, 30-35.)[3/]
>
> (29 Cal.3d at 861.)

The reference in the Court's Highland Decision to its decision in J. R. Norton Co. v. Agricultural Labor Relations Bd. (1979) 26 Cal.3d 1 indicates to us that the policy considerations addressed in Norton should also be applied to pre-certification, Highland-type cases.[4/] The issue in the Highland case, however, is whether the employer had any duty to bargain over the pre-certification change in working conditions. Under the Norton Decision, a duty to bargain after certification clearly exists and the issue is whether to impose a makewhole remedy for the employer's

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[3/] In Highland, the Court stated that it was unnecessary to decide this issue conclusively, resting its holding instead on the more limited ground that Highland had failed to appeal the Executive Secretary's dismissal of its objections to the full Board and therefore could not have had a reasonable doubt that the Union would subsequently be certified.

[4/] The Court in Norton struck down the Board's practice of applying the makewhole remedy in all cases where the employer refused to bargain, including those cases where the refusal was utilized as a means to obtain judicial review of the Board's action in certifying the union. Such a blanket imposition of makewhole relief, the Court reasoned, would discourage an employer from seeking judicial review of a meritorious claim that an election did not represent the free choice of the employees as to their bargaining representative. The Board was therefore instructed not to apply the makewhole remedy in "close cases raising important issues" where the employer had a reasonable, good faith belief that the election results did not reflect the free choice of its employees. (J.R. Norton Co. v. Agricultural Labor Relations Bd., supra, 26 Cal.3d at 39.)

technical refusal-to-bargain.[5/]

To avoid our finding an unfair labor practice in this case, therefore, Respondent must establish that it entertained a reasonable, good faith doubt that the UFW won a valid election. Respondent argues that it had and continues to have such a doubt, based on its view that it was the employer, for labor relations purposes, of the 80 workers in the 1980 garlic harvest.[6/] For the reasons stated below, we find that Respondent did entertain a reasonable, good faith belief that it was the statutory employer of the garlic harvest workers and that Respondent therefore did not violate Labor Code section 1153(e) and (a) by closing its operations without bargaining with the UFW over the effects of that closure.

[5/] An order in a certification proceeding is not directly review-able in the courts, since it is not a "final" order within the meaning of Labor Code section 1160.8. It is only by refusing to bargain with the certified union that an employer may obtain judicial review of the Board's certification and its finding that the refusal was an unfair labor practice. (Nishikawa Farms, Inc. v. Mahony (1977) 66 Cal.App.3d 781, 787.) Such employer conduct is known as a "technical refusal to bargain."

[6/] Respondent argues that its belief in the invalidity of the election was reasonable and held in good faith simply because the Board set its objection for hearing and, after the UFW was certified, Respondent diligently sought reconsideration before refusing to bargain. Although Respondent correctly distinguishes the instant case from the Highland case, in which the employer failed to pursue its election objections through the entire administrative process, its argument is without merit. Although Respondent presented sufficient declaratory evidence to suggest an incorrect peak determination by the Regional Director, the evidence adduced at the investigative hearing proved that Respondent's objection was insufficient to set aside the election. The mere presentation of a prima facie case is not conclusive as to an employer's ultimate duty to bargain, since the declaratory support for the objections may be discredited, rebutted, or proved insubstantial. Rather, it must appear, after a full investigative process, that the employer reasonably and in good faith believed the matters alleged in its objection tended to affect the outcome of the election. (Compare J.R. Norton Co. v. Agricultural Labor Relations Bd., supra, 29 Cal.3d at 39.)

Respondent's Election Objection

For several years prior to the election, Respondent and another company, Vessey Foods; had had an arrangement whereby Vessey provided the harvest labor for Respondent's garlic crop. In 1980, the year of the election, Respondent and Vessey entered into a written agreement, calling for Vessey to again provide harvest labor. Shortly before the harvest, however, Vessey informed Respondent that, due to financial difficulties, it could not supply the labor as agreed. Respondent was therefore forced to assume the responsibility for hiring a labor contractor and harvesting the garlic. Respondent borrowed the money to pay for the harvesting costs.

Both Willis Pack (Respondent's owner) and wayne Vessey (Vessey's manager) testified that, as a result of Vessey's failure to provide the harvest labor, the garlic was owned entirely by Respondent. During the harvest, Respondent was unsure to whom it would eventually sell the garlic crop. Respondent ultimately sold a small portion to a third party and the remaining amount to Vessey at the original contract price.

Labor Code section 1140.4(c) provides that workers supplied by a labor contractor are the employees of the entity engaging the labor contractor. In Tenneco West (1977) 3 ALRB No. 92, the ALRB found that where the company hired a labor contractor, determined the rate to be paid to the workers, and paid the labor contractor an amount sufficient to cover the cost of the labor, plus a commission or fee for his services, the company was the statutory employer under Labor Code section 114.0.4. (c). In this case, Respondent hired labor contractor Peter Bourdet and determined

the compensation to be paid to him and the workers. Based on these facts, Respondent was reasonable in its belief that it was the statutory employer of the Bourdet employees.

The dissent argues that Respondent's objection never amounted to more than reliance on the superficial terms of the contract between Respondent and Vessey because Vessey subsequently reimbursed Respondent for the money paid Bourdet, Vessey supervisors were present during the harvest, the workers supplied by Bourdet worked for Vessey before and after Respondent's garlic harvest and never again for Respondent, and Bourdet worked for Vessey for eight years prior to obtaining his labor contractor's license. In our view, the dissent misconstrues the issue at hand. The issue here is not whether Respondent's assertion that it is the employer of Bourdet's employees is correct, but rather, whether such assertion was reasonable at the time of the election and at the time of the decision to close the operations. Critical to this inquiry is the status of the relationship between Respondent, Vessey, and Bourdet at the times herein in issue. When Vessey failed to perform its harvesting operations, Respondent assumed the sole responsibility for the harvest and the ultimate disposition of the garlic crop.[7]

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[7] The dissent misstates that Respondent held the harvested garlic crop waiting for Vessey to obtain cash for reimbursement. This inference is at odds with the undisputed testimony of both Willis Pack and Wayne Vessey that Respondent assumed sole possession of the garlic crop and Pack's testimony that he was not sure to whom he would eventually sell the garlic crop. It is also inconsistent with the actions that Respondent did take, e.g., hiring Bourdet, negotiating the compensation for employees, and storing the garlic. If Respondent was merely fronting the harvest costs subject to later

[fn. cont. on p. 11]

The fact that Vessey subsequently cured its breach of the contract by paying the cost of the garlic harvest does not render unreasonable Respondent's assertion of its employer status during the times at issue.[8/]

Neither are we persuaded that the primary relationship between Bourdet and his employees and Vessey rendered Respondent's belief as to its employer status unreasonable. In San Justo Farms (1981) 7 ALRB No. 29, the Board decided that, in determining who is the employer of employees with ties to several parties, one important consideration is which party has the primary and continuing employment relationship with the employees. However, even assuming that San Justo is applicable to Respondent's case, that Decision was rendered a year after the events in question in this matter. Respondent could not have considered San Justo's potential effect on this case at the time it decided to close its operations.

The Board adopted the Investigative Hearing Examiner's (IHE) finding that Vessey supervisors were present during

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[fn. 7 cont.]

reimbursement, Respondent could have easily lent the money directly to Vessey and have avoided taking responsibility for the crop. While we think the evidence may support the conclusion that both Respondent and Vessey kept open the option that Vessey could cure its breach and buy the garlic crop, the record certainly cannot be read, as the dissent attempts to do, that in fact the parties expected the Pack/Vessey relationship to continue.

[8/] Vessey reimbursed Respondent for the harvest cost two months after the garlic harvest, i.e., in November 1980. The election was held in September 1980, and' the decision to close operations was made in October 1980.

Respondent's garlic harvest and supervised Bourdet.[9/] However, Respondent ultimately bore the responsibility for hiring the employees, set their rate of pay, paid them, and decided other matters relating to the harvest and disposition of the garlic crop, "as he saw fit."[10/] Despite the fact that Vessey supervisors exercised some role in supervising Bourdet, there was nonetheless a sufficient basis for Respondent to reasonably believe that it was the employer of Bourdet's workers.

As we find that Respondent had a good faith belief that it was the employer of Bourdet's employees, we likewise find that Respondent had a good faith doubt as to the validity of the election. Therefore Respondent's failure to notify the UFW about its decision to close its operation was not in violation of Labor Code section 1153(e) and (a), and we will dismiss the complaint in its entirety.

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[9/] The IHE in essence rejected the testimony of Pack, Vessey, and labor contractor Bourdet that Vessey did not provide supervision of the harvest and rejected Pack's and Vessey's testimony that Vessey supervisors visited the fields only to inspect the quality of the garlic for possible purchase. The IHE credited three worker witnesses, who testified that' they considered themselves Vessey employees while working at Respondent's field. Two workers testified that they saw Vessey supervisors giving Bourdet orders in Respondent's field, although one of them, Juan Carrillo, admitted that he was not personally aware of what the Vessey supervisors told Bourdet. Bourdet admitted that he supplied employees to work at fields supervised by Vessey at the same time he was working for Respondent, and, as to these fields, he received orders from Vessey supervisors. The IHE resolved this issue by finding that the orders were given with regard to Respondent's field, not in connection with Bourdet's services at the other Vessey fields.

[10/] For example, Respondent determined in which fields Bourdet employees would work and decided that no work would be performed over the Labor Day weekend.

ORDER

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

Dated: May 4, 1984

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

MEMBER WALDIE, Dissenting in part:

I disagree with the majority's conclusion that Respondent reasonably believed that it was the "employer" of the garlic harvest employees at the time Respondent decided to close its operation without notice to the UFW. In my view, by the time of Respondent's decision to close, Vessey had completely cured any breach in the original Pack/Vessey contract and stepped back into the employer status that would have been Vessey's under that original contract. Respondent's temporary control of the harvest is insufficient reason, in the final analysis, to doubt the validity of the election.

In W. G. Pack, Jr. (1982) 8 ALRB No. 30, the Board found that, regardless of the appearances created by Respondent's contract with Vessey and by Respondent's efforts to hire a labor contractor, Vessey actually provided its regular employees to harvest Respondent's garlic, just as in prior years. The Board found it significant that the labor contractor, Peter Bourdet, had worked for Vessey as a harvest manager for eight years before getting his contractor

license; that the workers supplied by Bourdet worked for Vessey before and after Respondent's garlic harvest and never worked for Respondent again; that Vessey supervisors were present during the harvest; and that Vessey actually bore the cost of the harvest labor because it reimbursed Respondent in full for money paid to Bourdet.[1/]

Based upon those facts, the Board found that Vessey was the employer of the garlic workers. The actual transaction showed that Vessey supplied the money for the labor, supervised the labor and the quality of the crop, and had a continuing employment relationship with both the garlic harvesters and the labor contractor. Respondent's connection with the garlic harvest consisted of advancing the money to pay Bourdet.[2/] Under this Board's "whole

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[1/] The majority finds that Respondent had a reasonable good faith belief that it was the employer of garlic harvest workers at the time of Respondent's refusal-to-bargain over the closure of its operations. On the contrary, the record reflects that Vessey reimbursed Respondent for the labor contractor's fee approximately two months after the close of the harvest or the first week of November 1980. Respondent had held the harvested crop, waiting for Vessey to obtain the cash for the reimbursement. Once that occurred, Respondent sold the garlic to Vessey at the original contract price. Therefore, at the time Respondent decided and began to take steps to close its operations in late October and November 1980, it knew or should have known that Vessey had performed all of its obligations regarding the garlic harvest as described in the original Pack/Vessey contract.

[2/] The testimony of Willis Pack and Wayne Vessey indicates that while Pack did assume responsibility for the ownership of the harvest for a short time, due to Vessey's financial problems, both parties expected the longtime Pack/Vessey relationship to continue. Respondent appears to have held the crop for Vessey with the intention of finishing the garlic transaction as originally planned. While the majority may be correct in stating that Respondent had the legal right to sell the crop to anyone, the fact remains that Respondent held the crop in storage until Vessey was prepared to complete the contract under its original terms.

activity" test for determining the proper employer for labor relations purposes, Vessey was clearly the employer, and Respondent has failed to demonstrate any reasonable factual basis for holding otherwise. (See San Justo Farms (1981) 7 ALRB No. 29; Joe Maggio, Inc. (1979) 5 ALRB No. 26; Napa Valley Vineyards (1977) 3 ALRB No. 22.)

Dated: May 4, 1984

JEROME R. WALDIE, Member

CASE SUMMARY

W. G. Pack, Jr. (UFW) | 10 ALRB No. 22
Case No. 82-CE-72-SAL

BOARD DECISION

Based on a stipulated record and testimony taken pursuant to a limited remand order by the Board, the Board found that Respondent closed its operations without notice to the UFW. The closure occurred after the UFW won an election but before the certification had issued. The Board held that, although an employer usually refuses to bargain over changes in working conditions "at its peril" during the pre-certification period, no violation of the duty to bargain occurs where the employer holds a reasonable good faith doubt as to the validity of the election.

In the instant case, Respondent believed the election petition was untimely filed because it was not at 50 percent of peak employment at the time the petition was filed. The objection alleged that Respondent was the employer of a group of garlic harvest workers; however, the Board held in its certification decision that another entity was the "employer." (W. G. Pack, Jr. (1982) 8 ALRB No. 30.) The Board here found Respondent's belief in its employer status to be reasonable, though, incorrect, because Respondent hired and paid the labor contractor who supplied the labor, set the wages and hours of the harvesters, and was the sole owner of the harvested crop. Respondent therefore did not violate the duty to bargain when it closed its operation, and the complaint was dismissed in its entirety.

MEMBER WALDIE DISSENTING

Member Waldie disagreed with the finding that Respondent reasonably believed it was the employer of the garlic harvesters. He would find, rather, that the garlic harvest was paid for and controlled by Vessey Foods and that Respondent's short period of ownership of the crop did not change the original arrangement which was for Vessey to harvest and then buy the entire garlic crop.

* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: W.G. PACK JR. Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 82-CE-72-SAL STIPULATION FOR TRANSER TO BOARD

Pursuant to 8 Cal.Admin.Code section 20260, the parties to the above captioned matter hereby stipulate that there is no conflict in the evidence to be considered and hereby transfer this proceeding directly to the Board.

The parties agree that the charges, complaint, answer and attached "Stipulation of Facts" and documents incorporated therein constitute the entire record in this case and that no oral testimony is necessary. The parties agree to waive a hearing before an Administrative Law Officer and to submit this case directly to the Board for findings of facts, conclusions of law and order.

STIPULATION OF FACTS

Counsel for the General Counsel, the Charging Party and the Respondent in case no. 82-CE-72-SAL hereby stipulate as follows:

1. Respondent W.G. Pack, Jr. was engaged in agriculture only in San Benito County through August 1981 and was an agricultural employer within the meaning of section 1140.4 (c) of the Act through January 1981.

2. Charging Party, United Farm Workers of America, AFL-CIO (UFW), is now and at all times material herein has been a labor organization within the meaning of section 1140.4 (f) of the Act.

3. On September 22, 1980 the UFW filed a Petition for Certification for all agricultural employees of Respondent in the State of California.

4. On September 29, 1980 the Agricultural Labor Relations Board (ALRB) conducted an election for Respondent's agricultural employees.

5. Oh April 16, 1982, the ALRB certified the UFW as the exclusive representative of Respondent's agricultural employees in the State of California for the purposes of collective bargaining as defined in section 1152 (a) of the Act.

6. On April 21, 1982, Paul Chavez, Director of the UFW Hollister office sent a letter to Respondent requesting negotiations. (A copy is attached as Exhibit A.)

7. On April 26, 1982, Paul Chavez, Director of the UFW Hollister office, sent a second letter to Respondent again requesting negotiations (A copy is attached as Exhibit B)

8. On May 14, 1982, Paul Chavez sent a third letter to Respondent requesting negotiations and admonishing Respondent that appropriate legal action would be taken if Respondent did not contact the UFW. (A copy is attached as Exhibit C.)

9. On June 28, 1982, W.g. Pack, Jr. sent a letter to the UFW in which he explained that the company was declining

to negotiate because he did not feel that the certification issued by the Board was valid. (A copy is attached as Exhibit D.)

10. Respondent last employed agricultural employees in January 1981 and ceased all agricultural operations in August 1981.

11. Respondent did not notify the UFW in any manner of its intention to close its operations prior to such closure.

12. Respondent first notified the UFW of the closure of its operations when it alleged such closure in answer to the instant complaint on September 27, 1982.

The parties further stipulate that the Board may take administrative notice of the records of the proceedings in case no. 80-RC-72-SAL, and that the following documents in that case shall be made a part of the record of this proceeding :

1. Petition for Certification
2. Employer's Response to Petition for Certification
3. Notice and Direction of Election
4. Tally of Ballots
5. Employer's Objections to Conduct of Election
6. Notice of Allegations to be set for Hearing
7. Notice of Investigative Hearing
8. Motion for Continuance
9. Order Granting Motion and Amended Notice of Investigative Hearing
10. Motion for Pre-Hearing Conference
11. Order Granting Motion for Pre-Hearing Conference and Amended Notice of Hearing

12. Amended Notice of Pre-Hearing Conference and Amended Notice of Investigative Hearing

13. Record Transcript of the Investigative Hearing including all exhibits introduced at the hearing

14. Decision of Investigative Hearing Examiner

15. Employer's Exceptions to Decision of Investigative Hearing Examiner

16. UFW Response to Employer's Exceptions

17. Decision and Certification of Representative, 8 ALRB NO. 30

18. Employer's Motion for Reconsideration

19. Order Denying Motion

This stipulation is. made without prejudice to any objection that any' party may have as to the materiality, relevance, or competency of any fact stated herein.

Upon the granting of this transfer to the Board, the parties request that the Board set a time for the filing of briefs.

January 21, 1983
DATE

CHRISTOPHER W. WADDELL
Attorney for Respondent

January 21, 1983
DATE

NEB-DUNPHY, Charging Party
UNITED FARM WORKERS OF AMERICA, AFL-CIO

January 21, 1983
DATE:

JUAN F. RAMIREZ, Staff Counsel
AGRICULTURAL LABOB RELATIONS BOARD

Exhibit A

April 21.

W. G. Pack, Jr.
1471 Wright Rosd
Hollister, CA 95023

Re: W. G. Pack, Jr. Negotiations

Dear Gentlemen:

Pursuant to a Union representation election conducted among your employees and a subsequest certification of our Union as exclusive collective bargaining representative by the Agricultural Labor Relations Board on April 16, 1S32, (80-RC-72-SAL)we are requesting a negotiations treating with your Company.

Forthcoming will for a request for information which is necessary for the Union to prepare- meaningful contract proposals on economic Issues at our upcoming bargaining sessions.

Please advise me of the dates acceptable for our first meeting, I can be contact at our Hollister office. If you have any quest tons, do not hesitate to contact me.

Sincerely,

Paul F. Chavez
Director

PFC/ ec

Certified # 1660692

Exhibit B

April 26, 1982

W. G. Pack, Jr.
1221 Lehigha Valley Place
Danville, CA 94526

RE: W. G. Pack, Jr. Negotiations

Dear Gentlemen:

Pursuant to a Union representation election conducted among your employees and a subsequest certification of our Union as exclusive bargaining representative by the Agricultural Labor Relations Board on April 16, 19S? (80-RC-72-SAL) we are requesting a negotiations meeting with your Company.

Forthcoming will be a request for Information which Is necessary for the Union to prepare meaningful contract proposals on economic issues at our upcoming bargaining sessions.

Please advise me of the dates acceptable for our first meeting. I can be contact at our Hollister office. If you have any questions, do not hesitate to contact

Sincerely,

Paul F. Chavez
Director

PFC/ec

Certified letter number 1660694

Exhibit C

May 14, 1982

W.G.Peak.Jr,
1221 Lehigha Valley Place
Danville. CA 94526

RE: W.G. PACK Jr. Negotiations

Dear Gentlemen:

Pursuant to a Union representation election conducted among your employees and a subsequest certification of our Union as exclusive collective bargaining representative by the Agricultural Labor Relations Board on April 16,1932. (case # 80-RC-72-sal) , we are requesting a negotiations meeting with pour Company.

We have yet to hear from you regarding your avail ability for our first meeting. Our original meeting request was mailed to y to you on Aril 26, 1932. If we do not hear from you in a few days we will be force to take appropriate legal action.

If you have any questions do net hesitate to contact me at the Hollister Union Office.

Sincerely,

Paul F. Chavez
Director

PFC/ec

Certified letter # P 225 400 004

Exhibit D

RECEIVED JUL 6 1982

28 JUNE 9820 1932
121 lehigh valley place
Danville, CA 94526

United Farm Workers
P.O. Box 620
840 East St., Holliater CA 95023

Dear (Union):

Please be advised that we are indicating at this time our refusal to bargain with you, because we feel that the certification issued by the Agricultural Labor Relations Board on April 16, 1982 is invalid.

Sincerely,

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE 3Y MAIL
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Monterey________. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 112 Boronda Road. Salinas. CA 93907

On January 26, 1983 I served the within

Stipulation for Transfer to Board and Official

Exhibits; W.G. Pack, Jr. 82-CE-72-SAL

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at ______Salinas_______, California addressed as follows:

Certified Mail

Christopher W. Waddell, Esq.
Simms and Widman
84 West Santa Clara Street
Suite 660
San Jose, CA 95115

Cert. # 5380

Ned Dunphy, Esq.
United Farm Workers
of America, AFL-CIO
P.O. Box 30
Keene, CA 93531

Cert. # 5381

Regular Mail

William Figg-Hoblyn,
Administrative Law Officer
2476 Berrywood Dr.
Rancho Cordova, CA 95670

Ms. Janet Vining
Executive Secretary
Agricultural Labor
Relations Board
915 Capitol Mall,
Third Floor
Sacramento, CA 95814

Executed on January 26, 1983 at Salinas______________, California.

I certify (or declara), under penalty of perjury that the foregoing is true and correct.

JUDI BAUCOM

ALRB 64a (Rev. 5/80)