STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

O. E. MAYOU & SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 82-CE-147-SAL 11 ALRB No. 25

ERRATUM

Attached is a copy of the Board's February 1, 1983 Order, which should be included as an appendix to the Board's Decision and Order in this case.

Date: October 17, 1985

JYRL JAMES MASSENGALE, Chairperson

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

APPENDIX

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the matter of: O. E. MAYOU & SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 82-CE-147-SAL ORDER DENYING RESPONDENT'S OBJECTION TO ADMISSION CF LETTER OF JANUARY 26, 1984; ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE FOR FURTHER EVIDENCE.

PLEASE TAKE NOTICE that the Agricultural Labor Relations Board 'Board) considers Respondent's letter of January 26, 1984 relevant to the specific allegations of the instant complaint and therefore hereby denies Respondent's objection to the admission of the letter and orders that it be made a part of the record herein. However, in view of the fact that matters relative to that letter have not been fully litigated so as to permit a full and final resolution of the allegations of the complaint,[1/] the Board remands this case to an Administrative Law Judge (ALJ) with directions to reopen the record in order to permit the parties to present additional evidence by way of stipulation or for the ALJ to take additional evidence upon which findings of fact and conclusions of law may be made in accordance with established precedents of the

[1/] The present record does not establish that Respondent's conduct prior to January 26, 1984 violated the statutory duty to bargain. However, the January 26 letter standing alone satisfies Genera-27 "Counsel's prima facie case.

Agricultural Labor Relations Act (ALRA).

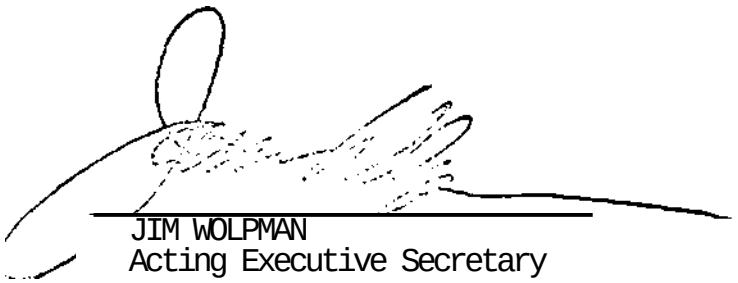
PLEASE TAKE FURTHER NOTICE that Respondent's defense that Labor Code section 1160.2 requires dismissal of the complaint in its entirety is hereby rejected. In this case, the record encompasses conduct within the six-month period of the filing of the charge which arguably could be the basis for finding a violation of the duty to bargain which the charge addresses. For example, the stipulated record reveals that in November 1982, the United Farm Workers of America, AFL-CIO (Union), the certified bargaining representative of Respondent's employees, requested that Respondent meet and negotiate and expressed the view that Respondent was still under an obligation to bargain with the Union despite Respondent's doubt as to the continuing validity of the Union's certification. Further, even at the one meeting in November 1933, Respondent continued to question whether the Union's certification survived the initial certification year and the meeting was limited to a discussion of information which the Union had requested relative to bargaining. Finally, Respondent's January 26, 1984 refusal to meet with the Union again was grounded on the asserted belief that the union's failure to obtain an extension of certification pursuant to Labor Code section 1155.2(b) extinguished Respondent's duty to bargain.

In Kaplan's Fruit and Produce Co., et al (1977) ALRB No. 28, we held that even in the absence of an extension of certification following expiration of the initial certification year, employees retain the right to be represented by the bargaining agent they have selected by secret ballot. That principle was

affirmed and amplified in our subsequent Decision in Nish Noroian (1982) 8 ALRB No. 25 wherein we ruled that "Once a union has been certified, it remains the exclusive collective bargaining representative of the employees in the unit until it is decertified or a rival union is certified...." In its brief to the Board, Respondent] contends that it entertained a good faith belief that the Union no longer enjoyed the support of a majority of employees due to both the passage of time and the high rate of employee turnover since the election. Such a defense is not legally cognizable under the ALRA. (See, generally, F & P Growers Association (1983) 9 ALRB No. 22.

By Direction of the Board

DATED: February 1, 1985



JIM WOLPMAN
Acting Executive Secretary

MEMBER HENNING, Concurring and Dissenting:

I dissent regarding the necessity to remand this matter for further proceedings.

I find sufficient evidence on this stipulated record to conclude that Respondent violated section 1153(e) and (a) of the Agricultural Labor Relations Act as of January 26, 1964. On that date, Respondent admittedly refused to meet with the certified representative of its workforce without good cause.

I otherwise concur with the findings of the majority contained in the above Order.

DATED: February 1, 1985

PATRICK W. HENNING
Board Member

MEMBER WALDIE, Concurring and Dissenting:

I would find a violation of 1153(e), (a) and see no need to remand this matter.

I am persuaded by Respondent's claims that it provided information relevant to bargaining to the Union as requested, yet never intended to recognize the Union or to bargain in good faith toward a collective bargaining agreement. This combination of assertions by an Employer is unusual, but I must conclude from it that its exchange of information was not for the purpose of good faith bargaining.

We are presented here with a case in which, in January 1984, Respondent unequivocally communicated to the UFW its position that the Union no longer represented its workers, several months after it had first provided information requested by the Union. I must conclude, based upon Respondent's own position in this case that its provision of information was not, as it appears to the majority, an act consistent with good faith negotiation toward

a collective bargaining agreement. Indeed, since the Employer now insists it never recognized the Union as the legal representative of the workers, the turning over of information could not have been for the purpose of pursuing a collective bargaining agreement. Thus, Respondent was engaging in bad faith bargaining and I would find a violation of 1153(e), (a) and award makewhole commencing six months prior to the filing of the charge, or June 30, 1982. I see no need to remand this matter.

DATED: February 1, 1985

JEROME R. WALDIE
Board Member

Watsonville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

O. E. MAYOU & SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 82-CE-147-SAL 11 ALRB No. 25

DECISION AND ORDER

In accordance with the provisions of California Administrative Code, Title 8, section 20260 (hereafter referred to as the Board's regulations), on February 3, 1984 Respondent O. E. Mayou & Sons (Mayou), Charging Party United Farm Workers of America, AFL-CIO (UFW), and the General Counsel submitted this matter for decision to the Agricultural Labor Relations Board (ALRB or Board) by way of a stipulation of facts and waived an evidentiary hearing.[1/] Mayou and the General Counsel each filed briefs addressing the legal issues presented and the General Counsel also filed a reply brief.

On February 1, 1985, the Board remanded the case to

[1/] The parties were unable to fully stipulate to all relevant events in this matter and therefore a hearing was convened on January 24, 1984, before Administrative Law Judge (ALJ) James Wolpman for the purpose of taking testimony relating to the disputed events. Following the close of the hearing, the parties waived findings of fact and conclusions of law by the ALJ and thereby the possibility of any demeanor based credibility resolutions. The parties also waived the filing of an ALJ Decision and the filing of any exceptions thereto. (See p. 42-43 of the transcript in this matter.)

an Administrative Law Judge (ALJ) with directions to reopen the record to permit the parties to present additional evidence concerning Respondent's intent in declining to bargain with the UFW on January 26, 1984. The Board's February 1, 1985 Order is attached hereto as an appendix.

On April 11 and 22, 1985, the parties submitted further stipulations in response to the remand order, however no new briefs were submitted by any party.

Findings of Fact

Jurisdiction

The parties stipulated that Mayou was at all relevant times an agricultural employer within the meaning of section 1140.4(c)[2/] of the Agricultural Labor Relations Act (ALRA or Act) and that the UFW was at all relevant times a labor organization, within the meaning of section 1140.4(f) of the Act, and we so find.

Unfair Labor Practice Allegations

In August 1979, the Board conducted an election among Mayou's agricultural employees in which the UFW received a majority of the valid votes cast. As no election objections were filed,[3/] the Board, on August 20, 1979, certified the UFW as the exclusive collective bargaining representative for all of Mayou's agricultural employees in the State of California.

On December 31, 1982, the UFW filed a charge alleging

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

[3/] See O. E. Mayou & Sons, 79-RC-ll-SAL.

that Mayou was violating section 1153(e) and (a) of the Act by refusing to bargain in good faith with the certified representative of the workforce. Following an investigation, the Salinas Regional Director issued a complaint on October 25, 1983 alleging that Mayou was violating section 1153(e) and (a) of the Act by its failure to provide information requested by the UFW and by refusing to meet and bargain with the UFW when requested. Mayou denied these allegations in its answer to the complaint, filed on November 8, 1983, but asserted no affirmative defenses.

At the reconvened hearing, the General Counsel, without objection, withdrew all allegations of bad faith bargaining prior to January 26, 1984.

Factual Background

On October 2, 1979, UFW representative David Burciaga wrote Mayou requesting that contract negotiations begin and that certain information be supplied regarding crop statistics, wage and benefits rates and crew names and addresses. C. M. (Mel) Roberts answered the letter on October 12, 1979, gave some of the information requested and suggested that the UFW contact his office for a time and place of negotiations. Roberts provided neither the names and addresses of employees nor detailed crop information. Roberts did provide generalized information regarding Mayou's operations and suggested that the employee names and addresses were in the possession of the Board pursuant to a request from the Regional Director during the recent election.

Burciaga wrote again on October 29, 1979, detailing the specific information required and stating that Marion Steeg would handle the negotiations for the UFW. Roberts photocopied this October 29th letter from the UFW and returned it to the UFW on November 8, 1979. Roberts wrote on the bottom of that photocopy that the UFW had the names and addresses of employees from the recently supplied voter eligibility list and that all other information had been supplied.[4/] On December 6, 1979 Burciaga for the third time sent a request for information to Roberts and asked him to contact Steeg for dates of negotiation.

On December 18, 1979, Steeg telephoned James Beard, Roberts' assistant. Steeg found Beard very helpful even though Beard explained that due to the seasonal flucuations in Mayou's operations, only five employees were currently employed and a current list of employees' names and addresses could not be compiled because Mayou's bookkeeper was absent. In December, Steeg wrote a letter confirming the information already supplied and further requesting that the employee identification be forwarded as soon as possible; she also asked for possible dates for commencing negotiations. Roberts phoned the UFW offices in Salinas or Steeg's phone number on January 8, 11, and 15, 1980, regarding a date for commencing negotiations and left messages

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[4/] On March 26, 1984., the parties moved to augment the record by adding three new stipulations. One of these later stipulations stated that Mayou had provided to the ALRB Salinas Regional Office a preelection list of employees. General Counsel and the UFW stipulated to the accuracy of this fact, but objected to its admission on the grounds of relevance. The Executive Secretary granted the motion to supplement the record on March 28, 1984, and we overruled the relevancy objections on February 1, 1985.

each time.

All contact between Mayou and the UFW ceased for nearly two years, from December 1979 until October 1981. On October 9, 1981, Mary Mecartney from the UFW telephoned Roberts to request information and the onset of negotiations. Relying on his interpretation of this Board's regulations, Roberts told Mecartney that he believed that the absence of any negotiations since certification of the UFW as the representative had resulted in the expiration of Mayou's duty to bargain with the UFW. Roberts asked Mecartney to send a letter stating the UFW position and promised to speak to Mayou to determine its future course of action in light of the UFW's position. Mecartney followed up the phone conversation with a letter requesting negotiations and information.

Roberts testified that he spoke to Mayou and requested that a list of employees be prepared. He took this list, and hand-delivered it to the UFW Salinas office on October 12, 1981. Roberts asserted that he left the document in the charge of a male representative of the UFW and explained that it concerned the Mayou negotiations. Mecartney testified that no such document was ever received by her, though the Salinas UFW office kept a folder for material intended for her and the UFW receptionist was aware of the companies with which she was dealing.

On October 19, 1981, Roberts mailed to the UFW office in Keene, California, a letter suggesting that the UFW was required by section 1155.2(b) of the Act to obtain an extension of its certification at the end of the first year. Roberts

requested a copy of the certification extension. The letter ended as follows:

> Upon receipt of a ALRB certification extention [sic] for the current twelve-month period I will be ready to commence negotiations.

On November 3, 1981, Mecartney wrote again to Roberts reiterating her request for information and negotiations.

On January 18, 1982, Mecartney again wrote Roberts requesting the list of current employees and certain data about those workers. Roberts testified that he prepared another list of employees and mailed it to the UFW's Keene, California office. The document is dated February 15, 1982. Mecartney testified that this document was never received by the UFW.

Mecartney met with the UFW Field Director for Watsonville, California in January 1982, and directed that he contact the Mayou workers directly. Rafael Morales, the UFW Field Director, attempted to contact the Mayou workers by posting signs in the Watsonville UFW office and by speaking to local workers. Morales ceased his unsuccessful attempts to locate Mayou employees in November 1982.

On November 19, 1982, Mecartney again wrote to Roberts, stating that it was the opinion of the UFW that Mayou was under a continuing duty to bargain with the UFW as the exclusive, certified collective bargaining representative. Mecartney again requested information regarding current employees and operations.

Roberts requested and received payroll records from Mayou upon receipt of the November 1982 correspondence from the UFW, which records he then hand-delivered to the UFW Salinas

office. Mecartney received neither employee lists nor payroll records from Mayou, either in the mail or from the Salinas UFW staff.

On December 31, 1982, the UFW filed the instant unfair labor practice charge against Mayou with the ALRB.

On July 29, 1983, Roberts, by letter, reminded Mayou of its obligation to provide current employee information to the UFW. Roberts stated in this letter that the information was required in light of an unfair labor practice charge to which Roberts must respond.

On September 16, 1983, Roberts sent, by certified mail, the following correspondence to the UFW:

> ...I am requesting a negotiating session with your organization [the UFW] on behalf of the above-named firm [Mayou] at 9:00 a.m. on Tuesday, September 20, 1983.
>
> Enclosed is a list of the current employees and their addresses for your information.

Roberto De La Cruz of the UFW wrote back on October 7, 1983, also by certified mail, suggesting alternative negotiation dates and requesting certain information on Mayou operations.

On October 25, 1983, the Salinas Regional Director of the ALRB issued a complaint against Mayou, charging that Mayou had, by failing to negotiate and by failing to provide information, unlawfully refused to bargain with the UFW in good faith in violation of the Act.

De La Cruz wrote to Roberts again on October 31, 1983, asking for negotiations. Roberts phoned De La Cruz on

November 4, 1983 and a negotiations session was arranged for November 18, 1983.

At the negotiations, the parties discussed Mayou's response to the UFW request for information. The meeting lasted approximately one hour and adjourned with the understanding that Roberts was to provide further information. Roberts stated that his presence at the negotiations was not to be construed as acceptance of the UFW's status as the representative of the employees of Mayou.

On January 23, 1984, Karen Kumari Bates of the UFW wrote to Roberts requesting further negotiations. Roberts wrote back the following message on January 26, 1984:

> A complaint was issued by the ALRB and the matter of your certification continuing beyond a one-year period is currently being decided by the Board. Until this matter has been adjudicated I do not feel that it would be appropriate for us to meet or exchange further information.
>
> May I suggest that any further negotiations be held in abeyance until the question of the Unions [sic] certification is determined?

On January 31, 1984 Bates reiterated the UFW's request for further negotiations.

Prior to January 31, 1984, Roberts suffered a debilitating stroke. In the spring of 1984 (March or April), Mayou met with its counsel and decided to await Roberts' recovery before resuming bargaining with the UFW. On March 8, 1984, Human Resources Management, Inc. (HRMI) informed Roberts' clients of his disability and offered its labor relations services to Mayou, among others.

In February 1985, John Quay of HMRI met with Mayou to discuss this matter. Prior to that time, Mayou had been relying on Roberts to conduct his negotiations. Following receipt of the Board's February 1, 1985 order remanding this matter, Guay and Ray AmRhein, Mayou's counsel, met with Mayou. This meeting occurred on February 22, 1985.

On March 1, 1985 Guay, on behalf of Mayou, contacted Ramiro Perez of the UFW to request bargaining. Perez requested information from Guay for the purposes of negotiation which Guay provided on March 22, 1985. The parties met on April 5, 1985 in a negotiating session.

Conclusions of Law

The complaint in this matter originally alleged that as of October 19, 1981,[5/] Mayou began bargaining in bad faith in violation of section 1153(e)[6/] and (a). Mayou, in its brief to the Board, argues that on October 19, 1981, Mayou commenced a "technical" refusal to bargain to test the UFW's certification. Mayou also argued that as no charge was filed within six months of the notice to the UFW that no bargaining would occur (the

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[5/] On April 11, 1985, the General Counsel agreed with the ALJ that no contention then existed by the General Counsel that Mayou engaged in bad faith bargaining before January 26, 1984.

[6/] Section 1153(e) provides:

> § 1153
> It shall be an unfair labor practice for an agricultural employer to do any of the following:
>
> (e) To refuse to bargain collectively in good faith with labor organizations certified pursuant to the provisions of Chapter 5 (commencing with Section 1156) of this part.

UFW waited until December 31, 1982, to file its charge), the complaint alleging bad faith bargaining must be dismissed because it was proscribed by the limitations period set forth in the Act. The General Counsel responded that the limitations argument is an affirmative defense that was not timely raised and was therefore waived. The General Counsel additionally asserted that Mayou's refusal to bargain was a continuing violation of the Act and the limitations period would therefore only affect the scope of the appropriate remedy awarded.

As we stated in our previously issued order, because conduct by Mayou within the six-month period preceding the filing of the instant charge arguably could serve as the basis for our finding a refusal to bargain, the charge was not untimely filed. We also rejected Mayou's technical defense based on the certification of the UFW as the bargaining agent of Mayou's agricultural workforce (see Kaplan's Fruit & Produce Co. (1977) 3 ALRB No. 28), and Mayou's doubt as to the majority support enjoyed by the UFW (see F & P Growers Association (1983) 9 ALRB No. 22). Therefore, the sole question on this record is when, if ever, did Mayou refuse to fulfill its obligation to bargain in good faith with the UFW.

Substance of the Refusal To Bargain

Based on the stipulated record, we find ourselves in the position of rejecting an employer's assertion that it refused

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to bargain with the certified representative.[7/] Rather, we find that while Mayou may have questioned the UFW's majority status, it simultaneously chose to respond to requests for information from the UFW. Further, the negotiating sessions took place after Mayou made clear and unambiguous requests for them. The fact that Roberts may have attempted to limit Mayou's role at the bargaining table in November of 1983 is insufficient to demonstrate that two years earlier Mayou refused to bargain with the UFW.[8/] (See, e.g., Al Bryant Inc. (1982) 260 NLRB 128

[7/] Were we to accept Mayou's protestations in its brief that it clearly notified the UFW on October 19, 1981, that it was refusing to bargain with it to test the continuing viability of the UFW's certification, then the clear precedent in this area conclusively demonstrates that Mayou violated section 1153(e) and (a) of the Act by its refusal to bargain. (See, e.g., Kaplan's Fruit and Produce, supra, 3 ALRB No. 28, Roberts Farms (1983) 9 ALRB No. 27; Montebello Rose Co. v. ALRB (1981) 119 Cal.App.3d 1; Terrell Machine Co. (1969) 173 NLRB 1480 [70 LRRM 1049]; Ray Brooks v. NLRB (T954) 348 U.S. 96 [75 S.Ct. 176].) Moreover, Mayou's supplemental arguments are also unavailing. The "good faith doubt" Mayou asserts to the continuing majority status of the UFW based on the lapse of time from certification to October 19, 1981, and/or employee turnover in the bargaining unit is no defense to a refusal to bargain charge under the ALRA. (Nish Noroian Farms (1982) 8 ALRB No. 25; see also, Lu-Ette Farms (1982) 8 ALRB No. 55; Lu-Ette Farms (1982) 8 ALRB No. 91; F & P Growers Assoc., supra, 9 ALRB No. 22.) Even under National Labor Relations Act precedent, Mayou's defenses here must be rejected. A doubt as to continuing majority support for a union based on either the lapse of time since certification (coupled with the inaction of the Union during this period) or employee turnover is insufficient to establish a defense to a bad faith bargaining charge. (See, e.g., Bartenders, Hotel, Motel and Restaurant Employers Bargaining Assoc. (1974) 213 NLRB 641 [87 LRRM 1194]; Pioneer Inn Assoc. (1977) 228 NLRB 1263, 1266 [95 LRRM 1225] enf'd (9th Cir. 1978) 578 F.2d 835, 838-9 [99 LRRM 2354]; King Radio Corporation (1974) 208 NLRB 578, 583 [85 LRRM 1118] enf'd (10th Cir. 1975) 510 F.2d 1154 [88 LRRM 2819].)

[8/] Mayou raises the equitable defense that the delays of the

(Fn. 8 cont. on p. 12.)

[109 LRRM 1284].)

Based on the stipulated record herein, we find that, as of January 31, 1984, when the UFW rejected Roberts' suggestion that negotiations be placed in abeyance pending Board resolution of Respondent's dispute concerning its continuing duty to bargain, Mayou failed to fulfill its obligation to bargain with the UFW, as required by section 1153(e) and (a) of the Act.

Remedy

Due to Roberts' incapacitation on January 30, 1984, we shall temper our remedy in this matter and order Mayou to make its employees whole from March 22, 1984, or two weeks after Mayou received notice from HMRI about Roberts' incapacitation and offered its substitute services. In keeping with our standard practice of facilitating compliance by breaking the makewhole period into discrete intervals, we will order Mayou to make its

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(Fn. 8 Cont.)

General Counsel and the UFW in processing this matter estop both the General Counsel and the UFW from charging violations of the protections of the ALRA. As to the Board, laches is not a valid defense. (NLRB v. Katz (1962) 369 U.S. 736 [82 S.Ct. 1007, 1114, fn. 16] ["Inordinate delay in any case is regrettable, but Congress has introduced no time limitation into the Act [the NLRA] except that in §10(b)"].)

So far as any argument can be based upon the Union's delay in this case, the issue is really whether the Union has abandoned the bargaining unit. The Union here has not abandoned the bargaining unit, however negligent its representation has been. The test for abandonment is a showing that the Union was either unwilling or unable to represent the employees in the bargaining unit. (Road Materials, Inc. (1971) 193 NLRB 990 [78 LRRM 1448]; Pioneer Inn, supra, 228 NLRB at 1264.)

employees whole from March 22, 1984 until March 1, 1985[9/] and thereafter until Mayou began bargaining in good faith with the UFW. (John Elmore Farms (1982) 8 ALRB No. 20.)

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent O. E. Mayou, 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 Labor Code section 1155.2(a), on request, with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of its agricultural employees.

(b) In any like or related manner interfering with, restraining, or coercing agricultural employees in the exercise of the rights guaranteed them by Labor Code section 1152.

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

[9/] Chairperson James-Massengale and Member McCarthy dissent from the remedial order provisions in that they would decline to extend the makewhole remedy beyond Respondent's March 1, 1985, request to bargain. (See John Elmore Farms (1985) 11 ALRB No. 22, dissenting opinion.) They believe that Respondent's bargaining conduct after March 1, 1985 should be reviewed through the normal statutory process commencing with the filing of a new unfair labor practice charge if a party believes that Respondent engaged in unlawful conduct after March 1, 1985. Members Waldie, Carrillo and Henning endorse the remedial provisions in the attached Order, providing makewhole relief until Respondent commences good faith bargaining.

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees regarding a collective bargaining agreement and/or any proposed changes in its agricultural employees' working conditions and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole its present and former agricultural employees for all losses of pay and other economic losses sustained by them as the result of Respondent's refusal to bargain, such losses to be computed in accordance with Board precedents, plus interest computed in accordance with our Decision and Order in Lu-ette Farms, Inc. (1982) 8 ALRB No. 55. The period of said makewhole obligation shall extend from March 22, 1984, until March 1, 1985, and thereafter, until Respondent commences good faith bargaining with the UFW.

(c) Preserve, and upon request, make available to the Board or its agents for examination, photocopying, and otherwise copying all records relevant and necessary to a determination of the amounts of makewhole and interest due to the affected employees under the terms of this Order.

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

(e) Post copies of the attached Notice in conspicuous places on its property for sixty (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.

(f) Provide a copy of the attached Notice to each employee hired during the 12-month period following the date of issuance of this Order.

(g) Mail copies of the attached Notice in all appropriate languages, within thirty (30) days after the date of issuance of this Order, to all agricultural employees employed by Respondent between March 22, 1984, and March 1, 1985, and thereafter, until Respondent commences good faith bargaining with the UFW which results in a contract or bona fide impasse.

(h) 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 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 to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Regional Director in writing, within thirty (30) days after the date of issuance of this Order, of the steps which have been taken to comply with it. Upon request

of the Regional Director, Respondent shall notify him or her periodically thereafter in writing of further actions taken to comply with this Order.

IT IS FURTHER ORDERED that the certification of the UFW, as the exclusive collective bargaining representative of all of Respondent's agricultural employees, be extended for a period of one year from the date following the issuance of this Order on which Respondent commences to bargain in good faith with the UFW.

Dated: October 2, 1985

JYRL JAMES-MASSENGALE, Chairperson

JOHN P. McCARTHY, Member

JORGE CARRILLO, Member

MEMBER HENNING, Concurring and Dissenting:

I see no justification for "tempering" our remedial provisions in this matter and dissent from the majority's failure to award makewhole relief from January 26, 1984. Mayou attended a negotiating session in November 1984 which was convened at its request. Mayou was represented by Roberts in its negotiations and by AmRhein in its then pending unfair labor practice proceeding. Mayou's failure to agree to continuing negotiations based upon a meritless legal theory regarding the UFW's certification cannot be excused. The January 26, 1984 letter from Roberts is a clear, unambiguous rejection of a request to negotiate. Roberts' subsequent unavailability does not permit Mayou to ignore the advice of its legal counsel and evade its obligation to bargain. Accordingly, I would order Mayou to make its employees whole for this refusal to bargain from January 26, 1984 until March 1, 1985 and thereafter until good

faith negotiations commence which result in a contract or a bona fide impasse.

DATED: October 2, 1985

PATRICK W. HENNING, Member

MEMBER WALDIE, Concurring and Dissenting:

I would find a violation of 1153(e), (a) as of June 30, 1982, six months prior to the filing of the charge and award make-whole accordingly.

I am persuaded by Respondent's claims that it provided information relevant to bargaining to the Union as requested, yet never intended to recognize the Union or to bargain in good faith toward a collective bargaining agreement. This combination of assertions by an Employer is unusual, but even more unusual is this Board's new-born willingness to extricate Respondent from the folly of its own contentions and relieve it of all but the narrowest period of makewhole.

I agree with the majority that the Employer's providing of information requested by the Union is inconsistent with the Employer's contention that it had engaged in a technical refusal to bargain. However, it is also inconsistent with the majority's conclusion that Respondent was engaged in some undefined form of

good faith negotiations. The only explanation consistent with the facts in this case and with the Employer's own contentions is that it provided the requested information with no intention of bargaining in good faith toward a collective bargaining agreement. I would, therefore, find a violation as of June 30, 1982, six months prior to the filing of the charge, and award makewhole from that date.

I concur with Member Henning's position regarding the majority's "tempering" argument. The Employer's representative had a stroke only five days after he sent the letter refusing to negotiate upon which the majority bases its finding of a violation. While we are all in sympathy with Mr. Robert's stroke, that is not the standard -- if there is one -- for "tempering" makewhole. I would agree with the majority here had there been clear evidence that the Employer wanted to change his position and revoke the letter he authorized five days earlier, and begin bargaining, but was frustrated in doing so by the unavailability of Roberts. But there is no such evidence and the majority is using a personal tragedy to further deny farmworkers the makewhole to which they are clearly entitled.

We are seeing an increasing willingness by a majority of this Board to limit the makewhole remedy in very imaginative ways. I suspect that the next step in this depressing drama will find the remedy being more frequently denied in its entirety and then the Board will have unwittingly accomplished that which the

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Legislature has consistently refused to do, namely, the elimination of makewhole as a remedy under the Act.

Dated: October 2, 1985

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office by the United Farm Workers of America, AFL-CIO (UFW), the certified bargaining agent of our employees, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, 0. E. Mayou & Sons had violated the law. Following a review of the evidence submitted by the parties, the Board has found that we failed and refused to bargain in good faith with the UFW in violation of the law. The Board has told us to post and mail this Notice. We will do what the Board has ordered, and also tell you that the Agricultural Labor Relations Act is a law which gives you and all farmworkers 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 try to get a contract or to help or protect one another; and
6. To decide not to do any of the above things.

Because it is true that you have these rights, we promise that:

WE WILL in the future bargain in good faith with the UFW with the intent and purpose of reaching an agreement.

WE WILL pay all of our agricultural employees who worked at any time from March 22, 1984., to the date we began to bargain in good faith with the UFW for a contract, for all losses of pay they have sustained as the result of our refusal to bargain.

Dated: O. E. MAYOU & SONS

By: _____
(Representative) (Title)

If you have any questions about your rights as farmworkers 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 (4.08) 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

O. E. Mayou & Sons
UFW

Case No. 82-CE-147-SAL
11 ALRB No. 25

BOARD DECISION

In December 1982 the UFW filed a charge in the Salinas Regional Office of the ALRB alleging that O.E. Mayou & Sons had violated section 1153(e) of the Act since October 1981, by failing to provide information and bargain in good faith with the UFW. The Regional Director issued a complaint in October 1983 alleging the above violations of the law. The parties waived evidentiary hearing and ALJ Decision and submitted the matter directly to the Board on stipulated facts.

On February 1, 1985, the Board issued an Order remanding the case for further evidence and thereafter the parties submitted further stipulations. The Board decided that the charge was timely filed for events which occurred within the six-month period preceding the filing of the charge that arguably could be the basis for a finding that Mayou failed to meet its obligation to bargain with the UFW, The Board further rejected Mayou's defense to the complaint premised on the theory that the UFW's certification as the exclusive bargaining representative for Mayou's workforce expired at the end of the first year following certification. The Board noted that this theory had been previously rejected and reaffirmed its prior ruling. Mayou's other arguments regarding a good faith doubt as to the UFW's continued majority support of the workforce and inordinate delay in processing this matter were also found to be meritless. However, prior to January 31, 1984, the Board found insufficient evidence of Mayou's refusal to bargain with the UFW.

The Board tempered its remedial order to reflect the incapacitation of Mayou's negotiator during the period following the UFW's request for continued bargaining on January 31, 1984. Mayou was ordered to commence bargaining in good faith with the UFW and to make its employees whole for its prior unlawful refusal from March 22, 1984 to March 1, 1985 (the date Mayou requested bargaining with the UFW) and thereafter until good faith bargaining commenced.

DISSENTING OPINIONS

Chairperson James-Massengale and Member McCarthy dissented from the Board's remedial order provisions to the extent that they would not extend the makewhole remedy beyond March 1, 1985, the date on which Respondent invited the Union to bargain. They believe that Respondent's bargaining conduct after March 1, 1985 should be reviewed through the normal statutory process commencing with the filing of a new unfair labor practice charge if a party believes that Respondent engaged in unlawful conduct after that date.

Member Henning dissented from any tempering of the remedial order. He would find that Mayou's letter dated January 26, 1984, was a clear, unambiguous rejection of the UFW s request for bargaining. Mayou's negotiator's illness should not relieve Mayou of the obligation to perform its duties under the Act.

Member Waldie, while agreeing with Member Henning, would also find that Mayou's unlawful conduct of refusing to bargain with the UFW was of much longer duration. He would accept Mayou's protestation that it refused to bargain with the UFW to test the continuing certification of the union and that this refusal was, under prior Board precedent, unlawful. He would, accordingly, award makewhole from six months prior to the filing of the charge in this matter.

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

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