Holtville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MARIO SAIKHON, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 81-CE-5-EC 13 ALRB No. 8

DECISION AND ORDER

On September 30, 1983, Administrative Law Judge (ALJ) Barbara D. Moore issued the attached Decision in this matter. Thereafter, Respondent, General Counsel and the United Farm Workers of America, AFL-CIO (UFW or Union) timely filed exceptions to the ALJ's Decision, along with supporting briefs. Respondent and General Counsel also filed reply briefs.

The Agricultural Labor Relations Board (Board) has considered the record and the ALJ's Decision in light of the exceptions, briefs and reply briefs of the parties and has decided to affirm the ALJ's rulings, findings and conclusions, as modified herein, and to adopt her proposed Order, as modified.

The complaint alleges that Respondent has refused to negotiate in good faith with the UFW from July 15, 1980, to February 24, 1983, in violation of section 1153(e)[1/] and (a) of the Agricultural Labor Relations Act (Act). In addition, Respondent is

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

charged with instituting several unlawful unilateral changes in working conditions.

The ALJ concluded that Respondent engaged in unlawful conduct by unilaterally implementing increases in the following wage rates: the lettuce ground crew rate on December 15, 1980,[2] on December 13, 1982, and on December 16, 1982; the lettuce wrap machine crew rate on December 18, 1980, and on December 20, 1982; and the tractor driver rates on January 2, 1981. Respondent did not except to these conclusions. We therefore adopt these findings of section 1153(e) and (a) violations as well as the ALJ's additional finding that, with the exception of the December 16, 1982 increase, these unilateral changes constitute evidence of bad faith.

We affirm the ALJ's conclusion that Respondent failed to provide relevant information to the UFW, in violation of section 1153(e) and (a). Respondent's failure to respond to the Union's October 1980 request for information and its excessive delay in responding to the Union's August 1982 request, constitute violations of section 1153(e) and (a).

BAD FAITH/SURFACE BARGAINING

The ALJ concluded that Respondent unlawfully engaged in bad faith bargaining with the UFW in violation of section 1153(e) and (a) of the Act. The ALJ based this conclusion on Respondent's

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[2] The ALJ found that Respondent unilaterally raised this rate but did not make a finding as to when it was implemented. General Counsel correctly points out that the parties stipulated the change occurred on December 15, 1980. (General Counsel Exhibit {GC Ex. 2).)

repeated delays in responding to the Union's proposals, its failure to submit counterproposals as promised, its refusal to timely respond to the Union's information requests, its intransigence on all major bargaining issues, and its failure to reinstate former strikers. In addition, the ALJ concluded that Respondent's unilateral implementation of wage increases, enumerated above, indicate bad faith and support a finding that it engaged in surface bargaining. Finally, the ALJ also considered Respondent's action in refusing to disclose the names and addresses of its employees as well as the location of its operations. She concluded that this action severely restricted the UFWs ability to communicate with and ascertain the negotiating desires of the employees it represents.

We affirm the ALJ's findings, conclusions, analysis and holding on the matter of bad faith bargaining to the extent that they are consistent with the discussion below.

Initially, we reject the ALJ's conclusion that Respondent unlawfully delayed negotiations from July 15, 1980 until October 30, 1980. The ALJ's conclusion is premised on the combined Board rulings in Admiral Packing Company, et al. (1981) 7 ALRB No. 43 and Mario Saikhon, Inc. (1982) 8 ALRB No. 88, that Respondent bargained in bad faith from February 1979 until July 15, 1980. Admiral Packing was reversed by the Court of Appeal in Carl Joseph Maqgio, Inc. v. ALRB (1984) 154 Cal.App.3d 40 [201 Cal.Rptr. 30]. Accordingly, the Board modified its Saikhon Decision at 8 ALRB No. 88 in Mario Saikhon, Inc. (1986) 12 ALRB No. 4, insofar as the earlier Decision had concluded that

Saikhon had engaged in bad faith or surface bargaining commencing in February 1979. In 12 ALRB No. 4, the Board further concluded that there was insufficient evidence to support a finding that Saikhon engaged in bad faith or surface bargaining through July 15, 1980.[3] Thus, the premise underlying the ALJ's conclusion that Respondent continued to bargain in bad faith is no longer viable. Further, in this case there is no evidence that between July 15, 1980 and October 30, 1980, either party sought to resume negotiations. After a significant and judicially approved hiatus in bargaining, such as that which occurred here, neither party can be expected to bear total responsibility for the resumption of bargaining. Accordingly, we do not adopt the ALJ's conclusion that Respondent unlawfully delayed negotiations from July 15, 1980 until October 30, 1980.

At the commencement of the October 30, 1980 meeting, the status of negotiations was as follows: There had been no bargaining session between Respondent and the Union since August 1979. A bona fide impasse, which commenced February 29, 1979, had been broken by Respondent's unlawful unilateral wage increases in excess of its outstanding offer to the Union. (Saikhon, supra, 12 ALRB No. 4.) Respondent's outstanding proposal was that presented on February 21, 1979, modified by the interim wage increases implemented between February 28, 1979 and October 30,

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[3] Although the focus of 12 ALRB No. 4 was on the impact of the employer's unilateral wage increase, all parties were provided the opportunity in that case to refer the Board to any other indicia of bad faith or surface bargaining occurring through July 15, 1980. No such references were made in the parties' briefs in that case.

1980. Finally, the Union's outstanding proposal consisted of its February 20, 1979 offer and its February 28, 1979 proposals.

During the October 30, 1980 meeting, the Onion proposed a modification of the contribution rate specified in its February 28, 1979 proposal on the Robert F. Kennedy Medical Plan (RFK plan).[4/] Respondent made no modification of its outstanding proposal. In addition to proposing a modification of the contribution rate to the RFK plan, the Union urged Respondent's further consideration of the concept of Respondent's compensating a union representative for administering the contract.[5/] The Union then requested a response from Respondent. No response was provided until December 10.

It is well-established that both parties in a collective bargaining relationship have mutual obligations to actively participate in the bargain process. (NLRB v. Montgomery Ward & Company (9th Cir. 1943) 133 F.2d 676 [12 LRRM 508].) While the union must institute the bargaining process by initially requesting negotiations, the employer may not passively sit by, forcing the union to continually renew its requests to meet and to proceed with negotiations. (M. H. Ritzwoller Company v. NLRB (7th Cir. 1940) 114 F.2d 432 [6 LRRM 894].) The employer also has an affirmative obligation to make arrangements for meetings once the union has initiated the process. (NLRB v. Exchange Parts Company (5th Cir. 1965) 339 F.2d 829 [58 LRRM 2097].) Here, at

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[4/]The modification consisted of a change from contributions based on a percentage of compensation to contributions based on an hourly rate.

[5/]The Union's outstanding February 1979 proposals included a provision on union representatives to be paid by the Employer.

the conclusion of the October 30, 1980 meeting, it was incumbent upon Respondent to respond to the Union's new proposal and thereby permit the Union to decide whether further meetings or new proposals were necessary.[6] Respondent's failure to respond until December 10, when it indicated that it was unlikely that a new contract could be negotiated unless the Union was willing to make new proposals,[7] constitutes evidence that Respondent was not taking its bargaining obligation as seriously as it should have.

On December 10, Respondent also notified the Union that it desired to raise wages for tractor drivers. The parties met on December 15, 1980, for the purpose of discussing the interim wage increase proposed by Respondent. During that meeting Respondent also proposed an interim increase in lettuce harvest wage rates. The Union refused to agree to interim wage increases and continued to maintain its demand for a complete contract. Respondent's negotiator then notified the Union that it would immediately implement the proposed increases in the lettuce rates. It was not until February 4, 1983, that Respondent informed the Union that it had also increased tractor driver wage rates on January 2, 1981.

The context in which the above unilateral increases were

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[6] During the December 15 meeting, the Union was informed that Ronald Barsamian would be replacing Charles Stoll as Respondent's negotiator. Sometime during January 1981, Barsamian told Ann Smith that he would review Respondent's position and present a new proposal or reaffirm Respondent's position. He committed himself to completing his review by the end of January.

[7] The position Respondent communicated to the Union on December 10, was the same as that communicated by the Union to Respondent on October 30; each party demanded that the other make substantial movement to produce a contract.

made compels the conclusion that Respondent was acting in disregard of the Union's role as the exclusive collective bargaining representative of Respondent's agricultural employees and was engaging in conduct which could not help but frustrate the collective bargaining process. Of particular relevance are the following facts: in October 1980, the Union initiated resumption of contract negotiations and modified one provision of its proposal; for six weeks thereafter Respondent gave no response to the Union's overtures; and, when Respondent did respond, its response was accompanied by an announcement of its desire to make interim wage increases followed by immediate implementation of those increases even though the Union made clear its intent not to agree to interim increases. It was not until March 12, 1981, that Respondent made any effort to resume bargaining in good faith toward a collective bargaining agreement.[8/]

By its March 12, 1981[9/] letter (GC Ex. 15), Respondent offered to meet with the Union, thus satisfying the mutual obligation to make arrangements for meeting. Upon the Union's informing Respondent, on March 17 or 18, that it had appointed a new negotiator, Respondent's negotiator contacted the Union's representative and arranged to meet on March 31. On March 31, the parties reviewed the status of negotiations and set a schedule for

[8/] A party is not obligated to respond to the other party's movement with a counterproposal. Appropriate responses include rejection of new offers with an explanation, an indication that the proposals are unacceptable, a counterproposal or agreement to the new offer.

[9/] Unless otherwise noted, all dates refer to 1981.

future meetings. At the next meeting, on April 15, Respondent presented new proposals and both parties made movement which resulted in agreement on some issues. The parties also agreed to meet on April 27. On April 27, Respondent reviewed with the Union unresolved issues and explained its concerns with regard to each of them.

The parties continued discussions on May 4, 5 and 18, which resulted in agreement on additional articles.[10/] At the conclusion of the May 18 meeting, although the parties had made substantial progress, agreement on a contract was not reached, ostensibly because the Union had made acceptance of its entire package a prerequisite to agreement and certain provisions of the package were not acceptable to Respondent.

On June 30, the parties again met and the Union presented a new package proposal; Respondent responded with counterproposals. On July 21, the Union presented another package proposal. Respondent admits that it did not expressly reject the Union's July 21 package proposal. The ALJ properly found that it was clear that Respondent had indicated it would provide a further response.

Between July 21 and January 12, 1982, there were no meetings or communications between the parties for the purpose of attempting to reach agreement on a contract. This period of delay was attributable to Respondent's failure to provide its promised

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[10/] The outstanding issues included contract duration, hiring hall, good standing with respect to union membership and economics. Contrary to the ALJ's finding, Respondent explained its rejection of the Union's proposal on hiring hall on the basis that it did not satisfy its needs. (R.T. IV, p. 6.)

response.

In response to a call from Union negotiator David Martinez, the parties resumed negotiations on January 12, 1982. At that meeting, Respondent finally responded to the Union's July 21, 1981 proposal. Respondent rejected the Union's proposal, counterproposed on the hiring issue and stated its demand for agreement to its February 1979 proposals.

On February 16, 1982, the Union presented its first complete proposal since February 1979. This proposal, which contained noneconomic and economic items, including wages, was not a package proposal and had a duration of six months. In response to a request by Respondent's negotiator, the meeting ended so that Respondent could prepare a three-year counterproposal.

Two months later, Respondent had not presented its promised counterproposal. The Union's negotiator wrote Respondent's negotiator on April 12, stating that it was still awaiting Respondent's response. The parties agreed to meet in May but the meeting was subsequently canceled because the Union's negotiator had to attend a bargaining session with another employer. The next scheduled meeting was canceled because the Union's negotiator had to visit his ill father. In late May or June, the Union notified Respondent's negotiator that Arturo Mendoza would be the Union's new bargaining representative.

The parties next met on August 3, 1982. At no time between February 16 and August 3, did Respondent give any indication that it had prepared the promised counterproposal. Since the Union's outstanding proposal had an expiration date of

August 31, the Union told Respondent's negotiator that there was no need to respond to that proposal and that the Union would present a new proposal. On August 12, the Union also requested information from Respondent which the Union indicated it needed to prepare its new proposals. The information was not provided and the Union went ahead and proffered a proposal which it submitted on November 16 as a modification to its proposal of February 16, 1982.

The parties next met on December 8. At that time Respondent provided some of the requested information. As of the commencement of the hearing on February 24, 1983, Respondent had not responded to the Union's November 16, 1982 proposal.

Section 1153(e) of the Act requires an agricultural employer to bargain in good faith with its employees' certified collective bargaining representative. The ALJ appropriately cites various expressions by this Board, the NLRB and the courts as to the requirements of the mutual obligation of the employer and the union to bargain in good faith. The ALJ is also correct in acknowledging the difficulty in determining whether challenged conduct constitutes permissible hard bargaining or a type of unlawful bargaining. The difficulty in the Board's task is largely attributable to the Board's dual responsibility of assuring that parties bargain in good faith while, at the same time, giving full recognition to the statute's express acknowledgement that the good faith bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." (Lab. Code § 1155.2.) The Board must

take pains to avoid interjecting itself as another party at the bargaining table under the guise of evaluating a party's compliance with the statutory bargaining obligation. The Board is in danger of assuming an improper role when it relies too heavily on such factors as the importance of issues to a party and the degree of movement exhibited by either side.

In this case, the ALJ frequently analyzed the parties' bargaining conduct in terms of whether movement was substantial or not on major issues. Similarly, frequent reference was made to whether Respondent was agreeing to the Sun Harvest contract[11/] or whether the Union was accepting something less than Sun Harvest, with the implicit suggestion that in the former case, there was no significant movement on Respondent's part but in the latter case, there was a substantial concession by the Union. No inference can be properly drawn from the Union's willingness to drop substantially below the Sun Harvest agreement unless one impermissibly assumes that the Sun Harvest agreement was more reasonable than Respondent's position.

Notwithstanding the foregoing flaws in the ALJ's analysis, the record in this case does establish that, commencing in October 1980, Respondent failed to fulfill its statutory obligation to bargain in good faith by creating inexcusable delays and by engaging in conduct indicating a conscious disregard for

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[11/]Sun Harvest" refers to the collective bargaining agreement entered into by the UFW and Sun Harvest, Inc. in September 1979. A number of other growers and/or harvesters of vegetable crops also signed contracts with the UFW that were substantially identical to the Sun Harvest agreement except for local provisions.

the Union's role as the exclusive bargaining representative of Respondent's employees (i.e., implementing various unilateral wage changes). For a short time, Respondent gave indications of being in compliance with its obligation to bargain in good faith, but it later resumed its dilatory behavior and its unilateral implementation of wage increases. Given Respondent's recurring and sometimes blatant acts in derogation of its basic bargaining obligations, we can only conclude that Respondent lacked the requisite good faith intent to reach an agreement with the Union and was engaged in an overall course of surface or bad faith bargaining from October 30, 1980 onward.

UNION BARGAINING CONDUCT

General Counsel excepts to the ALJ's conclusion that the UFW failed to propose a seniority supplement. We find merit in this exception. Respondent's refusal to disclose the names and addresses of its employees prevented the Union from speaking with the employees and learning the current working conditions at the Company. UFW negotiator David Martinez testified that he was aware Respondent had added new lettuce machines and job classifications since the illegal lockout, but could not obtain any information on these changes. The UFW's failure to formulate and submit a seniority supplement was a direct result of Respondent's unlawful failure to supply requested information. Under these circumstances, the Union cannot be faulted for its failure in that regard.

General Counsel and the UFW both except to the ALJ's finding that the Union engaged in regressive bargaining by

reverting back to a prior position on the RFK plan. We find merit in this exception. Martinez submitted the summary of the Union's proposals at the meeting of May 4, 1981 (GC Ex. 18), during a period when the parties were making some changes in their outstanding proposals. It is undisputed that the summary included a proposal which the Union had previously abandoned and, in that sense, it was regressive. However, the regression had minimal, if any, effect on the negotiations since the parties did not discuss economics until February 1982, and Company negotiator Ronald Barsamian did not mention the "change" to Martinez until that time. Under these circumstances, the Union's return to an old proposal is not indicative of bad faith bargaining on its part.

APPROPRIATENESS OF THE MAKEWHOLE REMEDY

We begin by noting that the Act provides for "making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain...." (Labor Code § 1160.3.) That provision thus contemplates that the Board will find the makewhole remedy to be appropriate for some violations of the employer's statutory bargaining obligation and not for others.[12] Where such violations are isolated and do not establish a pattern of conduct amounting to surface bargaining, we have declined to apply the makewhole remedy. (Holtville Farms, Inc. (1984) 10 ALRB No. 49.) Moreover, we are cognizant of the fact that a makewhole award is

[12] The Board has held in United Farm Workers of America (Maqgio) (1986) 12 ALRB No. 16 that the ALRA does net sanction the use of the makewhole remedy in cases of union bad faith bargaining.

in the nature of an equitable remedy and cannot be invoked without reference to the conduct of both parties to the bargaining process. (N. A. Pricola Produce (1981) 7 ALRB No. 49.) Finally, we recognize that to apply the makewhole remedy without some regard for what can realistically be expected from the bargaining process would be to use that remedy in a punitive fashion and to make the use of legitimate hard bargaining unduly hazardous. Such results were clearly not intended by the Legislature in providing for use of the make whole remedy " . . . when the Board deems such relief appropriate, for the loss of pay resulting from employer's refusal to bargain. . . ." With these considerations in mind, we find makewhole relief to be appropriate in this case to the extent that the collective bargaining process was clearly frustrated by Respondent's overall course of surface or bad faith bargaining.

Despite Respondent's failure to fully comply with its obligation to bargain in good faith, we would not find it appropriate to order the makewhole remedy as of October 30, 1980. Given the fact that the Union failed to pursue contract negotiations for 15 months prior to October 30, 1980, and with the only change in the parties' position since February 1979 being the Union's single modification of the Employer's contribution rate to the RFK fund, we have an insufficient basis for concluding that Respondent's six-week delay in responding had any impact on negotiations. Indeed, it strains credulity to even suggest that absent that delay the parties would have concluded a contract on October 30, 1980, or soon thereafter, so as to render makewhole an appropriate remedy for any loss employees suffered. This

conclusion is particularly warranted in light of the Union's conduct with respect to the bargaining which preceded the period at issue here and undoubtedly set the tone for negotiations during the period being scrutinized. In Carl Joseph Maggio, supra, 154 Cal.App.3d 40, the appellate court described the following conduct by the union which contributed to the impasse that commenced in February 1979.

> First, the union's extreme demands at the outset and its unwillingness to compromise or negotiate in good faith. The union cancelled meetings; it refused to join the employers in a request for a federal mediator and a representative from the Council on Wage and Price Stability which might have provided the catalyst for resolution of differences; it called for strikes before it had even presented a complete proposal to the employers; and it failed to make more than small concessions in its proposals. (Id. at p. 71.)

The court further noted that, "[t]he violence which took place in the [UFW sanctioned] strikes against the employers . . . was 'serious misconduct,' and so would have justified their refusing to bargain with the UFW."[13]

Respondent's conduct beginning on December 15, 1980, when Respondent instituted the first of its series of unilateral wage increases warrants a different conclusion with respect to the appropriateness of the makewhole remedy. From that point onward the failure of the collective bargaining process in this case was made inevitable by a clear pattern of bad faith conduct on the part

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[13] In light of these circumstances, we do not rely on Respondent's failure to provide the names and addresses of strike replacements in response to the Union's October 30 information request as a factor indicating that Respondent was engaged in a course of bad faith bargaining from that date onward.

of Respondent which included long delays in responding to Union proposals, a failure to submit counterproposals as promised, a failure to provide requested relevant information in a timely manner, and a string of unlawful unilateral wage changes. Under these circumstances, we deem application of the makewhole remedy to be appropriate.

Had Respondent's bargaining conduct from March 12, 1981, through July 21, 1981, been representative of the final stage of bargaining between the two parties, it may well have warranted the inference that Respondent had abandoned the bad faith course of conduct that characterized the earlier period of bargaining. However, given the lengthy period of bad faith bargaining which took place subsequent to July 21, and the lack of any objective factors which would indicate the plausibility of a temporary change in its attitude toward bargaining, we cannot conclude that Respondent was engaged in other than a course of surface bargaining from March 12, 1981, through July 21, 1981. Since we infer from the totality of circumstances that Respondent lacked the requisite good faith intent to reach an agreement during that period, the progress that the parties appeared to have made can only be considered illusory and would not warrant a tolling of Respondent's makewhole liability.

The makewhole remedy shall be applied from December 15, 1980, until Respondent is shown to have commenced good faith bargaining with the UFW. A determination as to when the makewhole remedy may be terminated will be made through the supplemental compliance proceeding in this case. The General Counsel will bear

the burden of proving the appropriate duration of the makewhole remedy. Our Order herein shall not be construed as precluding Respondent from the use of legitimate hard bargaining pending the outcome of the compliance proceedings.

ORDER

By authority of Labor Code section 1160.3 the Agricultural Labor Relations Board (Board) hereby orders that Respondent Mario Saikhon, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to meet and to bargain collectively in good faith, as defined in section 1155.2(a) of the Agricultural Labor Relations Act (Act), with the United Farm Workers of America, AFL-CIO (UFW) as the certified exclusive 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 section 1152 of the Act.

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

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

(b) Upon request of the UFW, rescind its unilateral wage increases from the 1980-81 and 1982-83 lettuce harvest season, and meet and bargain in good faith with the UFW concerning

any proposed wage increases, or any other conditions of employment of its agricultural employees.

(c) Make whole its agricultural employees for all losses of pay and other economic losses they have suffered as a result of Respondent's failure and refusal to bargain in good faith with the UFW, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with the Board's Decision and Order in Lu-Ette Farms, (1982) 8 ALRB No. 55. The makewhole period shall extend from December 15, 1980, until February 24, 1983, and from February 24, 1983, until the date on which Respondent commences good faith bargaining with the UFW.

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

(e) Preserve and, upon request, make available to the Board or its agents, for examination, photocopying, and otherwise copying, all payroll and social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the amounts of makewhole and interest due under the terms of this Order.

(f) Sign the Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, make sufficient copies in each language for the purposes set forth in this Order.

(g) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this Order, to all agricultural employees in its employ at any time during the period from October 30, 1980, until the date on which the said Notice is mailed.

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

(i) Arrange for a representative or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all piece-rate employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(j) Notify the Regional Director in writing, within 30 days of the issuance of this Order, of the steps it has taken to comply with its terms, and make further reports at the request of the Regional Director until full compliance is achieved.

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's agricultural employees be, and it hereby is, extended for a period of one year commencing on the date on which Respondent commences to bargain in good faith with the UFW.

DATED: May 11, 1987

JOHN P. McCARTHY, Member[14/]

GREGORY L. GONOT, Member

[14/] The signatures of Board Members in all Board decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority. Chairman Ben Davidian and Member Ivonne Ramos Richardson did not participate in the consideration of this case

MEMBER HENNING, Dissenting:

This case presents an egregious example of unlawful surface bargaining. The Administrative Law Judge (ALJ) concluded that Respondent repeatedly delayed in responding to Union proposals, failed to submit counterproposals as promised, refused to provide basic information for nearly two years, unlawfully refused to rehire former strikers, severely restricted the ability of the United Farm Workers of America, AFL-CIO (UFW or Union) to communicate with and ascertain the negotiating desires of the employees it represents, remained intransigent on all major bargaining issues, and engaged in a repeated pattern of unilaterally implementing wage increases right before the beginning of the lettuce harvest season. All of these conclusions are well supported by the record evidence, as is the ALJ's ultimate conclusion that, based on the totality of the circumstances, Respondent was engaged in surface bargaining during

the period covered by the complaint in this case.

My colleagues uphold most of the ALJ's findings and conclusions. However, they appear to be embarking on a process of compartmentalizing the analysis of surface bargaining into artificial categories. Since the analysis, although confusing, reaches nearly the correct result, let me merely state that wherever the majority deviates from the recommended decision of the ALJ, I would not and insofar as that makewhole analysis charts a new course for the application of the Agricultural Labor Relations Act (ALRA or Act), I disagree.

The issue posed by the majority is framed as determining in what circumstances the Board should order the makewhole remedy for violations of the duty to bargain. Citing Holtville Farms, Inc. (1984) 10 ALRB No. 49, the majority states that makewhole will not be utilized for "isolated" violations nor for less than "a pattern of conduct amounting to surface bargaining." In Holtville, we found that the employer failed to respond to a request to bargain in a timely fashion (waiting six weeks) and failed to timely provide seniority and some wage information. However, we found substantial good faith negotiations did occur and that the delay in the onset of bargaining did not have a "significant impact on the opportunity for meaningful negotiations." (Holtville, supra, at p. 20.) Since we found no surface bargaining, we awarded no bargaining makewhole.[1/]

[1/] The majority also sites N. A. Pricola Produce (1981) 7 ALRB No. 49 regarding the appropriateness of the makewhole remedy. As that decision was a plurality panel decision with no majority regarding the makewhole remedy, it is not particularly persuasive authority.

Here we find surface bargaining and therefore award makewhole.

The majority announces, based upon the above authority, that it will only

> ...find makewhole relief appropriate in this case to the extent that the collective bargaining process was clearly frustrated by Respondent's overall course of surface or bad faith bargaining. (Supra at p. 14.)

To the extent the majority implies that surface bargaining may not warrant effective relief, I dissent. As the majority does in fact apply the remedy here, save for a short span at the onset of this matter, I will wait for a more appropriate case to learn the implications of the majority's reformulation of our precedent.

In my view, our finding that Respondent engaged in bad faith bargaining renders the makewhole remedy applicable. We must comprehensively consider the entire course of bargaining conduct, and if we glean from that conduct surface bargaining -- a sophisticated practice of appearing to bargain in good faith for periods of time without intending to reach an agreement -- we are obligated to remedy that violation by awarding makewhole. Whenever an employer is found to have engaged in surface bargaining, makewhole relief is warranted, as it is the only remedy that can begin to compensate employees for the losses they suffer when their employer fails to meet its duty to bargain. A finding of unlawful surface bargaining amounts to a conclusion that the conduct frustrated the bargaining process. I can think of no circumstances where makewhole relief would not be appropriate to remedy a finding of surface bargaining. (Rivcom Corp. v. Agricultural Labor Relations Bd. (1983) 34 Cal.3d 743,

772-773.)

For all the foregoing reasons, I dissent from the majority's decision insofar as it fails to adopt the rulings, findings and conclusions of the ALJ.

Dated: May 11, 1987

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we, Mario Saikhon, Inc., had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by bargaining in bad faith with the UFW regarding a collective bargaining agreement. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all farm workers 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 to obtain a contract covering your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help or protect one another; and
6. To decide not to do any of these things.

Because you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above. In particular:

WE WILL NOT make any changes in your wages, hours, or conditions of employment without first notifying and negotiating with the UFW, the certified bargaining representative of our employees, about such changes.

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

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

DATED: MARIO SAIKHON, INC.

By: ______________________________
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California 92243. The telephone number is (619) 353-2130.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MTILATE

CASE SUMMARY

Mario Saikhon, Inc. | 13 ALRB No. 8
(UFW) | Case No. 81-CE-5-EC

ALJ DECISION

The ALJ found that Saikhon bargained in bad faith with the UFW from July 15, 1980 to the beginning of the hearing in this matter (February 24, 1983). The ALJ found that Saikhon repeatedly delayed responding to UFW bargaining proposals, refused to provide information, restricted the UFW's ability to communicate with the employees in the bargaining unit, remained intransigent on all major bargaining issues, and engaged in a pattern of proposing wage increases shortly before the harvest season and then immediately implementing the increases without giving the Union an opportunity to bargain. The ALJ concluded that Saikhon's "away-from-the-table" conduct supported the finding of bad faith and that the UFW's bargaining conduct could not serve as a defense to Saikhon's unlawful tactics. The ALJ found the makewhole remedy appropriate for the period covered by the complaint.

BOARD DECISION

The Board adopted the ALJ's findings that Respondent had violated section 1153(e) and (a) by unilaterally implementing increases in wage rates and that such conduct constituted evidence of bad faith. It affirmed the ALJ's conclusion that Respondent violated section 1153(e) and (a) by failing to provide relevant information to the UFW.

The Board agreed with the ALJ that Respondent violated section 1153(e) and (a) by engaging in bad faith bargaining and that this conclusion is supported by Respondent's unilateral implementation of wage increases and its actions which severely restricted the Union's ability to communicate with Respondent's employees. However, the Board disaffirmed the ALJ's conclusion that Respondent's conduct was a continuation of prior bad faith bargaining and found that the delay in resumption of bargaining was attributable to both parties. The Board also took issue with the ALJ's reliance on the degree of movement exhibited by one party concerning issues of importance to the other party.

The Board concluded that commencing in October 1980, Respondent failed to fulfill its statutory obligation to bargain by creating inexcusable delays and by engaging in conduct indicating a conscious disregard for the Union's role as the exclusive bargaining representative of Respondent's employees. The Union's bargaining conduct was not found improper.

Concerning the remedy the Board indicated that it considered makewhole relief appropriate in this case to the extent that the collective bargaining process was clearly frustrated by

Respondent's overall course of surface or other bad faith bargaining. Under this standard, a makewhole award was deemed appropriate commencing on December 15, 1980, when Respondent instituted the first of its series of unilateral wage increases. The remedy would run until Respondent is shown to have commenced good faith bargaining with the UFW. The Board indicated that in so ruling it did not preclude Respondent from the use of legitimate hard bargaining pending the outcome of the compliance proceedings.

DISSENTING OPINION

Member Henning dissented from the majority opinion insofar as it deviated from the ALJ's analysis. He noted that the majority's discussion of the makewhole remedy was confusing but since it nearly conformed with the ALJ's opinion, he merely commented that he would remedy any finding of surface bargaining with the makewhole remedy.

* * *

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: MARIO SAIKHOM, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 81-CE-5-EC

Appearances:

Christine C. Bleuler
for the General Counsel

Clare M. McGinnis
for the Charging Party

Larry A. Dawson and Daniel Haley
for the Respondent

Before: Barbara D. Moore
Administrative Law Judge

DECISION OF ADMINISTRATIVE LAW JUDGE

BARBARA D. MOORE, Administrative Law Judge

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

This case was heard by me on 7 days in February and March 1983, in El Centre and Bakersfield, California. The Third Amended Complaint[1/] (hereafter complaint) based on the charge in case number 81-CE-5-EC[2/] was issued on January 18, 1983 and forms the basis for the instant case.[3/]

The complaint alleges that Respondent Mario Saikhon, Inc. (hereafter Respondent, Saikhon or the Company) has refused to negotiate in good faith with the Charging Party, the United Farm Workers of America, AFL-CIO, (hereafter UFW, the Union or Charging Party) from July 15, 1980 to February 24, 1983, in violation of subsections (a) and (e) of section 1153 of the Agricultural Labor Relations Act (hereafter ALRA or the Act).[4/]

Specifically, General Counsel alleges that Respondent failed and refused to respond to proposals, maintained inflexible bargaining positions, failed to provide information, engaged in dilatory tactics and made predictably unacceptable proposals.

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1. General Counsel's Exhibit 1.2. Hereafter, General Counsel's and Respondent's exhibits will be referred to as "G.C. Ex, (number)" and "Resp. Ex. (number)", respectively. References to the hearing transcript will be noted as follows: "R.T. (volume): (page)."

2. G.C. Ex. 1.1.

3. This case originally included four additional charges: cases numbered 79-CE-128-EC, 79-CE-153-EC, 80-CE-210-EC and 82-CE-16-EC. The first two charges were dismissed and the latter two severed.

4. All section references herein are to the California Labor Code unless otherwise specified.

General Counsel further alleges that Respondent implemented unlawful unilateral wage increases during the 1980-1981 and 1982-1983 lettuce harvest seasons. General Counsel also alleges that various conduct away from the bargaining table and Respondent's past history of bad faith bargaining and anti-union animus are indicative of its refusal to bargain in the instant case.

Respondent filed its Answer[5/] on January 24, 1983, denying that it bargained in bad faith and asserting several affirmative defenses including an allegation that the UFW bargained in bad faith during the time covered by the instant complaint. Respondent asserts that the Union has delayed bargaining by changing negotiatiors twice, by sending unprepared negotiators to the table, by cancelling and being unavailable for meetings and by refusing to negotiate wage increases.

After the close of the hearing, General Counsel and Respondent filed motions to correct the official transcript. Those motions are dealt with in Appendix A which is attached hereto.

All parties were given full opportunity to participate in the hearing, and, after its close, General Counsel, the UFW and Respondent each filed briefs in support of their positions. Upon the entire record, including my observation of the demeanor of witnesses, and after consideration of the briefs filed by the parties, I make the following:

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5. G. C. Ex. 1.3.

FINDINGS OF FACT

I. Jurisdiction

Respondent, as admitted in its answer, is an agricultural employer within the meaning of subsection (c) of section 1140.4 of the Act. Charging Party is a labor organization within the meaning of subsection (b) of section 1140.4 of the Act. The UFW at all times material herein has been the certified representative of Respondent's agricultural employees for the purposes of collective bargaining. There is no contract between the UFW and Respondent in effect.

II. Company Operations

Mario Saikhon, Inc., is an Imperial Valley based agricultural company operating primarily in the area of Holtville, California. (R.T. III: 32.) The Company grows a combination of row crops and field or flat crops including lettuce, carrots, watermelons, cantaloupes, broccoli, cotton, wheat, alfalfa and Bermuda grass. (R.T. III: 33.)

Mario Saikhon testified that the Company both farms and harvests lettuce on approximately 1700-1800 acres. (R.T. III: 38.) The ground preparation for lettuce usually begins about the latter part of June with planting starting around the middle of September. (R.T. III: 40.) Thinning occurs about the first week in October, and the lettuce is harvested from approximately December 10 through March 10. (R.T. III: 41.) The cantaloupe harvest begins about the 20th to 25th of May and runs to approximately July 4. (R.T. III:

42.)

III. Bargaining History

The UFW was certified as the bargaining representative on August 18, 1977, and Respondent and the UFW signed a contract on February 9, 1978, which expired on January 1, 1979. This contract was the basic uniform contract prevailing in the vegetable industry at the time and was known as the Inter Harvest Master Agreement (hereafter referred to as Inter Harvest). Saikhon's contract (hereafter prior Saikhon contract) consisted of the Inter Harvest contract (Articles 1 through 43) plus supplements on local issues such as seniority.

Negotiations for a new contract began in late 1978 with Respondent bargaining separately but simultaneously with a number of other employers including the Sun Harvest company which was formerly Inter Harvest. Those negotiations were the subject of unfair labor practice proceedings before the Agricultural Labor Relations Board (hereafter ALRB or Board), and Respondent was found guilty of bad faith bargaining in Admiral Packing Company, et al. (1981) 7 ALRB No. 43.

Specifically, in that case the Board found that Respondent and other employers had falsely declared impasse on February 28, 1979, and that the UFWs strike against Respondent and other employers [6] was converted into an unfair labor practice strike as of February 21, 1979.

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6. The strike against Respondent had begun on January 22, 1979.

Responent's bargaining conduct subsequent to that litigated in Admiral Packing, supra, was found to be in bad faith by the Board in Mario Saikhon, Inc. (1982) 8 ALRB No. 88, petition for rev. denied Div. 1, 4th Dist., Ct. of App. (hereafter Saikhon I).

IV. Background Facts

This section will provide an overview of the bargaining history for the time period covered by the instant case. The factual discussion will then be divided into sections corresponding to specific issues. Some facts are relevant to more than one issue and are treated accordingly.

The instant case covers the period of negotiations following that litigated in Saikhon I and commences on July 15, 1980, and continues to the date of hearing, February 24, 1983. Respondent's bargaining position as of July 15, 1980, is reflected by its proposal of February 21, 1979.[7] (R.T. I: 23-24.) The Union's position at that time consisted of a combination of its last[8] proposal of February 28, 1979,[8] and its proposals which were on the[9] table as of February 20, 1979.[9] (R.T. I: 24.)

There were no bargaining sessions between the Union and Respondent from August 1979 (described in Saikhon I, supra) until October 30, 1980. In early October, Ann Smith, the UFW negotiator, called Respondent's negotiator, Charley Stoll, to see if

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7. G.C. Ex. 8.

8. G.C. Kx *9.

9. G.C. Ex. 5, 6, and 7.

negotiations could be resumed. Since a new lettuce harvest season was about to begin in December, Ann Smith wanted to ". . . reassert the union's position on a number of things and try to encourage [Saikhon] to come forward with a new bargaining proposal." (R.T. I: 25.)

A meeting was scheduled for October 30, 1980, where Ann Smith represented the Union, and Charley Stoll and Ron Barsamian represented Respondent and two other companies, Gourmet Harvesting and Packing Company and Lu-Ette Farms, Inc., both also Imperial Valley companies. (R.T. III: 10.) As in earlier negotiations, each company envisioned signing a separate agreement but bargained in a group format. (R.T. I: 26.)

At that time, Smith presented a request for information which was not responded to in any detail until December 8, 1982. She also proposed a modification of the UFW's position on the Robert F. Kennedy Medical Plan (hereafter RFK plan) from that in its February 28, 1979, proposal. She invited the Company to respond to this modification, to her suggestions about a paid union representative and also to present new proposals.

During December, the parties discussed interim wage increases. Barsamian stated that the increases were in keeping with the Company's February 21, 1979, proposal and thus were not really new. Stoll, however, characterized them as wage proposals. On December 15, 1980, Stoll confirmed to Smith that Barsamian would be taking over negotiations because Stoll was going into private practice. There was no meeting between December 15, 1980 and March 31, 1981.

Smith and Barsamian spoke on March 17 or 18, 1981, and Smith informed him that, because she was ill, David Martinez would be taking over negotiations. Barsamian and Martinez met for the first time on March 31, 1981. They held another seven negotiation sessions between this time and July 21, 1981.

There is a significant gap in negotiations dating from the July 21, 1981, meeting until November 20, 1981, when Barsamian wrote Martinez (G.C. Ex. 23; same as Resp. Ex. 16.) telling him the Company wanted an interim wage increase. (R.T. II: 11.) Martinez refused saying the Union wanted any wage increases to be part of a complete contract. (G.C. Ex. 24.) Martinez gave a letter of opposition to Barsamian on December 10, 1981, at a meeting[10/] primarily for negotiations with other companies. They did not meet again to negotiate for Saikhon until January 12, 1982.

The parties next met on February 16, 1982. Martinez then wrote Barsamian on April 12, 1982 (G.C. Ex. 26), and, that same day, they spoke by telephone and agreed to meet on May 11. (R.T. II: 28.) Martinez had to cancel the May 11 meeting because he was required to attend a negotiation session with a different company. (Id.) He had to cancel the next meeting also, which was set for May 18, to go to Texas because his father was dying. (Id.) He sent Barsamian a mailgram from Texas saying he would contact him when he returned.

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10. General Counsel and Respondent, but not the Charging Party, stipulated that December 10, 1981, was one of the meetings on the Saikhon negotiations. From the record, it appears that at least the interim wage increase for Saikhon was discussed at this meeting whether or not it was actually a scheduled negotiation session pertaining to Saikhon. (R.T. II: 12.) (G.C. Ex. 3; Resp. Ex. 50.)

When Martinez returned, the Union reassigned him. Arturo Mendoza was assigned to take over negotiations for Saikhon and various other companies, and Martinez notified Barsamian of this fact in late May or early June.

Mendoza and Barsamian met on August 3, 1982, and reviewed their positions and the status of negotiations. Mendoza told Barsamian he would submit another request for information which he did on August 12. (G.C. Ex. 30.) He also said he would submit a new proposal since the Union's proposal of February 16, 1982, -- the last proposal on the table-- was due to expire the end of August along with the Sun Harvest contract.

Not having received any information, Mendoza sent a proposal to Barsamian on November 16, 1982, (G.C. Ex. 32) and suggested a meeting. They met on December 7, at which time Barsamian provided some of the requested information but did not respond to the Union's proposal

During December the parties discussed the Company's desire to raise wages, but there were no meetings between December 8, 1982 and February 4, 1983.

V. The Unilateral Wage Increases

On December 10, 1980, Respondent's negotiator Charley Stoll called Ann Smith and told her the Company wanted to raise the wage rates for tractor drivers. Stoll wrote to Smith confirming the call and her response.[11/] He asserted the wage increases had

11. G.C. Ex. 13.

historical precedent.[12] Smith objected to the increase, noting she was especially disturbed since the parties had just recently met (on October 30) after a substantial gap in bargaining, and she had requested new proposals from the Company with the goal of reaching a complete contract. She told Stoll that a wage increase without agreement on a contract would undermine the UFW's bargaining position. Thus, the UFW would not agree to it and would treat any such increase as an unfair labor practice. (R.T. I: 35.)

Smith, Stoll and Barsamian met on December 15, 1980. Stoll brought up the subject of the wage increases he had proposed on the phone as well as increases in the lettuce harvest rates which were set out in his subsequent letter. Both Smith and Stoll agree that Smith refused to agree to the proposed interim wage increases saying she wanted a full contract.

The meeting ended with Stoll telling Smith the lettuce harvest rates would be increased immediately.[13] (R.T. III: 29.) Smith testified that Stoll was not sure when the tractor driver increases would occur.[14]

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12. In Saikhon I, supra, 8 ALRB No. 88, the Board found several wage increases unlawful and determined that they did not come within the exceptions of an historical precedent or past practice.

13. Based on information given by Barsamian to Mendoza on February 1, 1983, it appears that on December 18, 1980, the lettuce harvest wages were raised for the cutter, packer, closer and loader as proposed in Stoll's December 12, 1980, letter. (G.C. Ex. 13.) (R.T. IV: 32.)

14. During the meeting of February 4, 1983, Barsamian told Arturo Mendoza that beginning January 2, 1981 and until February 4, 1983, class A tractor drivers were receiving $5.40 and class B

(Footnote continued——)

Prior to the begining of the following lettuce season, Barsamian wrote to Martinez (G.C. Ex. 23) suggesting another interim wage increase. Martinez refused. (G.C. Ex. 24.) There is no allegation that the Company instituted a unilateral wage increase during this season.

Two years later, again just as the lettuce harvest was beginning, the Company once more proposed an interim wage increase. On December 8, 1982, Ron Barsamian proposed to Arturo Mendoza that the lettuce ground crew wage be increased from 76 cents to 82 cents per box.[15/] Barsamian was clearly surprised when instead of rejecting any increase, Mendoza said the Union would not agree to 82 cents but would agree to $87^{1/2}$ cents which Mendoza said was the prevailing rate. (R.T. IV: 24.) Barsamian said the Company also wanted to increase the tractor driver rates. He did not make a specific proposal since there are two rates for tractor drivers and Barsamian only indicated the company wanted to raise them to about $6.00 per hour.

(Footnote 14 continued——)

tractor drivers were receiving $5.30 per hour. Based on the rates Stoll gave Smith (R.T. IV: 31-32.), the Company apparently increased the tractor drivers' wages beginning January 2, 1981, to 10 cents an hour less than it proposed to the UFW in December 1980. (R.T. I: 37.) There is no indication the Company ever previously told the Union when the increase went into effect or that it differed from what had been proposed.

15. This rate had been raised from 75 cents to 76 cents as Stoll had proposed to Smith on December 15, 1980. It is not clear from the record whether this increase occurred on December 18, 1980, when the other lettuce rates were increased. There is no evidence, however, of any discussions regarding this rate subsequent to those on December 15, 1980. Thus, like the others, the employer unilaterally raised it following the UFWs refusal to negotiate wage increases apart from a full contract.

Barsamian said he would talk to Mario Saikhon and would get back to Mendoza about the 87% cents. (R.T. IV: 25-26.) Mendoza was going to be away and told Barsamian to talk to Mary Mecartney, who was assisting him in negotiations, regarding a matter with another company. Barsamian called her on December 21, 1982, to propose raising the lettuce harvest ground crew rate to 85 cents. Mecartney refused saying it had to be 87% cents or the Union would not agree. R.T. V: 30; VII: 5.)

Barsamian testified that after he called Mecartney and proposed 85 cents, there were 2 or 3 days of discussion and Mario Saikhon said he would agree to 87%. Barsamian called Mecartney and said $87^{1/2}$ cents was agreeable. (R.T. V: 30.) He also said he told her the Company would make it retroactive to the beginning of the current pay period which was December 16, 1982. Mecartney asked what the rate would be for the first week of the season. Barsamian said that since she had no problem with 83 cents,[16/] they had already installed it.[17/] He testified she said, "fine, great." (R.T. V: 30-31.)

After he called Mecartney on December 21, 1982, Barsamian called back wanting to know how to split up the increase. (R.T. V: 135, 137; VII: 6.) Both agree that she said the Company could split it up however it wanted. (R.T. V: 137; VII: 6.) Mecartney testified

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16. Barsamian's reference to 83 cents is apparently an error since the Company had proposed 82 cents.

17. The Company had raised the rate to 82 cents on December 13, 1982, only 5 days after the Union indicated it was amenable to working out an agreement on a wage increase and over a week before Barsamian called Mecartney to propose 85 cents. (R.T. IV: 30.)

that Barsamian never told her specifically that the Company agreed to the $87^{1/2}$ cents figure nor gave her a specific implementation date.

I find that the Company and the Union never agreed to an implementation date. I discount Barsamians's testimony for several reasons. He maintained that at the time he told Mecartney that the Company agreed to $87^{1/2}$ cents he told her it would be retroactive to December 16. On direct examination he said that as part of that discussion he also told her the Company had implemented a wage increase to 83 cents during the first week of the season and that Mecartney said that was fine. I find that totally improbable. The increase was in fact to 82 cents which the Union had rejected on December 8. The Union had also rejected an offer of 85 cents. It is highly unlikely that Mecartney would suddently unhesitatingly have acquiesced to 82 cents (or even 83 cents if Barsamian at that time gave that figure).

On December 20, 1982, the rates of the lettuce wrap machine crews were raised by 30 cents per hour. (R.T. IV: 32.) It is clear that the Union was not informed of these increases until February 4, 1983. In fact, even Barsamian was not aware of the increase until he was gathering data to prepare for the hearing in this case. (R.T. V: 139.) Barsamian testified there was a miscommunication in the Saikhon office which resulted in the failure to tell the Union about this proposed increase. (R.T. V: 41: 139-148.)

VI. <u>The Requests for Information</u>

When the parties met on October 30, 1980, Ann Smith requested certain information from Respondent. This request was

memorialized in a letter from Smith to Stoll on November 1, 1980. (G.C. Ex. 12.) The request sought:

1. Current and projected crop program of the company, including the number of acres of each crop grown and/or harvested by the Company.

2. Location of Company operation by canal and road names.

3. Number of employees employed and/or expected to be employed in each job classification. Whether the Company employs labor contractors to perform bargaining unit work.

4. Current rates of pay for each job classification.

5. Names, addresses and Social Security numbers of current employees and those to be recalled.

6. Whether the Company intends to recall workers who have made unconditional offers to return to work.

At that meeting, Stoll told Smith the Company was not going to recall the striking employees and was continuing to lock them out. (R.T. I: 29-30; III: 11,14.) Stoll did not respond to any of the other items of information Smith requested. (R.T. I: 30: III: 13).

In December when Stoll proposed certain interim wage increases, he told Smith the current wage rates for those classifications. He did not provide the wage rates for any other classifications. (R.T. I: 54; 71.) Other than this, the Company did not provide any of the requested information until May 4, 1981, over 6 months later.

There is substantial testimonial dispute as to whether Smith gave Respondent reasons for wanting the requested information. There is also substantial dispute as to whether Respondent refused to supply information and gave reasons for its refusal or simply

failed to provide the information.

In essence, it is apparent that relations were strained, and both parties communicated minimally. Thus, Smith said she wanted the information because she was the bargaining representative and gave general reasons for her requests. Stoll refused to give her any information. He would not provide employee names or company locations because of concern about harassment and violence.[18/] He would not give information on crops because Smith's reasons for wanting the information did not satisfy him. Respondent gave no reasons for its failure to provide any wage information other than for those classifications for which it was proposing a wage increase.

At meetings with Barsamian on March 31 and April 27, 1981, David Martinez, who had taken over negotiations for the UFW from Smith, repeated the request for information made on October 30, 1980. (R.T. I: 82, 100, 102.) Barsamian refused the request for employee names citing fear of harassment of employees. (R.T. I:

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18. Smith testified that there was no picketing at Saikhon at the time she asked for information in October 1980. It had ceased about January of that year, and the height of such activity had been during the 1978-79 lettuce season ending in about March of 1979. (R.T. I: 70.) Stoll testified he told Smith he understood there was vandalism occurring in December 1980 and that was the reason he would not give her the location of company operations. (R.T. Ill: 20.) This testimony, though, was admitted only on the basis that this was what he told Smith. It was not admitted for the hearsay purpose of showing that vandalism in fact occurred at that time. The only testimony on this point came from Ron Barsamian who testified to certain events he saw. He could not say, however, that the perpetrators were Saikhon employees or affiliated with the union. Also, the latest specific instances to which he referred occurred in the fall of 1979. (R.T. IV: 87.)

(103; II: 91; V: 74-82.)[19/] He also maintained the position that the Company would not divulge the location of its operations. (R.T. V: 138.) Barsamian said he would give other information as it came in. He gave no time line; nor did the Union ask for the information by a specific time.

At the next meeting, May 4, 1981, Barsamian supplied some of the information originally requested by Ann Smith in October of 1980. The cantaloupe harvest was to begin the next month. Barsamian indicated the Company expected to have about 1,000 acres in cantaloupes (R.T. V: 82.) Barsamian did not at that time or at any later time give any information about projected crop programs in other crops in response to Smith's request. Barsamian said he did not know the number of employees to be utilized in the cantaloupe. season or their job classifications.[20/] He told Martinez he would project the number of employees needed for the harvest but never did so. (R.T. I: 107; IV: 111.) Barsamian said he did not know how much the employees would be paid since the growers had not gotten together yet to discuss the rates. (R.T. IV: 141.)

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19. Martinez testified there was no strike activity at Saikhon at this time. (R.T. I: 103.) Barsamian testified to activity he or Stoll communicated to Smith and/or Martinez. The latest incident he testified to specifically was in the fall of 1979 where possibly 1 of 15 to 20 pickets was a Saikhon employee, in most of the instances he described, he failed to specify that any Saikhon employees were involved.

20. The information request had sought information regarding the use of labor contractors for bargaining unit work. While providing information on cantaloupes, Barsamian told Martinez he thought the Company used labor contractors for watermelons. (R.T. IV: 141.) This was the only information provided about the use of labor contractors.

Martinez testified that as to the location of company operations, Barsamian told him only that they were all in the Imperial Valley, basically in Holtville and Westmoreland. (R.T. I: 107.) Barsamian testified he told Martinez he wouldn't give him the specifics as Smith had requested but that by telling Martinez that they were out at "the high line" he was in effect giving Martinez the location "under the table". (R.T. IV: 138, 140; V: 113.) He refused, however, to give him the employee names. (R.T. IV: 141.) He never provided either Smith or Martinez with the names and addresses of employees. (R.T. V: 113.)

Martinez testified he continued to seek the rest of the information. Barsamian testified that Martinez did not request any further information at either the meeting of June 30 or July 21, 1981. (R.T. IV: 165, 172.) The UFW, however, never indicated it had abandoned the request.

Arturo Mendoza took over negotiations from David Martinez in June of 1982. He and Barsamian first met on August 3, 1982. At that meeting, Mendoza told Barsamian he would be presenting a new request for information. (R.T. IV: 5-6.) On August 12, 1982, he wrote Barsamian detailing the information he wanted. (G.C. Ex. 30.) Barsamian wrote back explaining that a response would not be forthcoming immediately since the Saikhon offices would be partically shut down for a while because people were on vacation. (G.C. Ex. 31 and Resp. Ex. 23.) He did not provide any information until December 8, 1982, when the parties next met.

Barsamian testified that by mid-September people were returning to the Saikhon office. He testified that he asked Mendoza

what he wanted first, and Mendoza told him to do whatever was easiest. (R.T. V: 18.) Barsamian testified that since reinstatement was an issue, he started with names of employees and wages and other benefits. This took quite a bit of time because the request covered prior years and there had been a lot of turnover. (R.T. V: 18-19.) Barsamian testified that on December 8, 1982, he responded to all parts of Mendoza's August request except Part A-6 regarding which Barsamian was unsure of what Mendoza wanted. This was the first time he tried to clarify the issue. (R.T. V: 23.) All of Part B was answered in December and in Part B-6 Barsamian volunteered the data for the current year. (R.T. V: 24.)

Barsamian had not supplied Mendoza with certain Saikhon contracts nor with information on harvesting carrots and watermelons. He said he would do so. (R.T. IV: 23.) At this meeting, Mendoza asked for the current wages by job classification and the dates the wages went into effect. (R.T. IV: 26.) This was some of the same information Smith had requested over two years earlier in October 1980.

On December 28, 1982, Mary Mecartney wrote Barsamian, pursuant to Mendoza's direction, seeking the informantion not yet turned over. (G.C. Ex. 36.) Barsamian testified that on February 4, 1983 he turned over all the remaining information which Mendoza had requested. (R.T. V: 33-40.)

Respondent gave no reasons for the 4 to 6 month delay in responding to the August 1982 request other than the temporary unavailability of workers and, as to Part A-6, Barsamian's uncertainty of what information was requested. Barsamian testified

that Saikhon's operation was computerized (R.T. V: 127.) and that some of the information, such as names and addresses of employees and seniority lists, was already maintained. {R.T. V: 129.)

General Counsel does not argue in its brief nor did it present testiomony that the responses of December 8, 1982, and February 4, 1983, do not, together, adequately respond to the union's outstanding request for information.

VII. Delay

Each side points to a number of factors indicating that the other bargained in bad faith by delaying negotiations. From August 1979 until October 30, 1980, there were no negotiation sessions between the UFW and Saikhon. (R. T. I: 50.) On December 15, the parties met and discussed the Company's desire to raise wages. Stoll confirmed to Smith that Barsamian was taking over negotiations. Following the meeting on December 15, 1980, there were no further meetings until March 31, 1981.

Barsamian testied that this gap was occasioned by his needing to review the extensive material involved in the negotiations which dated back to late 1978 and the fact that Ann Smith was ill. He testified he talked with Smith "on and off in January and February." (R.T. IV: 90.) He said she was unable to meet for other companies but specified only one such occasion when he said she told him to negotiate directly with workers at Pricola Produce regarding a wage increase. (R.T. IV: 91.) He did not say when this occurred. Although he testified that Smith could not come to El Centro, he also indicated that when he telephoned her she was

sometimes " . . . taking the day off because she was sick or she'd be traveling. She also [had] a very heavy caseload for the Salinas Area. She was doing quite a bit of traveling at the time." (R.T. IV: 91.)

Smith testified that she spoke to Barsamian in early January 1981 when they were bargaining in Calexico regarding Pricola Produce. Barsamian told her he was going to review Saikhon's position and the outstanding proposals and hoped to complete his review by the end of January. (R.T. I: 40.)

Smith testified that although she was ill from January 24 until well into February, she carried on negotiation activities such as exchanges of proposals and other correspondence. (R.T. I: 43, 62.) She said whether she would have been able to meet would have depended on when such a request had been made. (R.T. I: 61.) She did not ever indicate to Barsamian that she or someone else from the Union could not meet. (R.T. I: 43.) During the time she was ill, she concluded negotiations with California Coastal Farms and signed an agreement early in April 1981.

Neither party called the other from January thru mid-March to request a meeting. Barsamian did not complete his review until 217 about that time. (R.T. IV: 92, 93.)[21/] He wrote to Smith on March

21. Barsamian acknowledged he did not contact Smith in February because he was not ready to meet. (R.T. IV: 93.) General Counsel moved to strike a part of Barsamian's testimony in which this statement is contained and seeks to have the record clarified that the motion to strike referred only to that portion of Barsamian's answer wherein he offered the opinion that "Valley fever basically puts you under for a while." (R.T. IV: 93, lines 9-10.) From the context, I believe it is clear that this is the only part of the answer objected to and hereby clarify that the motion to strike was granted only as to that specific sentence.

12, 1981, suggesting they get together and review their positions. (G.C. Ex. 15; same as Resp. Ex. 14.) Before receiving his letter, Smith wrote him noting that she was waiting for a proposal which Barsamian had promised by the end of January 1981 and asking about the information request and about a response on the medical plan and the paid union representative (G.C. Ex. 14).

When Barsamian testified, he hedged as to whether he had promised to prepare a complete counterproposal by that time. His notes of March 31, 1981, indicate that he did promise a proposal or a reaffirmance of the Company's positions but that in reviewing the negotiation material he had difficulty in figuring out some of the old positions.

In any event, there is no evidence that Barsamian held off suggesting a meeting until March 12 because Smith had been ill until then and Barsamian was waiting for her recovery. His testimony that he did not complete his review until about mid-March belies such a conclusion. Conversely, Smith essentially admitted that it would have been difficult for her to meet at least at times between late January and mid-February, and she did not call Barsamian suggesting they meet. Nor did she suggest to Barsamian that she could review and respond to a proposal by mail.

Smith and Barsamian spoke on March 17 or 18, and Smith informed him that because of her illness David Martinez would be taking over negotiations. Martinez and Smith met for at least one full day to review negotiations, and Smith turned over her negotiation files to Martinez. (R.T. I: 63; II: 40.)

Barsamian and Martinez met on March 31, 1981. Martinez did

not have two of the proposals. (R.T. II: 42-43.) Nevertheless, he and Barsamian proceeded exactly as Barsamian had proposed to Smith, by reviewing their respective positions. They set the next meeting for April 15, and Barsamian then said he would submit a proposal.

Martinez and Barsamian vigorously dispute whether Barsamian promised to send his proposal before the next meeting so that Martinez could counter before then. Martinez maintains there was such a promise. (R.T. I: 82.) Barsamian testified he never made such a promise and that it would be atypical for him to mail a comprehensive proposal. (R.T. IV: 112.)

Martinez' notes (Resp. Ex. 63) corroborate his testimony. Barsamian's notes (Resp. Ex. 31) do not mention sending or even preparing a proposal although he admittedly said he would prepare one. I find that the weight of the evidence demonstrates that Barsamian did promise to send the proposal. Martinez' notes are specific and detailed. Furthermore, while it does not appear to have been a common practice, it was not atypical for Barsamian to send proposals in the mail. (G.C. Ex. 38 and 39.) Nor was this the only occasion he promised to provide a response by a certain time and failed to do so.

On April 15, 1981, Barsamian provided the proposal he had promised. (R.T. I: 82.) He and Martinez met again on May 5, 1981, and Barsamian said he would provide a proposal on mechanization at the next session. They next met on May 18, but Barsamian did not provide the proposal. They met again on July 21, and then neither called the other to meet on Saikhon from July 21, 1981, until January 12, 1982. (R.T. II: 175, 194; IV: 182.) The only exception

was the exchange of letters and the December 10, 1981, discussion relating to the Company's desire to raise wages.

Barsamian testified that both he and Martinez were occupied with other matters during this time from July 1981 to January 1982 and even, during August and September, joked about getting time to do something besides the other matters occupying their time. (R.T. IV: 176-177, 179.) There was also testimony that, during part of this time, Martinez was unavailable because he was out of state visiting his father who was seriously ill with cancer. (R.T. IV: 179.) Because of this fact, Martinez had to cancel a meeting on October 5 for one of the other companies for which he and Barsamian were negotiating. Martinez contacted Barsamian when he returned in November.

Barsamian also testified it was not typical to negotiate in August through October in the Imperial Valley and that generally one did so only for an emergency. (R.T. IV: 181.) Barsamian did not indicate that he ever specifically tried to get Martinez to meet for Saikhon during this period, and he indicated that his involvement with the Saikhon negotiations during that time involved review and preparation. (R.T. IV: 182; Resp. Exs. 48 and 49.)

Martinez testified that during the entire time, Barsamian owed him a counterproposal (R.T. II: 175). Barsamian hedged as to whether he had actually promised a counterproposal but admitted he told Martinez he would respond. (R.T. IV: 172.)

Martinez testified that at the January 1982 meeting Barsamian made an oral response to the UFWs July 21, 1981, proposal which he promised to put in writing but never did. (R.T. II: 13,

22; II: 146.) Martinez denied receiving. Resp. Ex. 50 which is dated January 11, 1982, and reflects what Barsamian orally proposed to Martinez at the January 12, 1982, meeting. (R.T. II: 146.) Barsamian testified he gave Martinez a copy of the company proposal (Resp. Ex. 51) on January 12, 1982.

I find that Barsamian did provide the written proposal. I do not believe Barsamian inadvertently or deliberately failed to give Martinez a copy, and there would be absolutely no purpose to fabricate since the fact remains that Barsamian owed Martinez a response during this entire time and presented him with one, whether oral or written, on January 12. Martinez testified that the essence of both proposals was the same. The date on the written proposal is only one day before Barsamian's oral proposal so it would not mitigate the Company's responsibility for the long delay. Having found no purpose to fabricate, I doubt Martinez[1] testimony that at the meeting Barsamian promised a written proposal. Consequently, I credit Barsamian's testimony on this issue.

The parties next met on February 16, 1982, when Martinez submitted a proposal of 25 Articles (G.C. Ex. 25). Since the Sun Harvest agreement was expiring at the end of August and the UFW was still proposing a common termination date, Barsamian asked Martinez if his proposal was for a 6 month contract. When Martinez said yes, Barsamian asked if he would consider a 3 year contract. Martinez said he would, so Barsamian suggested they stop the meeting, and Barsamian would prepare a complete 3 year proposal. (R.T. II: 26.)

When he did not hear from Barsamian, Martinez wrote on April 12, 1982 (G.C. Ex. 26), reminding him that he was waiting for

the proposal. (R.T. II: 26-27.) That same day, he and Barsamian spoke by phone and agreed to meet on May 11. (R.T. II: 28.) Martinez was unable to meet during May because of his father's illness and because he had to attend a negotiation session for another company. (R.T. II: 28.) In late May or June, he notified Barsamian that Arturo Mendoza would be taking over.

As of that time, Martinez had still not received a response to the proposal he had made on February 16. (R.T. II: 29.) Barsamian testified that from February to April he was busy trying to figure out what it would take to settle each of the outstanding cases involving Saikhon. (R.T. V: 13.)

During June, Martinez met with Mendoza to give him his negotiation notes and to review the posture of negotiations. Mendoza also spent time himself reviewing the notes, proposals and documents. (R.T. IV: 3.)

Mendoza and Barsamian first met on August 3, 1982. At this point, Barsamian still had not responded to the Union's February 16 proposal. (R.T. IV: 2.) Pursuant to Barsamian's suggestion, they reviewed the status of negotiations.

Mendoza and Barsamian agreed that Barsamian owed the Union a proposal, but since the Union's proposal on the table expired on August 31, Mendoza said he would draw up a new proposal so Barsamian need not submit a response. (R.T. IV: 5.)[22/] Mendoza also told

22. In G.C. Ex. 22, Mendoza refers to Barsamian's failure to respond to the Union's February 16 proposal. Mendoza testified this was an error, that he failed to proofread the letter carefully and that he had indeed told Barsamian on August 3 that Barsamian need not reply to that proposal. (R.T. IV: 19.)

Barsamian he would be submitting a new request for information which he did by letter on August 12, 1982. (G.C. Ex. 30.)

Barsamian told Mendoza on August 3rd that it would take some time to get the information because the Saikhon offices were practically closed until about mid-September. His letter of August 25 confirms this. (G.C. Ex. 31.)

Not having received a response to his information request, Mendoza sent a proposal to Barsamian on November 16, 1982, (G.C. Ex. 32), modifying the Union proposal of February 16, 1982, and suggesting a meeting during the week of November 30 to December 6. Barsamian replied on November 23 (G.C. Ex. 33) saying he would contact Mendoza about a meeting. He did not, and Mendoza spoke with Barsamian on December 7 while Mendoza was in the Imperial Valley. They met the next day December 8. (R.T. IV: 20.)

At that meeting, Barsamian first provided information in response to Mendoza's August 12, 1982, letter. (R.T. IV: 22.) (G.C. Ex. 34.) Mendoza indicated that some information was missing but that it was ". . .a lot of the information we had requested . . . . " Further information was provided on February 4, 1983. As of the date of the hearing, Respondent had not responded orally or in writing to the Union's November 16, 1982, modifications of its February 16, 1982, proposal. The parties did discuss interim wage increases during December. (See discussion, supra.)

The lack of meetings in December and January was due to a combination of factors. Mendoza was on vacation for Christmas and New Year's, and Barsamian was ill in early January. The February 4 meeting was the last negotiation session prior to the commencement

of the hearing in this case.

VIII. Exchange of Proposals and Progress in the Substance of Negotiations

In the approximately two and one-half years covered by the complaint, the parties met only 16 times. (G.C. Ex. 3.) At the first meeting on October 30, 1980, the UFW's position consisted of a combination of its February 28, 1979, proposal and prior proposals (G.C. Exs. 5, 6, and 7). Respondent's position was reflected by its February 21, 1979, proposal. (G.C. Ex. 8.)

At this meeting, the Union modified its proposal regarding the employer contribution to the RFK medical plan. Smith proposed 36 cents per hour with an 8 hour guarantee for piece rate workers. (R.T. I: 27.) The prior proposal had been much more expensive. She also gave Respondent a new schedule of benefits so the Company could see what its contribution would be paying for.

Smith gave Respondent information regarding companies that were using paid full-time Union representatives and suggested that Respondent review the experience of these companies and re-examine its opposition. The Union requested that Respondent re-examine its bargaining position in light of the UFWs change on the RFK plan and the other companies' experience with the Union representative system.

The UFW also sought new proposals from the Company or, at least, a review of outstanding issues. The Union suggested Respondent show its good faith by reinstating the strikers and by having the company principals present since they had participated in the earlier negotiation sessions in 1978 and 1979.

The Company refused to reinstate the strikers and

reiterated that it was locking out the employees. It did not respond to the Union's change in RFK and made no proposals other than, immediately before the start of the lettuce season, suggesting an interim wage increase to which the Union refused to agree. (R.T. I: 62.) The meeting on December 15, 1980, was largely dedicated to the wage increases which Stoll characterized as a new wage proposal. In fact, as Barsamian admitted, it was the wage which the Company's 1979 proposal would have put into effect at that time.

The parties did not meet again until March 31, 1981, during which time David Martinez took over negotiations from Ann Smith because of her illness. At that time, they reviewed their positions and discussed what each saw as the major issues. Barsamian said the Company did not want to have a contract expiring at the same time as the Sun Harvest Agreement. Saikhon did not want to be tied to the Salinas companies. Further, the expiration date of August 31 was not realistic because there was little or no activity in the Imperial Valley in August. He wanted language on good standing modeled on the National Labor Relations Act (hereafter NLRA) rather than the ALRA. Barsamian pointed out that the UFW had agreed to this position in the Cal Coastal and the Souza-Boster contracts. (R.T. I: 79.)

The Company was worried about the complexity of the seniority supplement in the Sun Harvest contract. Barsamian said the Company did not need a hiring hall and that it was an "emotional" issue. He also told Martinez that the Company wanted a flat crop differential (a lower rate of pay for flat crops such as wheat, barley, and cotton as opposed to row crops such as lettuce)

because of differences in operation in Salinas versus the Imperial Valley. (R.T. IV: 100, 103-104.)

Martinez told Barsamian he thought the seniority provision for Saikhon could be much less complex than that in Sun Harvest. That agreement covered numerous companies and thus dealt with many more crops than even a large company such as Sun Harvest had. (R.T.I: 80.) Martinez told Barsamian that both hiring hall and union security were very important to the Union. The Union had given up ALRA good standing in only a very few contracts. The UFW wanted a common expiration date with other companies which had already signed contracts in order to avoid "leapfrogging." He also told Barsamian that the paid union representative was important and reiterated Smith's observation that several companies had had a good experience with the system.

After this discussion, Barsamian agreed to send a proposal before the next meeting so the Union could respond. (See discussion, supra.) They agreed to work on the language proposals first and to deal with economic issues later.

Barsamian testified that he and Martinez agreed to negotiate only article by article rather than in packages. He said they both felt that the prior approach of negotiating by package contract proposals had frustrated negotiations. Martinez testified he did not understand that to mean that small packages of a few articles were inappropriate. I find that they discussed not continuing the past practice of putting relatively complete package proposals on the table, but did not agree they would not present packages consisting of a few articles.

This approach does not contradict the reason both gave as the basis for rejecting the past approach, and there is nothing in either's notes to indicate an agreement such as Barsamian suggests. The most the record shows is they may have misunderstood one another.

At the next meeting, April 15, 1981, Barsamian presented the first comprehensive Company proposal since February of 1979. (G.C. Ex. 17; same as Resp. Ex. 34.) Very little movement was made by the Company, and there was no movement on the major articles. The Company amended Article 1 Recognition so that it was the same as the prior Saikhon contract. Martinez testified without contradiction that in the earlier negotiations the parties had agreed to the prior Saikhon language so this amendment was nothing new. Inexplicably, Paragraph F from the prior contract was not agreed to.

Article 17 Union Label and and Article 38 Grower-shipper were the same as the Company's 1979 proposal. Since these were agreed to in Sun Harvest, the Union agreed to them despite the fact that it had sought more in its 1979 proposals to Saikhon.

The Company modified its position on two articles. It raised its offer on rest periods from 10 to 15 minutes (Article 21), and it added a provision to bereavement pay (Article 23) so that an employee who had to travel more than 300 miles for the funeral of an immediate family member had an additional day off with pay. The Union compromised its positions of 20 minutes of rest and 2 days of additional leave for bereavement, and agreement was reached on these two articles. The agreed to language is the same as the Sun Harvest

contract. They also agreed to Sun Harvest language on subcontracting. Thus they agreed to 5 articles at this meeting.

Leaving aside the economic proposals since the parties had agreed to work on language first, there was no significant movement by Respondent on major issues. The union security provisions included some language changes, but the article still proposed NLRA good standing. There was no change in its position with regard to Paragraph F regarding the Union's status as a priority creditor in bankruptcy. There was no change regarding hiring hall, duration, seniority, leaves of absence, paid union representative, probationary period, or health and safety.

The Company continued to insist that leaves of absence be only for training related to the employees' work at Saikhon and that only leaves for over 3 days would be in writing. It also maintained its position that there should be 30 days' rather than 60 days' appeal time in the grievance procedure and that warning notices would not be grievable. It also continued to oppose the UFWs proposal for a temporary ban on mechanization.

There was also no change in the Company's position on the RFK medical plan, nor did the proposal react to the Union's modification of that article made in October of the preceding year. The proposal simply stated the Company maintained its 1979 position.

Ten articles are described as "Agreement reached." Martinez testified that this meant they agreed to the prior Saikhon contract.[23/] None of these articles was significant. (R.T. I: 90.)

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23. Article 7 - Access; Article 9 - Discrimination; Article 16 - Management Rights; Article 18 - New or Changed Operations; Article 29 - Credit Union; Article 35 - Bulletin Boards; Article 36 - Family Housing; Article 39 - Location of Company Operations; Article 40 - Modification; Article 41 - Savings Clause.

Barsamian stated there were bookkeeping problems with the Union's language on Article 27 - Records and Pay Periods and Article 28 - Income Tax Withholding.

Following the discussion of the Company proposal on April 15, Martinez presented a package proposal wherein rejection of any part constituted rejection of the whole. He proposed Sun Harvest language on several articles (R.T. I: 94-96,; II: 89.}:

Worker Security

Leaves of Absence

Maintenance of Standards

Health and Safety

Records and Pay Periods

Income Tax Withholding

Camp Housing

Labor-Management Relations Committee

Grievance and Arbitration

Hiring Hall

Also as part of the package, he proposed to drop the request that the employer contribute to an apprenticeship program because he thought it was an obstacle to reaching an agreement. He did not say why he believed this, nor did he indicate any communication from the Company stating that this was a particular stumbling block. (R.T. I: 96-97.) He also proposed a probationary period under Discipline and Discharge which, although it was in Sun Harvest, had not been in the prior Saikhon contract. (R.T. I: 95.) Finally, he proposed the main body of the seniority proposal from Sun Harvest and suggested a supplement later. Barsamian rejected

the package.

At the next meeting, on April 27, 1981, Barsamian reiterated his rejection of the package, and they then discussed each article. (R.T. I: 100.) Barsamian wanted a list of dischargeable offenses rather than a just cause provision such as was in the prior Saikhon contract and in Sun Harvest's Discipline and Discharge article. He also wanted a probationary period under the seniority article in order to be able to discharge people who could not properly do their job. (R.T. I: 101.) Martinez pointed out that the prior Saikhon contract had no probationary provision. Martinez also said the Union was worried that the provision would be used to fire Union supporters. Barsamian said the Company did not need a hiring hall and that the paid union representative was a problem for Saikhon. Neither side presented any new proposals, and the meeting ended with them maintaining their positions.

At the May 4 meeting, Martinez submitted a summary of the status of articles including his package proposal of April 15. (G.C. Ex. 18.) He returned to the Union's original position on the RFK plan dropping the modification made by Ann Smith on October 30, 1980. There were no new proposals by the UFW, although during the meeting Martinez dropped the demand for the Labor-Management Relations Committee even though it was in Sun harvest. (G.C. Ex. 10, Article 43.) (R.T. I: 106.) They also agreed to the articles on Worker Security, Maintenance of Standards and Camp Housing. In each instance, they agreed to language from the prior Saikhon contract. None of these were very important issues in the negotiations.

At the next meeting, May 5, 1981, Martinez submitted language on Records and Pay Periods which met the concerns the Company had voiced in April, and this article was agreed to. (G.C. Ex. 19.) This provision was less favorable to the Union than Sun Harvest. They discussed the Health and Safety and the Mechanization articles. The Union modified its position of a ban on mechanization to a requirement that the Company bargain on the issue. Barsamian said he recognized that a compromise on this issue was needed, and he said he would make a proposal at the next meeting. (R.T. I: 115.)

On May 18, much of the Health and Safety Article was agreed to because the Company's February 21, 1979, proposal was in many respects the same as Sun Harvest. Approximately 80% of it was agreed to primarily because the Union made either significant or minor concessions.

The parties noted agreement on 4 articles. Martinez submitted a handwritten proposal. (G.C. Ex. 20.) His successor clause was the same as the Company's February 21, 1979, proposal and did not represent a major concession. His proposal on supervisors was the same as the Union's February 1979 proposal. The Company gave up a clause allowing supervisors to perform the type of work non bargaining unit members had done in the past, and agreement was reached. His proposal on Jury Duty and Witness Pay was the same as the Company's February 1979 proposal, and in it the Union conceded a qualifying period of work and eliminated pay for proceedings between the parties. The Union modified its position on Income Tax Withholding to meet the Company's concern. The articles agreed to,

except that on Income Tax, were Sun Harvest language. The Union compromised below Sun Harvest on that article.

Barsamian had promised to provide a compromise proposal on mechanization. He failed to do so. Martinez provided a list of articles that Vessey & Company, Inc., had agreed to that, as of May 18, Saikhon had not. Several were stumbling blocks at Saikhon where there seemed to be little change of position -- Grievance and Arbitration, Discipline and Discharge, Leaves of Absence and No Strike. Other articles had yet even to be discussed.

At the June 30, 1981 meeting, Martinez made another package proposal. He proposed NLRA good standing keeping the provision in Paragraph F specifying the Union as a priority creditor in bankruptcy. He then proposed Sun Harvest language on the following:

1. Hiring Hall
2. Seniority
3. Grievance and Arbitration
4. Discipline and Discharge
5. Leaves of Absence
6. Health and Safety
7. No Strike

Martinez considered the major concessions to be union security and the probationary period in the Discipline and Discharge article. The union security proposal was the same as contained in the Cal Coastal contract. (G.C. Ex. 21.)

Barsamian protested that Martinez had never countered his article by article proposal of April 15. (R.T. IV: 158.) Nonetheless, Martinez had countered and discussed various articles

and in almost every instance where agreement was reached it was the UFW which modified its position.

Barsamian rejected the package, and they then discussed his problems with each part. He said the union hiring hall was unacceptable, calling it probably the major problem. (R.T. IV: 159.) Barsamian suggested they reopen the issue in a year. Each side wanted to try its proposal for the intervening year.

Barsamian wanted specified the Company's right to seek an injunction in case of a strike in violation of the contract. He said he would drop the demand for harsher treatment of strike leaders in return for the right to equitable relief. He still objected to leaves of absence for less than 3 days being in writing. Aside from this issue, most of the provisions on leaves were agreed to. The Union gave up on leaves for training other than those related to company operations and agreed to language that employees could not leave at critical times. This latter condition was not in the prior Saikhon contract.

Barsamian still wanted 30 rather than 60 days' appeal time in the grievance procedure. He also maintained his opposition to having warning notices be grievable. He also objected to the seniority article since there was no supplement proposed yet.

On July 21, 1981, the next meeting, Martinez made another package proposal. (R.T. II: 2-3.) He proposed a No Strike article which was the same as the Union's February 1979 proposal, the prior Saikhon contract and Sun Harvest. The Company February 1979 proposal sought the right to impose additional discipline on union officers and stewards and to seek an injunction in the case of an

illegal strike. Martinez proposed the Sun Harvest language on the Grievance and Arbitration article thus retaining his demand for 60 days. Both parties had previously indicated they were not far apart on this issue. He still wanted Sun Harvest on leave of absence with those for less than 3 days being in writing. Martinez again proposed Cal Coastal language NLRA good standing including the provision on priority creditor status to which the Company objected. He also proposed Seniority as in the prior Saikhon contract (same as Sun Harvest) although he had not yet proposed the supplement.

Martinez testified he proposed the Discipline and Discharge article from the prior Saikhon contract plus the 5 day probationary period. Barsamian testified Martinez did not include the probationary period. He pointed out that Martinez had crossed it out in his proposed article on hiring. (G.C. Ex. 22.) He testified Martinez said that if the Company did the hiring, it should not need the probationary period. (R.T. IV: 168.)

Barsamian's notes indicate that Martinez offered Sun Harvest on a number of articles including Discipline and Discharge. (Resp. Ex. 45.) There is no mention of Martinez deleting the probationary period from Sun Harvest. Nor do Martinez' negotiation notes (Resp. Ex. 70) or his preparation notes (Joint Ex. 8) indicate such a deletion. I find that he did include the 5 day probationary period in his proposal.

Finally, Martinez proposed that instead of a hiring hall run by the Union, the Company would hire, but there would be a number of procedures designed to equalize hiring and to provide records against which to check complaints of discrimination in

hiring. The language came from the Limoneira contract. (G.C. Ex. 22.)

Martinez also submitted an economic package, not including wages, proposing Sun Harvest on the major articles. (R.T. II: 78.) He proposed a half-time rather than a full-time paid union representative. He proposed more people at the second step of the grievance procedure. (R.T. II: 8.) This was the only increase in the UFW's demands although it was proposing to give up ALRA good standing and a union hiring hall and was agreeing to a probationary period.

At this meeting, the parties continued their discussions on Health and Safety. They reached agreement on the remaining parts of the article with some compromises being made by each side.

While there is some dispute whether Barsamian rejected the packages at this meeting, it is clear he was going to give a further response. (R.T. IV: 172.) There was no communication on the Saikhon negotiations, however, until November 20, 1981, when Barsamian wrote to Martinez proposing an interim wage increase.247 (G.C. Ex. 23.)[24/] On December 10, 1981, Martinez gave Barsamian a

24. Both parties sought to introduce testimony that during this time the other side was busy with other matters. I refused to allow the testimony on the basis there was no offer to show that either side specifically contacted the other to meet on the Saikhon negotiations and thus that the other obligations of the parties in fact rendered anyone unavailable to meet regarding Saikhon.

written response rejecting the proposed increase. (G.C. Ex. 24.) This was the only matter discussed with regard to Saikhon. (R.T. IV: 183; Resp. Ex. 50.)

The next meeting was on January 12, 1982, in response to a call from Martinez. Barsamian responded to the UFW's proposal of the preceding July. The Company's position changed very little. It maintained its prior positions on every major disputed provision, although Barsamian made a small concession on warning notices.

Barsamian rejected the UFW"s Limoneira hiring hall proposal, specifying his problems. He proposed only that the Company would give the UFW two weeks notice of the starting dates of the season and would give the Union the names of any new employees within one week of hire. The first was in the prior Saikhon contract. The second and a proposal that the Company would tell the employees of their obligation to join the Union were in the Company's 1979 proposal in the Union Security Article. Thus there was absolutely no substantive change in response to the UFW' s concession on this issue.

The Company maintained its February 1979 position on all the economic items proposed by Martinez the preceding July. Thus in this first exchange on economics since February of 1979, the Company maintained its original position, and the UFW proposed the

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compromise language agreed on in the Sun Harvest contract.[25/]

Barsamian testified he told Martinez he still needed a wage proposal and a seniority supplement from him. (R.T. V: 1, 2.) He said he would rather have all the seniority provisions in the body of the contract but would use a supplement if they could not agree on it in the body. (R.T. V: 3.) His notes, however, indicate they would have a seniority supplement for each company. (Resp. Ex. 52.) Barsamian implied that Martinez said he would propose a flat crop differential.[26/]

On February 16, 1982, the parties met again. Martinez made a non-package proposal on both economic and non-economic items including wages. There was no proposal on a seniority supplement other than to work it out for each company. The proposal is memorialized in G.C. Ex. 25.

Since this was not a package, the UFW reverted to ALRA good standing and eliminated the probationary period in the Discipline

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25. Martinez stated the article on Reporting on Payroll Deductions and Fringe Benefits (Article 33 of Sun Harvest) was part of the July 1981 proposal to which Barsamian was responding. Barsamian did not make a proposal on this article, apparently believing it to have been agreed on. (Resp. Ex. 51.) It is not clear whether it was ever agreed to. Apparently his notiation showing agreement was in error since in a letter on August 9, 1982, Barsamian listed the article as not agreed to. (G.C. Ex. 29.)

26. Respondent contends in its brief that Martinez promised a flat crop differential and never proposed it. A flat crop differential is a lower rate of pay for work (for example tractor work and irrigation) on flat crops such as hay, barley, oats, grasses, alfalfa and cotton. (R.T. IV: 104.) Counsel for Respondent does not refer to any exhibit or transcript citation to support its contention. I find that the weight of the evidence indicates it was Respondent not the UFW that indicated it was interested in the possibility of a differential. (R.T. IV: 101-105.)

and Discharge article. It did not, however, revert to its position on a union hiring hall. It proposed the Limoneira language as it had done in July 1981 when it had been part of a package. Martinez testified he proposed wages as in Sun Harvent because he still did not have the current wage information as requested by Ann Smith in October of 1980. (R.T. II: 25.)

As had been their custom, Martinez indicated that when language on an article or portion thereof had been agreed to, that agreement and not Sun Harvest controlled. (R.T. II: 24-25.) There was no testimony why this approach versus proposing the current versions of the proposals was used.

Martinez testified that Barsamian asked if his proposal was for a six month contract. As in the past, the proposal provided a common termination date with Sun Harvest which was due to expire the end of August, 1982. Martinez said it was, and Barsamian suggested they end the meeting since he wanted to do a complete proposal for a 3 year contract. Martinez agreed to consider such a proposal, and they stopped the meeting. Martinez never received a proposal from Barsamian. (R.T. II: 26.)

Martinez wrote to Barsamian on April 12, 1982, indicating he was still waiting for a response. (G.C. Ex. 26.) They spoke by phone and decided to meet in May. Martinez had to cancel because he was to attend negotiations for another company, and he cancelled a later meeting because his father was dying of cancer. Due to a reorganization in the Union, Arturo Mendoza was assigned to take over negotiations.

Mendoza and Barsamian first met on August 3, 1982. They

reviewed their respective positions. They also discussed the fact that Barsamian owed a proposal. Since the UFW's proposal of February 16, which was still on the table, expired with Sun Harvest at the end of the month, Mendoza told Barsamian he need not prepare his counterproposal. The Union would prepare a new one. Mendoza also indicated he would need some information and would have to review the proposals and find out what the workers wanted. (R.T. IV: 5-6.) He testified he specifically mentioned wages and the RFK medical plan as items that would need to be revised because of the passage of time and increased costs due to inflation. (R.T. IV" 44, 65.) Barsamian said he was upset because it sounded as if Mendoza might be reopening agreements he had reached with Martinez.

On August 12, Mendoza wrote requesting information, none of which was provided until December (see discussion supra.) On November 16, still not having any of the information, Mendoza submitted his proposal.

The proposal was the same as the February 16, 1982, proposal in most respects. Duration was obviously changed as was the wage proposal since the old wage proposals were out of date. Mendoza proposed a new concept in Grievance and Arbitration, that the loser pay arbitration costs. He testified this change was based on the experience under other contracts where there were frivolous cases going to arbitration.

The level of benefits requested did not change, but the Company's contribution was raised due to increased costs under the RFK medical plan. The Juan de la Cruz Pension Plan Proposal was modified from 20 to 21 cents/hour because of inflation. Also,

information required by the actuaries was requested from the Company. (R.T. IV 12-15.)

The proposal on Payrolls and Deductions was; changed regarding the reporting date for Company information and for contributions to the RFK plan because the Union needed to get the data into its computers earlier in order to establish workers' eligibility for coverage. (R.T. IV: 15-16.)

The COLA was changed to reflect the new time frame and the formula was raised. The Union proposed the same formula it had recently negotiated in Salinas. (R.T. IV: 16-17.) None of these articles had been signed off on by Barsamian and Martinez. The change in reporting was in the article on Reporting on Payroll Deductions and Benefits. (See footnote 24, supra.) The Grievance and Arbitration article was characterized by both parties as very close to being agreed on although they had not formally signed off on it since the last proposal had been in packages. The Company had apparently as part of a package modified its position on time limits and agreed to Sun Harvest. (Resp. Ex. 51.)

At the next meeting, on December 8, 1982, Barsamian did not counter Mendoza's proposal. They discussed an interim wage increase. (See discussion, supra.) The only discussion between December 1982, and February 4, 1983, related to wage increases and information requests.

On February 4, 1983, the Company provided additional information the Union had requested. It did not respond to the November proposal. Barsamian and Mendoza discussed a few articles, and both agreed that Barsamian owed a proposal. (R.T. IV: 37.)

Barsamian asked for some wage rates that Mendoza had left out of his proposal. (R.T. IV: 34.) Mendoza sent those to him on February 8. (G.C. Ex. 37.)

Barsamian suggested several ideas to Mendoza on various proposals. Mendoza indicated a willingness to listen to any of the alternatives. Barsamian did not at that time or at any time up to the date of the hearing actually make proposals on ciny of these suggestions. (R.T. IV: 33-35.)

They also discussed reinstatement of the strikers, but nothing was settled. Barsamian said he would get bcick to Mendoza, but as of the hearing he had not done so. (R.T. IV: 35-39.) Since February 4, 1983, to the date of the hearing, February 24, 1983, there have been no further meetings, and the only contact was Mendoza's response to Barsamian's request for wage rates.

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ANALYSIS AND CONCLUSIONS

The Act defines bargaining in good faith in subsection (a) of section 1155.2 as follows:

> For purposes of this part, to bargain collectively in good faith is the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

This language is the same as section 8(d) of the NLRA. Thus, it is proper to refer to decisions of the National Labor Relations Board (hereafter NLRB) as a guide to deciding the present case.

An employer's failure to do little more than reject a union's demands is: "indicative of a failure to comply with the statutory requirement to bargain in good faith." (N.L.R.B. v. Century Cement Mfg. Co.,Inc. (2d Cir. 1953) 208 F.2d 84, 86 [33 LRRM 2061]. The employer must make " . . . some reasonable effort in some direction to compose his differences with the union." (N.L.R.B. v. Reed & Prince Mfg.Co. (1st Cir. 1953) 205 F.2d 131, 135 [32 LRRM 2225], cert. den. 346 U.S. 887 [33 LRRM 2133], cited in O.P. Murphy Produce Co., Inc. (1979) 5 ALRB No. 63, review den. by Ct. App., 1st Dist., Div. 4, November 10, 1980, hg. den. December 10, 1980.) Thus, what is required is:

> . . . something more than the mere meeting of an employer with the representatives of his employees; the essential thing is rather the serious intent to adjust differences and to reach an acceptable common ground. . . . Collective bargaining then, is not simply an occasion for purely formal meetings between management and labor, while each

> maintains an attitude of "take it or leave it"; it presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract . . . . (Citations omitted.) (N.L.R.B v. Insurance Agents' International (1960) 361 U.S. 477 [45 LRRM 2705.]

Direct evidence of an intent to frustrate the bargaining process will rarely be found. As a result, a party's intent can only be discerned by reviewing the totality of its conduct. (N.L.R.B. v. Reed & Prince Mfg. Co., supra; B.F. Diamond Construction Company (1967) 163 NLRB 161 [64 LRRM 1333] enf'd. (5th Cir. 1969) 410 F.2d 462 [71 LRRM 2112] cert. den. (1969) 396 U.S. 835 [72 LRRM 2432]; P.P. Murphy, supra, 5 ALRB No. 63; As-H-Ne Farms (1980) 6 ALRB No. 9, review den. by Ct. App., 5th Dist., October 16, 1980, hg. den. November 12, 1980.)

> . . . the question is whether it is to be inferred from the totality of the employer's conduct that it went through the motions of negotiations as an elaborate pretense with no sincere desire to reach an agreement if possible, or that it bargained in good faith but was unable to arrive at an acceptable agreement with the union. (N.L.R.B. v. Reed & Prince Mfg.Co., supra, [32 LRRM at 227]

• Necessarily, the final determination rests upon inferences drawn from circumstantial evidence. It involves reaching conclusions from conduct as to whether particular actions of a party were motivated by the desire to negotiate the best bargain possible for itself or were motivated instead by a desire to frustrate negotiations. (Columbia Tribune Publishing Co. (1973) 201 NLRB 538, 552 [82 LRRM 1553], enf'd and remanded (8th Cir. 1974) 495 F.2d 1385 [86 LRMM 2078]; Queen Mary Restaurants v. N.L.R.B. (9th Cir. 1977) 560 F.2d 403 [96 LRRM 2456].

The first conclusion results in the finding of a violation; the other that a party merely engaged in permissible hard

bargaining. Specific conduct which, standing alone, may not amount to a per se failure to bargain in good faith may, when considered with all the other evidence, support an inference of bad faith. (Continental Insurance Co. v. N.L.R.B. (2d Cir. 1974) 495 F.2d 44 [86 LRRM 2003]; Montebello Rose Co., Inc. (1979) 5 ALRB No. 64, enf'd. in relevant part Montebello Rose Co. v. A.L.R.B. (1981) 119 Cal.App. 3d 1 [173 Cal Rptr 774] (Ct. App, 5th Dist.), hg. den. August 1, 1981.)

Conversely, some action standing alone might clearly manifest an absence of good faith, but when taken in the total context of the parties' relationship would not support such an inference. (Deblin Mfg., Corp. (1974) 208 NLRB 392, 399 [85 LRRM 1478]; Webster Outdoor Advertising Company (1968) 170 NLRB 1395, 1396-97 [67 LRRM 1589].)

It is apparent that many of the principles governing analysis of a surface bargaining case are contradictory. One may take positions which may seem unreasonable to an outsider. (N.L.R.B. v. Truitt Mfg. Co. (1956) 351 U.S. 149 [38 LRRM 2042].) Yet s/he must make some reasonable effort to resolve differences. (N.L.R.B. v. Reed & Prince Mfg. Co., supra.) The Act "does not require either party to agree to a proposal or require the making of a concession." (N.L.R.B. v. National Shoes, Inc. (2d Cir. 1953) 208 F.2d 688, 691 [33 LRRM 2254, 2255].) Still, since one must try to resolve differences and since good faith bargaining is "inconsistent with a predetermined resolve not to budge from an initial position . . . .", (N.L.R.B. v. Truitt Mfg. Co., supra, at p. 154) some concessions and some movement on positions are clearly necessary.

These contrasting principles illustrate why it is difficult to separate tough negotiating from bad faith surface bargaining. The question is always hard to answer because "surface bargaining, by definition, may look like hard bargaining, and is therefore difficult to detect and harder to prove." (K-Mart Corp. v. N.L.R.B. (9th Cir. 1980) 626 F.2d 704 [105 LRRM 2431].) There is no simple formula to ascertain true motive. Each case must rest upon its own facts.

In this case, General Counsel alleges that Respondent bargained in bad faith as demonstrated by conduct away from the bargaining table, by its refusal to provide the UFW with information, by its unilateral wage increases, by delaying negotiations and by its intransigence. Refusals to provide information and unilateral changes may be independent violations of the duty to bargain as well as serving as indicia of an overall refusal to bargain. Thus, I turn to an examination of these allegations first.

I. THE REQUESTS FOR INFORMATION

There are two major requests for information involved in this case. Each will be discussed separately.

A. The October 1980 Information Request

Ann Smith's request for information on October 30, 1980, is precisely the same as that requested by the UFW in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

Respondent does not dispute its duty to supply the Union with requested information which is necessary and relevant to the

bargaining process. It also acknowledges that the standard for determining relevance is a liberal one. (Resp. Brief p. 68.)

Despite the fact that Respondent's negotiator, Ron Barsamian, represented Lu-Ette Farms in negotiations simultaneously with Saikhon, counsel for Respondent fails to acknowledge the existence of Lu-Ette, supra, wherein this Board found an employer's refusal to provide precisely the same information requested herein to be unlawful. Respondent's arguments that some of the requested information is not relevant are clearly to no avail. This Board has already decided that issue.

Respondent does assert a basis other than relevance which it argues justifies its refusal to provide the information. It contends that it feared the information requested could be used to harm the employees who worked at Saikhon during the strike and to disrupt or harm its business.

The cases Respondent cites as support for its refusal pertain to disclosure of employees' names and/or addresses. Counsel for Respondent makes no argument that these cases support its refusal to provide other requested information such as job classifications and rates of pay. It offers no specific reasons for its failure to provide such information.

Although none of the cases cited discuss providing information on the location of company operations, there is logic to applying the same standard for disclosure of company locations as is applied for disclosure of employee names and addresses where the concern of potential harm is asserted as the common basis for refusing to disclose each. Respondent concedes that the standard is

whether there is a "clear and present danger of violence." (Shell Oil Co. v. N.L.R.B. (9th Cir. 1972) 457 F.2d 615 [79 LRRM 2997].)

In that case, the union sought the names and mailing addresses of employees some nine-and-one-half months after the end of a strike. The record disclosed violence and harassment of employees after the strike. The company had offered the union alternatives so that it could contact employees. For example, the company said it would submit the names to a mailing house.

Distinguishing the case from that of United Aircraft Crop. v. N.L.R.B. (2d Cir. 1970) 434 F.2d 1198]75 LRRM 2692] cert, denied 401 U.S. 993 [76 LRRM 2867] (1971) where the violence had occurred 10 years earlier, the court found the employer justified in its refusal. The court specifically noted the company's proposed alternatives.

Unlike Shell, supra, the Company here offered no alternative means for communication. By refusing to disclose the location of Company operations, it even precluded the Union from contacting employees at the job site. Moreover, in Shell, supra, it was not clear how long the violence continued into the 9^ months after the strike ended. In the instant case, the last acts of violence and harassment were approximately a year prior to the request for information.

Counsel for Respondent primarily relies on the case of Sign and Pictorial Union v. N.L.R.B. (D.C. Cir. 1969) 419 F.2d 726 [72 LRRM 2274]. He also cites Webster Outdoor Advertising Co., supra. These are in fact the same case.

The facts there are sufficiently different from the case at bar so that the case does not serve as persuasive authority for Respondent's position. There the request was made less than two months after the strike began, and an uncontested NLRB decision had found that replacement workers were harassed, threatened and assaulted by some striking employees in the presence of union representatives. Thus, the court found the company was justified in not turning over company payroll lists.

Moreover, the court noted the employer did not categorically refuse to provide the records. In the words of the NLRB's Trial Examiner, the company would furnish the records " . . . only if necessary for intelligent bargaining." (Webster, supra, at p. 1404.) The union never responded to the company's letter seeking assurances against violence, so the company's "reluctance" to provide the information without assurances was never tested to see if it would develop into a categorical refusal.

Here, the Company repeatedly refused the information, although it was requested a year after the last acts of violence, not a mere two months into a strike. While the UFW and the Company stipulated[27] that the strike has never been called off and is thus technically ongoing, the testimony clearly indicates there has been no strike activity for a substantial period of time.

Based on the facts of this case and the applicable legal precedent, I find that Respondent has not shown that there was a

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27. The General Counsel did not join in the stipulation.

clear and present danger of violence. I therefore find that it was not justified in refusing to provide the UFW with the names and addresses of its employees or its company locations.

As to the other items in the request,[28] I see no basis for Respondent's asserted concerns insulating it from its obligation to provide the information. Respondent has asserted no specific justification for its refusal.[29]

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28. Counsel for Respondent cites Detroit Diego Newspaper Guild v. N.L.R.B. (9th Cir. 1977) 548 F.2d 863 [94 LRRM 2923] regarding the wage data requested. (Resp. brief p. 72.) He makes no argument why wage data would fit within the category of information which is "not ordinarily pertinent." Detroit Diego Newspaper Guild, id. at p. 2926. In fact, that case sets forth the long-standing principle that "wage data pertaining to employees in the unit is considered presumptively relevant . . . . [and] . . . . the employer has the burden to prove a lack of relevance." [Citations omitted.] It is particularly difficult to ascertain counsel's point since only a few pages earlier he acknowledges the principle that wages are presumptively relevant. (Resp. Brief p. 68.) The only "wage data" requested by the UFW was wages. Failure to supply requested wage data, standing alone, constitutes a refusal to bargain. (N.L.R.B. v. Fitzgerald Mills Corporation (2d Cir. 1963) 313 F.2d 260 [52 LRRM 2174] cert, denied (1963) 375 U.S. 834 [54 LRRM 2312].

I note that when the Company provided the wage rates in December 1980 for only those classifications for which it was proposing an interim wage increase, it obviously did not satisfy its obligation to respond to the UFW request for rates of pay for all job classifications.

29. Respondent asserts that it turned over much of the requested data on May 4, 1980. First, the delay of six months does not meet its obligation to promptly provide information. (As-H-Ne Farms, Inc., supra, 6 ALRB No. 9.) Second, the information that the Company was going to have about 1,000 acres in cantaloupes in June is hardly an adequate response to the UFW's inquiry regarding each crop grown and/or harvested. Third, I find that Respondent has not demonstrated from the record evidence that telling the UFW that it was operating "along the high line" was an adequate response to the request for canal and road names. To the extent the Company argues that it was adequate, Respondent's position that it was justified in withholding Company locations would appear to have been abandoned by that communication. At no time after that, however, did it provide the specifically requested information regarding Company locations.

Therefore, I find that Respondent has violated its duty to promptly provide relevant information to the Union and has thus violated subsections (e) and (a) of section 1153 of the Act. Moreover, this refusal may properly be used as an indicia of bad faith with regard to its overall bargaining conduct.

B. The August 1983 Request

Respondent does not contend that this request sought irrelevant information. The Union does not contend it did not ultimately receive the information. The issue here is solely whether Respondent's failure to provide the information until December 8, 1982, and February 4, 1983, violated its duty to promptly respond to the request.

Respondent argues it acted reasonably in not supplying the information until then because the material was voluminous and not easily compiled. It points to the fact that Barsamian told Mendoza in August that it would take a while to get the material together since there were only a few people in the Saikhon office, and the others would not return until September. The record demonstrates that the office began gearing up again by at least mid-September.

General Counsel asserts the four month delay was inexcusable and argues the UFW did not demand that all the information be submitted at once. Since Mendoza wanted the information in order to develop his proposals, the bargaining process was stalled while he was waiting for it. Ultimately, he gave up and submitted his proposals without it. (G.C. Ex. 32.)

In view of the fact that the failure to provide information

was delaying negotiations, the Company might have done better to submit the information as it was compiled. Similarly, if the Union wanted the information to be turned over in this fashion, or in a certain order, it should have said so. Mendoza's and Barsamian's testimony indicates there was no precise agreement as to how the information should be supplied or in what order. I do not hold the Company responsible for not turning over the information piecemeal.

That does not, however, mean the Company did not unreasonably delay. I find it did. Each case must be judged on its own merits. There is no absolute dividing line indicating a reasonable time. Leaving aside the question of whether Respondent was entitled to rely on the reduced availability of office personnel,[30/] it was still approximately three months from the time the office began operating again until the information was provided.

Given the slow speed at which negotiations were moving, the fact that Mendoza was preparing a new proposal since Barsamian had never responded to the UFWs prior one and the fact that Respondent had never turned over most of the information requested two years earlier (much of which was again requested by Mendoza), I find that Respondent's three month response was not sufficient to meet its obligation to promptly respond to the request. (As-H-Ne Farms, Inc., supra.)

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30. The fact that an employer's negotiator is a "busy attorney" has been held repeatedly not to excuse delay in negotiations. (N. L. R. B. v. Exchange Parts Company, (5th Cir. 1965) 339 F.2d 829 [58 LRRM 2097], N.L.R.B. v. Milgo Industrial, Inc. (2d Cir. 1977) 567 F.2d 540 [97 LRRM 2079], O.P. Murphy, supra.)

I acknowledge Respondent's point that the material was voluminous.[31/] Nonetheless, given the circumstances, the delay was inappropriate, and I find it does not meet the standard of responding to business affairs of importance. (McFarland Rose Production (1980) 6 ALRB No. 18, review den. by Ct.App., 5th Dist., April 26, 1982, hg. den. June 16, 1982; A.H. Belo Corporation (WFAA-TV) (1968) 170 NLRB 1558 [69 LRRM 1239]; modified (5th Cir. 1969) 411 F.2d 959 [71 LRRM 2437], cert, denied (1970) 396 U.S. 1017 [73 LRRM 2120].)

Respondent's reliance on Admiral Packing Company, et. al., supra, 7 ALRB no. 43 to excuse its delay in responding to Mendoza's request for information is misplaced. The delay in that case was due in part to the union's shifts in position. Here the Union did not vary from its original request, and thus its actions play no part in the Respondent's delay.

Purr's Cafeteria, Inc. (1980) 251 NLRB 879 [105 LRRM 1599] aff'd. 108 LRRM 2816, cited by Respondent, is also distinguishable from the case at bar. The periods of delay in that case were substantially less than here, and the NLRB in no way indicated that as a general rule a delay would be excused absent evidence that the information could have been gathered sooner. Rather, the NLRB noted that over a period of some 10 months, Respondent had replied

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31. The record demonstrates that Respondent's operations were computerized. To the extent information may not have been quickly retrievable, Respondent made no showing that such was the case. Clearly Respondent, not the General Counsel, is in the best position to make such a showing. Further, since it is Respondent's duty to respond promptly, it should bear the burden of demonstrating that it could not retrieve and compile the information quickly.

promptly to numerous information requests. In that context, a delay of less than a month was not found to be unreasonable where there was no evidence that the information could have been collected more quickly.

That is quite a different situation than this case where the delay of some 4-6 months followed 2 years of having provided virtually no information. I therefore find that Respondent's delay was not excused by the factors it cites. Respondent has failed to meet its duty to bargain in good faith and has thus violated subsections (e) and (a) of section 1153 of the Act.

II. THE UNILATERAL WAGE INCREASES

General Counsel alleges that Respondent unilaterally implemented interim wage increases in the lettuce harvest seasons of both 1980-81 and 1982-83.[32] Unilateral wage increases fall into the category of per se violations which violate the duty to bargain without regard to subjective good or bad faith. (N.L.R.B. v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].)

As this Board has stated in J.R. Norton Company (1982) 8 ALRB No. 89, quoting from O.P. Murphy, supra;

> Unilateral implementation of a wage increase constitues a change in a significant term of employment without regard to the union's role as representative of the employees, and has been considered by far the most important "unilateral act". (Citations omitted.)

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32. Although Respondent indicated to the UFW on November 20, 1981, that it wanted to implement an interim wage increase, the complaint does not allege that any unilateral increases were actually made during the 1981-82. season.

A. The 1980 Increase

Respondent's negotiator, Charley Stoll, and Ann Smith, negotiator for the UFW, met on December 15, 1980, and discussed the Company's proposed wage increase in the lettuce harvest rates and for tractor drivers. Smith refused to negotiate the wage increases in isolation.

The parties had just met after a substantial gap in negotiations. Smith had modified part of the Union's proposal on the table and had solicited both a response to the modification as well as new proposals from the Company since it had never countered the UFWs proposal of February 28, 1979. Respondent was willing to discuss only the wage increase. Smith refused to discuss wages unless it was part of an effort to negotiate an entire contract. Thus, Smith did not make a counterproposal on interim wages.

The lettuce harvest rates were raised on December 18, 1980. The tractor driver rates were raised on January 2, 1981, to 10 cents per hour less than the Company had proposed.

Respondent argues that it was justified in raising the wages because such action was consistent with its past practice. (Resp. Brief, pp. 61-62.) This defense has already been rejected by this Board in Saikhon I wherein Respondent was found to have unlawfully implemented unilateral wage increases in 1979. The history that Respondent relied on there to establish a past practice of increasing wages is the same history it relies on in this case. Thus, its defense of past practice is to no avail.

Respondent also contends that because the Union refused to bargain about the wage increases standing alone, rather than as part

of negotiations on a full contract, it was permitted to institute the increases. This Board on numerous occasions in a variety of factual circumstances has rejected this argument.

In J.R. Norton Company, supra, 8 ALRB 89, at pp. 28-29 the Board stated:

> Respondent was not entitled to isolate the single issue of wages from the remainder of the contract terms and force the Union to bargain over that single issue. Rather, the Union was entitled to insist upon bargaining over all issues until a contract was reached. Both the NLRB and this Board have rejected a piecemeal approach to negotiations because of the interdependence of bargaining issues, and the fact that a proposal on one issue may serve as leverage for a position on some other issue, [emphasis in the original] (J.R. Norton Co., (1980) 8 ALRB No. 76; Korn Industries v. N.L.R.B. (4th Cir. 1967) 389 F.2d 117 [67 LRRM 2148]; Federal Pacific Electric Company (1973) 203 NLRB 571 [83 LRRM 1201].) [33]

In Joe Maggio, Inc., Vessey & Company, Inc., and Colace Brothers, Inc. (1982) 8 ALRB No. 72, a case with many factual similarities to the instant case, the Board discussed this issue extensively. Here, as there, the proposed wage increases came after a substantial lull in negotiations. With the exception of the October meeting where Smith modified the Union's proposal on the RFK medical plan and requested information, the parties had not met in over a year.

There was no exchange of proposals or discussion of the outstanding issues. The proposals for the wage increases came just as the lettuce season was beginning, and Respondent insisted on bargaining only about wages and by its conduct indicated it had no interest in a discussion of a full contract.

33. See also McFarland Rose Production, supra.

In both cases it is apparent from the timing of the notification that the employer did not anticipate any lengthy given and take over the wage proposals. Given the parties' past history and the distance between their stands on wages, it is completely improbable that Respondent could have intended there to be a resolution of the wage issue in time for it to institute the wages for the new season as it said it must do to remain competitive with other companies already offering similar wages. The conclusion is inescapable that the Company evisioned that it would implement the wage increases with or without the agreement of the exclusive representative.

Although Stoll characterized the wage increases as a contract proposal, it is apparent here, as in Maggio, et.al., supra, that Respondent's true position and intention was that it could and would deal with wages separate from full contract negotiations. As the Board said in Maggio, et. al., id at p. 9, Respondent's conduct " . . . belies any intention to bargain in good faith and indicates a desire to increase employees' wages without following the customary procedures of good faith bargaining."

Respondent appears to argue, as an alternative to its defense of past practice, that it was permitted to make the wage increases because there was an impasse. The parties may have been deadlocked with the Union insisting that wages be negotiated together with other issues and the Company just as insistently committed to obtaining its wage increase immediately, but there was no bona fide impasse such as to permit the Company to make a unilateral change.

A true impasse requires the parties to have bargained in good faith. Here there was no bargaining over the proposed wage increase, and Board precedent holds that the Union may legitimately refuse to bargain wages in isolation. As the Board stated in Maggio, et.al., supra, this is not to say that impasse may not be reached on a single issue, merely that where, as here, the employer seeks to raise wages while avoiding its duty to negotiate a full contract, no impasse results from the Union's refusal to cooperate in the scheme.[34/]

B. The 1982 Increases

The Union agreed to Respondent's suggestion of a wage increase for the lettuce ground crews but rejected the proffered 82 cents and insisted on $87^{1/2}$ cents. It is uncontested that the Company implemented its proposed 82 cents rate on December 13, 1982, even through the Union had indicated it would consider agreeing to an increase. Respondent attempts to justify its action by stating

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34. There are NLRB cases which suggest that a unilateral wage increase after the employer has presented a proposal to the union which has been left unaccepted or rejected may not, in some circumstances, be unlawful. (N.L.R.B. v. Crompton-Highland Mills, Inc. (1949) 337 U.S. 217 [24 LRRM 2088]; Labor Board v. Land is Tool Co. (3d Cir. 1952) 193 F.2d 279; [29 LRRM 2255]; N.L.R.B. v. Bradley Washfountain Co. (7th Cir. 1951) 192 F.2d 144; [29 LRRM 2064]; _In the Matter of W.W. Cross & Co. (1948) 77 NLRB 1162; [22 LRMM 1131] In the Matter of Exposition Cotton Mills Co. (1948) 76 NLRB 1289; [21 LRRM 1319].)

These cases, however, occur where there has been bargaining in good faith throughout the course of negotiations. (Herman Sausage Co., Inc. (5th Cir. 1960) 275 F.2d 229 [45 LRRM 2829]. Often there is a long history of amicable bargaining relations. In other instances, e.g. Land is Tool, supra, there was no true objection by the union to the unilateral increase. The situtation in this case, with two prior adjudications of bad faith negotiating by Respondent, is clearly quite different.

that since the UFW had said 87^ cents was satisfactory then 82 cents was agreed to because it was incorporated within $87^{1/2}$ cents.

This argument is utterly without merit. Stated most simply, agreeing to 87^ cents is not the same as agreeing to 82 cents. Respondent's unilateral increase is unlawful and is a per se violation of subsection (e) of section 1153. Moreover, it is an indication of bad faith coming as it did while the Union was willing to negotiate an increase apart from a full contract, something it had steadfastly refused to do in the past. Barsamian indicated he was surprised and pleased at the UFW's stance. Proceeding to ignore this show of flexibility could do nothing but further undermine the already difficult bargaining relationship.

I find that the subsequent increase to 87^ cents was similarly an unlawful unilateral change because there was no agreement reached. I decline to find, however, that this increase separately evidences bad faith. Respondent could have believed agreement had been reached. Both parties bear some responsiblity for the lack of clarity.

I have refused to credit Barsamian's account because, among other things, of inherent improbabilities such as the Union voicing absolutely no objection to the increase to 82 cents. Mecartney, however, does not satisfactorily explain her response to Barsamian's inquiry as to how to split up the increase. It seems implicit in her response that the understanding was that they were talking about 87^5 cents. Otherwise, her failure to ask the amount is strange. The failure of either side to follow-up with an inquiry (by the UFW) or notice of the increase (by the Company) obviously complicated the

picture and probably reflects the overall lack of communication between the parties.

Respondent admits it unilaterally implemented a wage increase for the lettuce crew without notifying the Union but argues the action was inadvertent and thus should not be found unlawful. Such actions are not dependent on the subjective good faith of Respondent. The increase is a per se violation of the duty to bargain. Respondent's assertion of mistake argues against using the change as an indicia of bad faith bargaining. I find, however, that such an inference should be drawn. It is simply a further instance of the employer operating precisely as he pleased without regard to the Union. There are few exceptions to Respondent's pattern of raising wages when and how he alone saw fit. This is not one of those exceptions.

In conclusion, I find that each of the wage increases violates subsections (e) and (a) of section 1153 and that the increase to 82 cents and the increase in the lettuce wrap crew's wages are properly used as indicia of Respondent's overall bad faith in negotiations. III. SURFACE BARGAINING

General Counsel argues that in addition to refusing to provide information and making unilateral wage increases, Respondent engaged in surface bargaining in violation of its duty to bargain in good faith. The major indicia upon which General Counsel relies are Respondent's alleged failure to alter its past conduct already

adjudged to be in bad faith,[35] its delay in submitting proposals, its failure to respond to proposals and its inflexible position on all major issues. Lastly, General Counsel argues that Respondent's failure to rehire striking employees, found to be unlawful in Saikhon I, also demonstrates its bad faith.

There are substantial periods where the parties did not meet. Delaying negotiations by cancelling meetings and appearing unprepared at negotiations are indicia of bad faith. (Kaplan's Fruit and Produce Company (1980) 6 ALRB No. 36, review den. by Ct.App., 5th Dist., September 24, 1981, citing O. P. Murphy, supra; Montebello Rose Company, supra.)

As expected, each side asserts the other is responsible for the delays. The Union's contributions to the snail's pace of negotiations is examined infra. At this point examining only Respondent's culpability, it is apparent that it is primarily responsible for most of the extensive time lags.

The crux of the problem appears in Respondent's arguments as well as its testimonial evidence. It repeatedly asserts that the Union did not ask for meetings during some of the extended gaps. Respondent misconceives the parties' mutual responsibilities. The law requires the active participation of both sides. (N.L.R.B. v. Montgomery Ward (9th Cir. 1943) 133 F.2d 676 [12 LRRM 508].) Although the law places the burden on the union to institute the bargaining process, the employer may not sit passively by, forcing

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35. Prior unfair labor practices serve as background in analyzing the instant case. (Crystal Springs Shirt Co. (1977) 229 NLRB 4 [99 LRRM 1038]; Heck's Inc. (1968) 172 NLRB 2231 [69 LRRM 117], affirmed (D.C. Cir. 1970) 433 F.2d 541 [75 LRRM 2109].)

the union to continually renew its requests to meet and to move bargaining forward. (M. H. Ritzwoller Company v. N.L.R.B. (7th Cir. 1940) 114 F.2d 432 [6 LRRM 894].)

Thus, for example, where from July 21, 1981, until January 12, 1982, Barsamian owed the Union a response, it is no defense for Respondent to assert it is not responsible for the delay because the Union did not request meetings. While the UFW was less persistent than it might have been in pushing for meetings, I do not find that its failure to do so relieves the employer of its responsiblity to move negotiations forward. Particularly where, as in this example, the ball was in Respondent's court, it bears primary responsibility for the inordinate delay.

The parties met only 16 times in the more than 21/2 years encompassed by the instant charge. Respondent must bear responsibility for the delay from July 15, 1980, until the UFW contacted Respondent suggesting they meet. Respondent has previously been found to have refused to bargain on a continuing basis since 1979. (Admiral Packing, supra; Saikhon I, supra.) Since Respondent had done nothing to break with its past unlawful conduct, it must be found to have continued its bad faith bargaining. Its conduct did not "represent a substantial break with its past unlawful conduct or the adoption of a course of good-faith bargaining." (Maggio, et al., supra; McFarland Rose, supra.)

Respondent was also responsible for most of the delay in the period from October 30, 1980, until March 31, 1981. Its failure to respond to the UFW's modification of the RFK medical plan, its unwillingness to discuss anything but a wage increase and its

failure to provide the Union with any of the requested information (even that which was unaffected by its asserted defense of fear of harassment and violence) all contributed to the delay of negotiations and indicate its continuing bad faith.

Standing alone, Barsamian's failure to prepare a counterproposal by the end of January 1981 and his switching instead to suggesting a thorough review by both parties might not indicate bad faith. Considering the complexity of the past bargaining history and the state of confusion of the negotiation files that he testified to, the fact that he did not complete his own review until about mid-March 1981 might also not be unreasonable. He knew Ann Smith was ill, and the Union did not ask to meet, nor did it press for his proposal.

Thus, had this been the only significant delay by Respondent it would not weigh heavily. Given the other factors already mentioned, however, and subsequent conduct, I find that Respondent's conduct during this period frustrated bargaining.[36/] Ann Smith's illness and the transfer of negotiations to David Martinez had only a slight effect on the pace of negotiations.

From March 31 through May 18 the parties met about once every two weeks. They formally agreed to some proposals from the prior Saikhon contract which had not been at issue and reached agreement on several other articles with each side making some concessions. No progress was made on the major issues of hiring

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36. See As-H-Ne Farms, Inc., supra, (delays of 5^ and 7 months were indicative of bad faith); Montebello Rose, supra, (delay from mid-December to mid-March evidenced bad faith.)

hall, union security or duration. Some slight delay was occasioned by Barsamian failing to send his counterproposal to Martinez prior to the April 15, 1981 meeting. Similarly, he failed to provide a promised proposal on mechanization at the May 18 meeting.

Martinez suggested language to meet certain administrative problems the company had with the Union's proposals on Income Tax Withholding and on Records and Pay periods. These were then agreed to. Most of the agreements reached were consistent with language in the prior Saikhon contract. Much of the Company's February 21, 1979, proposal on Health and Safety was the same as the Sun Harvest contract, so the parties agreed on them.

Martinez dropped some proposals and reduced demands on others.[37/] While none of these were major concessions, they reflected flexibility. The Company, while agreeing to some compromises, in general made less movement on proposals than the Union.

In the meetings of June 30 and July 21, 1981, Martinez made two package proposals with concessions on major issues. He proposed NLRA good standing, agreed to a 5-day probationary period, proposed hiring to be done by the Company with procedural safeguards (he proposed language negotiated with Limoneira, a citrus company), Seniority as in the prior Saikhon contract, and No Strike as in the prior Saikhon contract. Thus, while there were certainly provisions the Company did not want, e.g., the priority creditor section in the union security proposal, the package represented major concessions

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37. E.g., Apprenticeships, Labor-Management Relations Committee, Jury duty and Witness pay and Supervisors.

by the Union in each of the critical areas. The provisions represented compromise langauge from various contracts. That is, all had been agreed to by employers in various contracts. This is not to say that because they had been agreed to in other negotiations, including Respondent's prior contract with the UFW, that Respondent should have accepted the packages.

The law is clear that parties are not compelled to "agree to a proposal or [to] mak[e] . . . a concession." (N.L.R.B. v. National Shoes, Inc., supra.) However, where, as here, the employer does little more than reject the union's demands, such conduct is indicative of bad faith. (N.L.R.B. v. Century Cement, supra.)

Barsamian made no counterproposals reflecting the Company's wishes. He simply stood on the now more than two year old proposal and rejected the Union's proposed concessions. Some of the Company's positions in isolation might not indicate bad faith. The employer may be entitled to maintain that it simply does not want a hiring hall, but a complete unwillingness to bend on any of the major subjects is strongly indicative of bad faith. Similarly, Barsamian's failure to respond until January 12, 1982, to the Union's July 21, 1981, proposal indicates less than a desire to capitalize on the Union's demonstrated willingness to reach a contract even on terms less advantageous to it than its other contracts.

The Union clearly demonstrated it was willing to drop substantially below the Sun Harvest agreement.[38/] Respondent was

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38. For example, Sun Harvest had ALRA good standing and a union hiring hall.

still unwilling to compromise. Although the UFW's concessions were in a package, this fact does not diminish the conclusion the Union was seeking to reach a compromise. Clearly in return for such major concessions the Union wanted some concessions from the employer. Negotiating those items one by one would have put the Union in a very difficult bargaining position.

Although Martinez was out of state for a time, necessitated by his father's illness, there is no indication his absence delayed bargaining significantly during this period of July 1981 to January 1982. Barsamian had said he would respond to Martinez. There is absolutely no indication he had his response ready and was unable to give it to Martinez due to the latter's unavailability. In fact, when they met in December 1981, Barsamian gave no indication he had a response ready even then. The fact that it was written on January 11, 1982, the day prior to the next meeting, indicates it was not ready until that time.

In his January response, Barsamian did little more than reiterate the now almost three year old Company proposal. The Company's proposals in response to the UFW's significant concessions on hiring hall, which Barsamian had called the major dispute, were not a concession in any sense. Each had in fact already been part of Respondent's position.

Martinez' July 1981 proposal contained the first proposal on economics. He proposed Sun Harvest. In January 1982, Barsamian responded with the Company's February 1979 proposal. Thus the Union had moved from its original demands to levels agreed to with other companies. Without any implication that Respondent should have accepted these levels, its failure to make any movement from its

three year old proposal clearly indicates a lack of interest in moving toward agreement. The employer is obliged to make "some reasonable effort . . . to compose his differences with the union." (N.L.R.B. v. Reed & Prince Mfg. Co., supra.)

At the next meeting, on February 16, 1982, Martinez tried a different tack. He made a non-economic and an economic proposal. Neither was in a package; so some of the concessions the UFW had proposed the previous year were changed. Without the benefit of trade-offs offered by the package approach, the Union was unwilling to give up on each issue individually. On the major dispute, hiring hall, however, it continued to propose the Limoneira language which did not provide for a union hiring hall.

This was insufficient to entice Respondent to make any major movement. Since Martinez' proposal was due to expire with the Sun Harvest contract in August 1982, Barsamian suggested he (Barsamian) prepare a three-year proposal. A month later he had not done so. They decided to meet in May, and Martinez was forced to cancel because his father was dying. Arturo Mendoza was substituted for Martinez in June due to a restructuring in the Union. During this time, however, Barsamian had not prepared a response and did not even have it on August 3, nearly 6 months since the Union's proposal, when he and Mendoza first met.

As with the time period from July 1981 to January 1982, Respondent argues that because the Union did not call to meet and because Martinez was unavailable to meet for a few weeks, the Union is responsible for the entire delay. It is difficult to see how Martinez' unavailability had any effect since Barsamian was not

ready to move forward.

Respondent's delay in providing information to Mendoza, which he requested on August 12, 1982, resulted in Mendoza not submitting his proposal until November 16, 1982, when, apparently fearing he would be no more successful then Ann Smith two year's earlier, he decided to go ahead without the information. As of the date of this hearing, Respondent still had not responded to this proposal.

In addition to the arguments already noted, Respondent asserts that the delays in negotiations from July 21, 1981, through December 10, 1981, and from August 3, 1982, through December 8, 1982, should not be counted since it is not common to meet during the summer months in the Imperial Valley. Although Mr. Barsamian testified that in his negotiating experience, little occurs during the summer because of the heat in El Centro which causes things to shut down, Respondent's defense fails for several reasons.

Since Mario Saikhon did not attend the negotiations, the fact that "the principals of the companies . . . go to San Diego" (Resp. Brief p. 59) would not seem to have a serious effect on the abilities of the parties to meet. Similarly, the fact that the office staff leaves and little farming is going on is not inherently inconsistent with Mr. Barsamian, as the Company negotiator, being available to meet.

Moreover, the record demonstrates that, to the extent the Company's schedule dictates Mr. Barsamian's, office activity resumes by mid-September. Furthermore, this Board has found that even where a custom of discontinuing bargaining over a certain season is

established, that custom may be inappropriate to some circumstances. (See J.R. Norton Company, supra, where, despite such a practice, the period was counted in the makewhole remedy because the UFW had not wanted to suspend bargaining, and Respondent had promised to review and respond to the UFW's outstanding proposal.)

General Counsel argues that Respondent's proposal of contractual terms which were significantly less favorable to the Union than the parties' prior contract and Respondent's adamant adherence to its proposals in the face of concessions by the Union demonstrate bad faith.

General Counsel cites Neon Sign Corporation (1977) 229 NLRB 861 [95 LRRM 1161] in support of its argument. Counsel- failed to note that the NLRB's decision was reversed by the Court of Appeals. (Neon Sign Corp. v. N.L.R.B. (5th Cir. 1979) 602 F.2d 1203 [102 LRRM 2485].)

Both Herman Sausage Co., Inc. (1958) 122 NLRB 168 [43 LRRM 1090], enf'd (5th Cir. 1960) 275 F.2d 299 [45 LRRM 2929] and Houston Sheet Metal Contractors Association (1964) 147 NLRB 774 [56 LRRM 1281], also cited by the General Counsel, are not persuasive authority. In the former, the employer's proposals represented a much more radical departure from its prior contract than the proposals in the instant case. There the employer proposed such changes as eliminating all sick benefits, eliminating scheduled rest periods for male employees, eliminating time off for deaths in the immediate family, eliminating the meal period after five hours work, eliminating layoff notices, eliminating recourse to the grievance procedure for discharges based on an employee's failure to fulfill

his duties, eliminating the just cause requirement for discharges and numerous other items. Moreover, when ultimately the union offered to agree to a contract reached with another company which the employer had consistently stated it wanted, Respondent rejected the offer. Throughout negotiations Respondent rejected outright the union's revisions of its proposals which the union made in an attempt to reach agreement.

In Houston, supra, the issue is more accurately described as regressive bargaining since Respondent, after offering wage increases and several paid holidays (the old contract had no paid holidays), later reduced its offer to a wage cut from the prior contract and no paid holidays.

There is merit to General Counsel's argument, however, even though the factual situations in those cases are more extreme than that in the instant case. Here, Respondent's unwillingness to agree to provisions contained in its prior contract with the UFW is closely tied to its unwillingness to make any significant movement toward reaching an agreement.

As this Board has noted, what the Act requires is a sincere effort to resolve differences rather than the actual reaching of an agreement. (O. P. Murphy, supra.) "[T]he duty to bargain in good faith is not satisfied by merely meeting with union representatives to inform them that the employer cannot or will not change its position." (N.L.R.B. v. Fitzgerald Mills Corporation, supra.)

Respondent seeks to justify its bargaining positions on major issues thereby defending its unwillingness to compromise. For example, Respondent defends its opposition to the Union's hiring

hall proposals by contrasting this case with <u>Kaplan's Fruit and Produce Company, supra.</u> Counsel argues that "unlike the situation <u>in kaplan</u> . . . it is clear in this case why the issue of hiring has not been resolved." (Respondent's brief p. 45.)

Counsel for Respondent does not develop his analysis, and, to the extent <u>Kaplan</u> applies, it would seem to undercut his position. In that case, the Board declined to find Respondent guilty of a refusal to bargain because the evidentiary record was incomplete in many respects. As in the instant case, the union sought a union hiring hall as it had obtained in its prior contract with the employer. There, as here, the employer had complaints regarding the quality of the functioning of the union's facility. Unlike this case, the employer there had repeatedly expressed his discontent. Here there is no evidence of such repeated expressions.

Various proposals and counterproposals were exchanged in <u>Kaplan's, supra,</u> with the union making the latest proposal which provided a company-controlled hiring location, advance notice to the union regarding hiring needs, a guarantee that hiring would be free of arbitrary discrimination and a union shop provision. The Board was perplexed that this proposal did not resolve the controversy and result in a contract since the hiring hall was the primary issue. Since the record was silent as to Respondent's reply or the context in which the proposal was made, the Board said it would not infer that Respondent never intended to reach an agreement from the simple fact that one did not materialize. Inherent in this discussion is the Board's sense that the union's proposal was a reasonable attempt to effect a compromise agreement.

The true analogy to Kaplan, supra, is that the Union in the instant case made a proposal with the same essential goals as in that case. Contrary to the situation in Kaplan, the Respondent's response and the context in which the Union's proposal was made are reflected in the record in this case. The Company rejected the proposal offering no meaningful counterproposal. This rejection followed the Company's prior stance of not offering any counterproposals or any suggestions other than to continue having no hiring hall and to allow reopening negotiations on the issue in a year. Thus, Respondent's position is not assisted by this Board's ruling in Kaplan.

I find that, overall, Respondent was unbending and unwilling to engage in the give and take which is essential to the bargaining process. The combination of significant delays, a pattern of not preparing responses when promised and its general inflexibility indicate Respondent's intent not to reach an agreement.

IV. THE REFUSAL TO REHIRE STRIKING EMPLOYEES

An employer's anti-union conduct away from the table may support a finding that it has negotiated in bad faith. (As-H-Ne Farms, Inc., supra; Kaplan's Fruit and Produce Company, supra.) Failure to rehire work stoppage participants has been characterized as conduct away from the bargaining table which indicates Respondent's bad faith in negotiations.[39/] (J.R. Norton Company, supra.)

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39. See also N.L.R.B. v. Fitzgerald Mills Corporation, supra.

I find that the Respondent's refusal to rehire the striking employees (found to be unlawful in Saikhon I) is properly considered as a further indication of its bad faith.

V. CONCLUSION

The totality of the circumstances demonstrates that Respondent repeatedly delayed in responding to Union proposals, failed to submit counterproposals as promised, refused to provide basic information for nearly two years which, coupled with its unlawful refusal to rehire striking employees, severely restricted the UFW's ability to communicate with, and ascertain the negotiating desires of, the employees it represents, remained intransigent on all major bargaining issues and engaged in a repeated pattern of proposing wage increases a few days before the beginning of the lettuce harvest season and implementing them forthwith. All of these elements combine to form:

> Conduct reflecting a rejection of the principle of collective baraining . . . [and] an underlying purpose to bypass or undermine the union . . . [which] manifests the absence of a genuine desire to compromise differences and to reach agreement in the manner the Act commands. (Montebello Rose Company, Inc., supra, 5 ALRB No. 64, quoting from Akron Novelty Mfg. Co. (1976) 224 NLRB 998, 1001 [93 LRRM 1006.]

VI. THE UNION'S BAD FAITH

Respondent asserts the Union bargained in bad faith. A labor organization's bad faith bargaining may be a defense to a refusal to bargain charge against an employer. (See McFarland Rose Production, supra, 6 ALRB No. 18 and cases cited therein at p. 26.)

Respondent points to several factors which it contends demonstrate that the UFW negotiated in bad faith. It asserts that the UFW broke an agreement not to negotiate in packages and cites

Eto Farms (1980) 6 ALRB No. 29, review den. by Ct.App., 5th Dist., June 18, 1981, as authority. I have already found that there was no agreement not to negotiate in small packages.

This case is also different from Eto Farms, supra. There the Board's point was not that Respondent's proposals were inappropriate because they were in a package but that because its proposal was a reiteration which it well knew was unacceptable to the union such conduct demonstrated the employer was not making a reasonable effort to compose its differences with the union.

Here, the Union's packages were not a reiteration of prior proposals it knew were unacceptable. Certainly they sought some concessions from the employer and contained items the Union wanted and the Company did not. In each instance, however, the Union made major concessions on issues the employer said were critical. It gave up more in packages than it had yielded to any other company in any one contract. Thus, I do not find that the Union's package proposals indicated bad faith. Rather, they were significant efforts toward breaking a stalemate and moving negotiations forward.

Similarly, the fact that the Union was willing to compromise on some items when tied together with others as part of a package but was not willing to do so when they stood as individual articles does not prove it negotiated in bad faith. Such conduct is an acceptable bargaining tactic. I find no grounds for finding such conduct to be regressive bargaining or otherwise indicative of bad

faith.[41/]

Respondent also argues that the Union's proposals were unreasonably harsh. As to those proposals which were part of the Union's February 28, 1979, proposal, that defense has already been rejected in Admiral Packing, supra. Since the Sun Harvest language proposed by the UFW is a retreat from those positions, or at best no more favorable, generally, to the Union, it is hard to see how they could be unreasonably harsh. I have already found that the Union did not have a take it or leave it stance as far as the Sun Harvest agreement was concerned. The Union dropped some benefits it negotiated in Sun Harvest and, in packages, offered substantial concessions from Sun Harvest. Had Respondent been willing to negotiate an agreement, it appears the Union was willing to go below Sun Harvest in major areas.

Respondent also argues that the Union failed to propose a flat crop differential and a seniority supplement and failed to reply to the Company's proposed increase on tractor drivers' wages. The Union did not promise to prepare a flat crop differential. Rather, it indicated it was willing to discuss one. The record clearly demonstrates it was the Company which wanted one.

Martinez did fail to propose a seniority supplement, and

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40. Respondent correctly points out that Martinez reverted to the UFW's original position on the RFK medical plan. This was a regressive proposal, and the Union did not explain its change. Regressive bargaining is indicative of bad faith. As I have rejected Respondent's arguments that the reverting to prior proposals outside of packages indicated bad faith, the change on RFK stands alone as an example of regressive bargaining conduct by the Union. Alone, it is not sufficient to demonstrate overall bad faith.

Barsamian told him, at least as of June 30, 1981, that he would not agree to a seniority provision without seeing the proposed supplement. There does not appear to have been a satisfactory reason for this failure although the lack of information clearly hampered Martinez' ability to construct a proposal. Nonetheless, he said he would do so, and if the negotiations had been moving well and had seniority been a central issue of discussion, Martinez[1] failing might well have interfered with the progress of negotiations and indicated bad faith. Given that the parties were making no progress with regard to the major issues and that seniority was not a major stumbling block, I find that this failing, while not to be condoned, is not especially significant.

I have found that Respondent did not make a definitive proposal on the tractor drivers' wage increases. Therefore the Union has not breached any duty in its failure so far to counterpropose.

In discussing Respondent's conduct, I have already indicated I do not find that the Union was primarily responsible for the major delays in negotiating. Clearly events such as Ms. Smith's illness and Mr. Martinez[1] absences could contribute to the delay both by their being unavailable and by causing Respondent to legitimately feel no urgency in setting meetings or preparing proposals. In this case, though, the timing of their unavailability was not such as to occasion either. Respondent's delays in having proposals ready went well beyond the times the Union's negotiators were not available. Similarly, Respondent appeared content to let the time go by, apparently feeling that so long as the Union was not

constantly insisting on meetings, it could sit back and passively do nothing.

Given the availability of the makewhole remedy for bad faith bargaining under the ALRA, there may be some incentive for a union not to press bargaining as insistently as one might under the NLRA. That is clearly a factor to consider when weighing the parties' conduct. In this case, however, while the Union could have been more vigorous in setting time lines and demanding meetings, its failure to do so does not amount to bad faith. Much of the time was spent waiting for information and counterproposals from Respondent. As this Board said in McFarland Rose, supra, "Had Respondent begun good faith bargaining, the UFWs failure to request bargaining...might have been of some consequence." (At p. 81 of ALO decision.) Here, as there, I find the Union's conduct did not constitute bad faith.

Respondent asserts that the UFW also caused delays by changing negotiators and by cancelling meetings. Both of these allegations have already essentially been discussed. In brief, Ms. Smith's illness did not materially delay negotiations since Mr. Barsamian was still reviewing the bargaining history. When Martinez replaced her, he and Barsamian spent their intitial session doing exactly what Barsamian had proposed he and Smith do, reviewing their respective positions. While Martinez did not have a copy of a few of the proposals, there is no evidence that his substitution for Smith was a material factor in impeding negotiations.

Similarly, when Mendoza replaced Martinez, Barsamian had yet to prepare his promised response even by the time he and Mendoza

met. Thus to the extent that Martinez' absence and the substitution of Mendoza occasioned any delay, it was not major and was outweighed by Respondent's failure to respond to the Union's proposal. Any inference that these minor delays indicated the Union was attempting to avoid reaching an agreement is overshadowed by other indicia that it was intent on working out a contract.[41/]

I thus find that the Union did not bargain in bad faith, and its conduct does not serve as defense to Respondent's bargaining conduct. I therefore find that Respondent has violated subsections (e) and (a) of section 1153 of the Act.

REMEDY

Respondent's counsel argues that the makewhole remedy is inappropriate in this case. He points to the employer's and the Union's postures on the unilateral wage increases (Resp. brief p. 62) and Respondent's reliance on the Administrative Law Officer's[42/] decision in Saikhon I regarding its defense to providing information. (Resp. brief p. 71.)

Respondent cites N.A. Pricola Produce (1981) 7 ALRB No. 99 and Kaplan's Fruit and Produce, supra, 5 ALRB No. 36, as authority for not imposing makewhole. The essential difference between those cases and the instant case is that in neither of those did the Board make a finding of overall bad faith bargaining on the part of the

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41. Cancellation of four meetings over a long period of time by the union negotiator is not such dilatoriness as to evidence bad faith. (As-H-Ne Farms, Inc., supra.)

42. At the time of the decision in Saikhon I, Administrative Law Judges were titled Administrative Law Officers.

employer. Indeed, in Pricola Produce, supra, the Board noted that it had imposed the makewhole remedy ". . . in cases involving surface bargaining, when the employer's bad faith frustrates the ability to reach any agreement at all . . . ." citing As-H-Ne Farms, Inc., supra.

Since I have found that Saikhon has engaged in bad faith bargaining in violation of subsections (e) and (a) of section 1153 of the Act, the makewhole remedy is appropriate. I have rejected Respondent's arguments that it was not responsible for the periods when there were substantial gaps in negotiations; thus it is not appropriate to provide the makewhole remedy for only some parts of the time covered by the instant charge. Moreover, this Board has shown a reluctance to do so, finding it incompatable with a proper analysis of surface bargaining cases. (McFarland Rose, supra.)

The makewhole remedy shall run from July 15, 1980 to February 24, 1983.

RECOMMENDED ORDER

By authority of Labor Code section 1160.3 the Agricultural Labor Relations Board hereby orders that Respondent Mario Saikhon, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to bargain collectively in good faith with the United Farm Workers of America, AFL-CIO (UFW) with respect to wages, hours, and other terms and conditions of employment of its employees, or the negotiation of an agreement covering such employees, or in any other manner failing or refusing

to so bargain with the UFW.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW, as the certified exclusive collective bargaining representative of its agricultural employees, with respect to said employees' rates of pay, wagees, hours of employment, and other terms and conditions of employment, and, if agreement is reached, embody such agreement in a signed contract.

(b) If the UFW so requests, rescind its unilateral wage increases from the 1980-81 and 1982-83 lettuce harvest seasons, and thereafter bargain in good faith with the UFW over any proposed wage increases for its agricultural employees.

(c) Make whole its agricultural employees for all losses of pay and other economic losses they have suffered as a result of Respondent's failure and refusal to bargain in good faith with the UFW, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with the Board's Decision and Order in Lu-Ette Farms, supra, 8 ALRB No. 55. The makewhole period shall extend from July 15, 1980, until February 24, 1983, and from February 24, 1983, until the date on which Respondent commences good faith bargaining with the UFW which results in a contract or bona fide impasse.

(d) Preserve and, upon request, make available to the Board or its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the amounts of makewhole and interest due under the terms of this Order;

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

(f) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from July 15, 1980, until the date on which the said Notice is mailed.

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

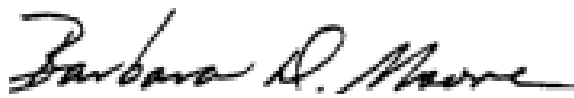
(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board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

and management, to answer any questions the employees may have concerning the Notice and/or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

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

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of the agricultural employees of Mario Saikhon, Inc., be, and it hereby is, extended for one year from the date on which Respondent commences to bargain in good faith with the UFW.

DATED: September 30, 1983



BARBARA D. MOORE
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centre Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we, Mario Saikhon, Inc., had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by bargaining in bad faith with the UFW regarding a collective bargaining agreement. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all farm workers 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 to obtain a contract covering your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help or protect one another; and
6. To decide not to do any of these things.

Because you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above. In particular:

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

WE WILL make whole all of our employees who suffered any economic losses as a result of our failure and refusal to bargain in good faith with the UFW since July 15, 1980.

DATED: MARIO SAIKHON, INC.

By: ________________________________
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California 92243. The telephone number is (619) 353-2130.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

APPENDIX

General Counsel filed a motion on May 9, 1983, seeking to amend certain errors in the official hearing transcript. Respondent, on May 27, 1983, responded to that motion, and, on June 6, 1983, filed a similar motion to which General Counsel responded on June 14, 1983. All motions and responses thereto were duly served.

Errors appear in transcripts for a variety of reasons, and little purpose is served to single out a few. There is also the danger of changing rather than truly correcting a transcript even where both parties agree to "correcting" the error. A witness may have misspoken, and the transcript may accurately reflect the record. With these thoughts in mind, after reveiwing each of the motions and the responses, I have determined to grant the motions as to certain of the requested changes. I have allowed changes only on significant points where the changes serve to avoid confusion.

The record shall be changed as follows:

Volume I, page 90, line 22, change "the sinker" to "sacred".

Volume II, page 146, line 5, change "July 12" to "January 12."

Volume IV, page 2, line 1, change "National Executive Union" to "National Executive Board of the Union."

Volume IV, page 7, lines 11-12, place quotation marks around the sentence "You also seem to indicate you were considering attempts to reopen articles already agreed to."

Volume IV, page 24, line 2, change "I asked him" to "He asked me."

Volume IV, page 38, line 10, change "I said personally I would rather" to "He said personally he would rather."

Volume IV, page 38, line 11, change "He said that" to "I said that."

Volume IV, page 47, line 19 and line 24, change "Colace" to "COLA".

Volume IV, page 50, line 15, change "Daniel Martin" to "David Martinez."

Volume IV, page 78, line 24, change "I" to "she".

Volume IV, page 79, line 26, change "walk out" to "lock out".

Volume IV, page 82, line 3, change "we" to "she".

Volume IV, page 82, line 4, change "he" to "she".

Volume IV, page 90, line 19, change "produce" to "Pricola Produce".

Volume IV, page 99, line 23/ change "position" to "permission".

Volume IV, page 107, line 6, change "ALRB" to "NLRB".

Volume IV, page 109, line 22, change "Nassa" to "Nassiff".

Volume IV, page 112, line 3, change "draft, but as" to "draft, but not as".

Volume IV, page 121, line 8, change the word "security" to "steward".

Volume IV, page 123, line 20, change the word "impact" to "impasse".

Volume IV, page 125, line 13, change the word "labor" to "label".

Volume IV, page 136, line 23, change the word "employee" to "employer".

Volume IV, page 156, line 5, change the word "easy" to "automatically".

Volume IV, page 158, line 8, change "ALRB" to "NLRB".

Volume IV, page 159, line 12, after the word "had" insert the word "not".

Volume IV, page 162, line 25, change the word "cause" to "clause".

Volume IV, page 177, line 4, change the word "wanted" to "considered".

Volume V, page 10, line 17, change the word "drown" to "dropped".

Volume V, page 41, line 9, change the name "Mario" to "Mary".

Volume V, page 61, line 11, change "employees" to "employers".

Volume V, page 73, line 19, change the letters "KKE" to "K.K. Ito".

Volume V, page 83, lines 17-18, change the phrase "What farms incorporated ALRB five-five" to "Lu-Ette Farms, INc. 8 ALRB No. 55".

Volume V, pages 84-85, lines 28-1, place quotation marks around the phrase "I said that I did promise proposals or reaffirmance, but when I started looking, had difficulty knowing all

positions,".

Volume V, page 85, line 6, change "extra" to "contract".

Volume V, page 88, line 13, in the phrase "You discussed his concerns", change the word "you" to "he" so that it reads "he discussed his concerns".

Volume V, page 120, line 4, change the word "safe" to Nassiff".

Volume V, page 133, lines 1, 7 and 9, change the proper name "Mario" to "Mary".

Additionally, I note two errors in the official transcript with regard to exhibits. Respondent's Exhibit Number 40 was admitted into evidence. {See R.T. IV: 67.) It is erroneously noted as not admitted in Volume VI, page 2, line 25. The reference there should be to exhibit number 44, not exhibit 40, and I direct that the transcript be changed accordingly. Further, the reporter noted in Volume IV at page 70 that Respondent's Exhibits 60-77 were admitted. There were correctly noted as stipulated into evidence and admitted in Volume V at page 60. The record shall be deemed changed accordingly.