Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BRUCE CHURCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party, and HECTOR DIAZ, Charging Party, and JUAN CASTRO, Charging Party.	Case Nos.	79-CE-176-EC 79-CE-87-SAL 79-CE-216-SAL 80-CE-151-EC 80-CE-167-EC 80-CE-192-EC 80-CE-255-EC 80-CE-261-EC 80-CE-284-EC 80-CE-26-SAL 80-CE-26-1-SAL 80-CE-64-SAL 80-CE-168-SAL 80-CE-168-1-SAL 80-CE-168-2-SAL 80-CE-168-3-SAL 80-CE-168-4-SAL 80-CE-168-5-SAL
		14 ALRB No. 20 (9 ALRB No. 74)

DECISION AND ORDER

On March 11, 1986, in an unpublished decision, the California Court of Appeal for the Fifth Appellate District reversed and remanded the Decision of the Agricultural Labor Relations Board (ALRB or Board) in Bruce Church, Inc. (1983) 9 ALRB No. 74. (Bruce Church, Inc. v. ALRB (1986) 5 Civ. No. F003587.)

Subsequently, on October 31, 1986, the Board requested that the parties brief the remanded issues. Respondent Bruce Church, Inc. (BCI or Respondent) and Charging Party United Farm Workers of America, AFL-CIO (UFW or Union) filed briefs.

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Respondent also filed a reply to the brief of the UFW.[1/]

We have considered the Court of Appeal's decision, the briefs of the parties, and the record in this proceeding, and hereby issue the attached Decision and Order.

Unilateral Changes

The Board found in 9 ALRB No. 74 that BCI had unilaterally implemented contract proposals made to the UFW during the prolonged bargaining at issue in this matter. It was determined that such unilateral changes were in violation of section 1153(e)[2/] and (a)[3/] of the Agricultural Labor Relations Act (ALRA or Act). It was also determined that Respondent engaged in bad faith bargaining, thereby precluding a bona fide impasse that would make the unilateral implementation by Respondent of changes in wages and working conditions lawful.

The Court of Appeal reversed the Board's determination that BCI was bargaining in bad faith prior to July 12, 1979, as well as the related finding that the unilateral changes in wages, hours and working conditions implemented by BCI on July 12, 1979, were unlawful. The court also remanded the unilateral actions of

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[1/] While our order did not specifically request reply briefs, we have accepted and considered BCI's reply brief as no party objected to its filing.

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

[3/] Those sections provide that it shall be an unfair labor practice for an agricultural employer to refuse to bargain collectively in good faith with certified labor organizations (§ 1153(e)) and to thereby interfere with, restrain, or coerce agricultural employees in the exercise of their section 1152 rights (§ 1153(a)).

February 27, 1980, and September 1, 1980, for a redetermination by this Board as to whether the implementations occurred during impasse.[4/]

Specifically, the court found:

> Rather than supporting a reasonable inference that BCI was engaging in surface bargaining, the evidence could suggest that after prolonged and intensive hard bargaining on both sides, the parties were nearing 'the end of their tether[1] and approaching an impasse in the negotiations. It is readily apparent that at the conclusion of Phase III of the negotiations, good standing and other Union 'institutional needs' concerns were the overriding obstacles separating the parties. When negotiations were mutually broken off on February 5, 1980, the parties still had not reached agreement on several other contract provisions. These included: maintenance of standards, successor clause, grower-shipper clause, subcontractor clause, health and safety, grievance and arbitration procedure, seniority, and management rights. These provisions were lower priority issues than good standing and the Union's other 'institutional needs.
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> 'Those who bargain collectively are normally under an obligation to continue negotiating to impasse on all mandatory issues. [Citation.] The law relieves them of that duty, however, when a single issue looms so large that a stalemate as to it may fairly be said to cripple the prospects of any agreement.[1] (NLRB v. Tomco Communications, Inc. (9th Cir. 1978) 567 F.2d 871, 881.) (Carl Joseph Maggio, Inc. v. Agricultural Labor Relations Bd., supra, 154 Cal.App.3d at pp. 58-59.)
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> After careful review of the entire record and consideration of the totality of the conduct of the parties, we conclude the Board's finding that 'BCI violated section 1153(e) and (a) of the ALRA by its failure to make some reasonable effort to compose its differences with the UFW is not supported by the record.

[4/] Still pending before the court are unilateral actions taken by BCI on September 1, 1981. (See Bruce Church, Inc. (1983) 9 ALRB No. .75.)

> On February 27 and September 1, 1980, BCI unilaterally changed its employees wages, hours and working conditions.
>
> The ALJ and the Board concluded no impasse existed on either February 27 or September 1. However, this conclusion was based on the premise BCI bargained in bad faith during this time. We have concluded that BCI was not bargaining in bad faith up to February 5, 1980, when the parties mutually broke off the negotiations.
>
> Before we can consider the events which occurred during Phase IV, the question whether the parties were at impasse during this period must be resolved.
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> Since the Board is better suited to resolve the impasse question, we remand this case to the Board for consideration of this issue.
> (Bruce Church, Inc. v. ALRB, (1986) 5 Civ. No. F003587, Typed Opn. at pp. 25-31.)

Before turning to the changes implemented on February 27, 1980, we note that the factual record of this case is now controlled by the Court of Appeal's decision. Where their findings and inferences differ from our previous findings, the court's decision prevails as the law of this case. (See, e.g., Athbro Precision Engineering Corp. (1968) 171 NLRB 21 [68 LRRM 1001] enforced (1st Cir. 1970) 423 F.2d 573 [73 LRRM 2355]; International Ladies Garment Workers Union v. NLRB (1939) 305 U.S. 364 [3 LRRM 663].) Accordingly, we reject the UFW's suggestion that we consider events occurring after February 5, 1980, to draw inferences inconsistent with the court's decision.

On February 29, 1979, during the course of negotiations, and before Respondent had been given the opportunity to present its full counterproposal, the UFW began five months of intensive strike activity against Respondent. The Union also commenced a boycott of Respondent's top-line Red Coach brand lettuce on

October 5, 1979, which continued throughout the entire bargaining period. The court found that a UFW proposal conveyed to BCI in November 1979 sent only mixed signals to BCI; that the UFW did not signal the likelihood of concessions on any major subject in dispute; that both sides were "digging in;" and, that good standing and the other union "institutional needs" were overriding obstacles separating the parties. The court found that as of February 5, 1980, while agreement was still to be reached on other significant contract provisions, those terms were of lesser priority to the parties than good standing and other "institutional" issues. The "institutional" concerns loomed so large as to create a stalemate, crippling the prospects of agreement. Given the court's findings, it is apparent that an impasse in bargaining existed as of February 5, 1980. We now look to see if any intervening events occurred which may have broken the impasse by creating a likelihood of further fruitful discussions.

February 27, 1980

From February 5, 1980, to February 27, 1980, when BCI implemented the remainder of its first-year bargaining proposals, nothing of substance occurred. There were no bargaining sessions, and no correspondence between the negotiators was introduced into the record. The impasse continued to exist as of February 27, 1980.

On February 27, 1980, BCI implemented most of its contract proposals effective March 1, 1980, with wage provisions retroactive to September 1979, when BCI had first proposed an

economic increase. No argument was made in these proceedings that the changes of February 27, 1980, deviated from BCI's last contract proposal. (See, e.g., Atlas Task Corp., (1976) 226 NLRB 222, 227 enforced (1st Cir. 1977) 559 F.2d 1201 [96 LRRM 2660]; Taft Broadcasting Co., (1967) 163 NLRB 475, 478, affd. (D.C. Cir. 1968) 395 F.2d 622 [67 LRRM 3032].) The February 27, 1980, implementations were consistent with BCI's last proposals and nothing had occurred to break the impasse. We accordingly find no violation in the February 27, 1980 unilateral implementations.

September 1, 1980

In March 1980, employees who had joined the UFW strike began requesting that BCI reinstate them to their previous positions. BCI employees, including replacement employees with newly acquired seniority, were recalled under new seniority practices, a development which prompted unfair labor practice charges by the UFW.[5/] In April, BCI Vice President Mike Payne informed BCI supervisors of the company's policy: returning strikers could reclaim their jobs when openings for which they were qualified by seniority and skill became available. Payne also asked returning strikers if their offers to return were unconditional. The UFW responded that all offers were, indeed, unconditional.

From March through November 1980, BCI continued to receive offers to return to work from UFW strikers and to respond

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[5/] The UFW charged that Respondent violated section 1153(e) and (a) of the Act by refusing to reinstate returning strikers with no loss of seniority.

with recalls, terminations, and announcements of procedure. BCI, primarily through Payne, also continued to receive and respond to UFW boycott literature during this period. Payne continued to publicize the good standing issue as being the greatest impediment to reaching agreement.

In August 1980, the parties engaged in off-the-record discussions. BCI negotiator Kenneth E. Ristau, Jr., testified that these discussions were the first discussions he had had with the UFW following the suspension of negotiations in February. Ristau testified that in a telephone conversation which occurred on August 25, 1980, Jerry Cohen, the UFW negotiator, indicated he wanted the conversation to be on the record and offered to give up the good standing provision the UFW had previously demanded. After Cohen indicated the UFW would concede on good standing, Ristau and Cohen continued to discuss other areas of disagreement between the UFW and BCI, including the UFW's other institutional demands as they related to the BCI proposal. Cohen also requested that formal negotiation sessions be resumed.

On September 1, 1980, BCI unilaterally implemented the second year economic increases contained in their contract proposals of September 1979. On September 8, 1980, Payne notified BCI employees that negotiations were beginning again and that the UFW was apparently prepared to make some changes. Payne stated that in response to UFW compromises, BCI would "fine tune" their previous proposals. Payne was aware that on August 25, 1980, the UFW had requested an "on the record" negotiating session. Pavne also'knew that the UFW had offered to accent BCI's

good-standing provisions during the August 25 telephone conversation; that is, the UFW would accept National Labor Relations Act (NLRA) restrictions on union security provisions. Payne testified he felt at the time that this informal offer was either a trap or mere posturing by the Union.

The formal negotiating session requested by Cohen was held on September 23. As they had previously indicated in the telephone conversation in August, the UFW offered to conform the UFW union security proposals to the type which would be permitted under the NLRA.[6/] The UFW also altered its proposed medical benefits provision, and made other changes in its "institutional" demands. BCI responded by requesting more information. Payne informed BCI employees on September 25, 1980, that the UFW had modified its proposals but that the parties still disagreed. Payne elaborated on this communication on November 3, 1980, when he informed BCI employees that BCI's position would not change, and that BCI would continue to resist efforts by the Union to "erode" and "squander" the employees' benefit provisions.

On November 7, 1980, BCI presented a counterproposal, which was largely identical to the previous BCI proposal. The UFW rejected some of the changes, and offered to accept language from the parties' previous agreement. At the last negotiating session

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[6/] Under the NLRA, a union member may be denied good standing in his or her union, thereby jeopardizing his or her employment, only for failure to pay dues, initiation fees, and assessments. (NLRA § 8(a)(3), 29 U.S.C. §158(a)(3).) The ALRA, on the other hand, permits much broader requirements for the maintenance of good standing. (See § 1153(c); Namms Inc. (1953) 102 NLRB 466 [31 LRRM 1328]; and UFW/Sun Harvest (Moses) (1983) 9 ALRB No. 40.)

in this record, on November 25, 1980, the UFW proposed a union-security provision identical in all respects to the parties' previous collective bargaining agreement, and three "institutional" articles (hiring hall, Juan de la Cruz pension plan, and Robert F. Kennedy medical plan) in exchange for the BCI proposals on all other articles. BCI rejected this final compromise offer from the UFW, but the parties entered into mediation and more off-the-record discussions. Payne informed the BCI employees of these events, and indicated that BCI would not deviate from any of its proposals. Mediation apparently failed -– according to Payne-–and the hearing in this matter convened. Payne itemized the disputes in the BCI-UFW negotiations on January 14, 1981, for the BCI staff, and in September 1981, BCI implemented the third year changes contained in its contract proposals. (See Bruce Church, Inc. (1983) 9 ALRB No. 75.)

We note initially, that a bargaining impasse does not forever relieve an employer from his or her duty to bargain in good faith. In a discussion of the precedent and principles at work, the court in Gulf State Manufacturing v. NLRB (5th Cir. 1983) 715 F.2d 1020 [113 LRRM 2789], stated that whether an impasse in bargaining exists depends on whether, in light of all the circumstances, further discussion would be futile.

> Anything that creates a new possibility of fruitful discussion (even if it does not create a likelihood of agreement) breaks an impasse; a strike may [break the impasse] [Citations]; so may bargaining concessions, implicit or explicit [Citations]; the mere passage of time may also be relevant.
> (Id. 113 LRRM at 2796; emphasis added.)

In the present matter, we find that impasse was broken

prior to the September 1, 1980, implementation. Respondent's duty to bargain to impasse or contract had been resurrected before it unilaterally implemented its second year contract proposals. We recognize that the boycott was still in effect and that major differences between the parties continued to exist. Several of the Union demands that led to impasse were among the major obstacles to reaching contract and the Union continued to press for its hiring hall proposal and the three Union benefit plans. We further acknowledge that Respondent's strong opposition to these proposals continued. However, six months had passed, the strike had failed, workers were returning to the job, and the UFW had recently yielded on its good standing demand which was a central issue in the stalemate. These circumstances all indicate that fruitful discussions might have been possible at the time Respondent implemented its unilateral changes. In this regard, we note that Respondent's chief negotiator testified that the UFW's concession on the good standing provision sparked immediate discussion between himself and Cohen during the telephone conversation of August 1980. The parties discussed what BCI would be required to deliver in return for the UFW concessions and whether the UFW would soften its position with regard to its other institutional concerns. Ristau specifically questioned Cohen- as to whether they might reach settlement if BCI were to accept one or more, but not all four, of the UFW's remaining institutional demands. Cohen replied that the UFW would require the entire package. Ristau and Cohen ended the conversation intending to proceed with a formal negotiating session. As of that point in

time, it can be reasonably said that the parties had resumed negotiations.

The dynamics of this situation are very similar to those present in Richmond Recording Corporation (1986) 280 NLRB No. 77 [124 LRRM 1081]. In that case, time was becoming critical and company negotiators were desperately trying to reach contract or impasse in order to implement new job classifications and other changes. As in the instant case, the company continued to accept and respond to union proposals in the context of declaring impasse and implementing unilateral changes. Here, BCI management was distrustful of the Union's motives and urgently wanted to implement its wage changes prior to impasse being broken. Thus, Respondent refused to acknowledge that impasse had been broken despite clear indications to the contrary. The Union made a major concession on a term that had been at the heart of the impasse, further discussion ensued about the parties' respective bargaining positions and another bargaining session was scheduled. As the court in Richmond Recording observed:

> . . . this is not evidence of impasse; it is evidence of the grinding tactical path of collective bargaining. [citing cases.]
> (Richmond Recording Corporation, supra, 280 NLRB at p. 40.)

While the concession made by the Union on good standing may not have been sufficient to bring the parties to full agreement on all terms of *a* contract, the concession was of sufficient magnitude to alert Respondent that further discussions might be fruitful. We find, therefore, that the impasse was broken and the implementation of the unilateral changes in the

terms and conditions of employment by BCI on September 1, 1980 was a per se violation of the Act. (NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].)

A full and final assessment of the overall bargaining conduct of the parties must await further review by the Court of Appeal. Confining our determinations to the instructions from the Court of Appeal, we make no determination regarding the bargaining conduct of BCI after the September 1, 1980, implementation of wage increases and no determination as to whether the parties again reached impasse in November 1980. We merely conclude that, as there was no impasse on September 1, 1980, Respondent's unilateral action on that date was not excused.

ERISA

In the remand instructions, the Court of Appeal authorized us to modify our remedial order to conform with Fresh International Corp., et al. v. ALRB (S.D. Cal. 1984) No. CV 81-01160-EGB, as finally resolved. On December 9, 1986, the United States Court of Appeal for the Ninth Circuit reversed the above-entitled case and remanded it to the district court with instructions to abstain in favor of these ongoing state proceedings. (Fresh International Corp. v. ALRB (9th Cir. 1986) 805 F.2d 1353.)

In the absence of an injunction, it therefore appears that the California Court of Appeal may, in its consideration of this matter, reach one other issue raised by BCI in its appeal of our order. That issue is whether the preemption clause of the Employee Retirement Income Security Act of 1975, 29 U.S.C.

sections 1001-1461 (1982) (ERISA) has any effect on the Board's decision or order.[6/] While we have previously ruled on this question, we wish to take the opportunity to offer the parties and reviewing court some clarification of our thinking in this area.

Respondent's preemption claim rests on section 514(a) of ERISA (29 U.S.C. § 1144(a)), which provides that, except for certain specified exemptions, ERISA:

> . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

The purpose of the preemption provision is to ensure uniform regulation of employee benefit plans. As noted by the House Education and Labor Committee when ERISA was enacted:

> Because of the interstate character of employee benefit plans, the Committee believes it essential to provide for a uniform source of law in the areas of vesting, funding, insurance and portability standards, for evaluation of fiduciary conduct, and for creating a single reporting system in lieu of burdensome multiple reports." (1974) U.S. Code Cong. & Admin. News p. 4655. (Quoted in Azzaro v. Harnett (S.D.N.Y. 1976) 414 F.Supp 437, 474; emphasis added.)

The ALRA does not purport to regulate any of these areas, nor is our decision and order herein intended to do so. The ALRA makes no mention whatsoever of employee benefit plans; neither does it set forth any standards for funding, vesting, insurance, portability, reporting, disclosure, or any other aspect of such plans.

[6/] The Ninth Circuit indicates that BCI may have failed to preserve this issue for review by the State Court of Appeal. (Fresh International Corp., et al. v. ALRB, supra, at p. 1362.)

Section 514(c)(2) of ERISA defines "State" as any state, state agency, etc. "which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by [ERISA]." (See, Lane v. Goren (9th Cir. 1984) 743 F. 2d 1337, 1339.) The ALRA does not prescribe the specific terms and conditions of employment of agricultural employees. It is only concerned with the process by which such matters are negotiated when there exists an exclusive bargaining agent for employees. When we assess bargaining conduct, we are not concerned with whether or not an employer agrees to a particular health or welfare plan for its employees or whether such a plan provides certain benefits, vests at a certain time, or establishes fiduciaries charged with the plan's administration. We enforce a statute which charges us with administering the process by which such plans are agreed upon (or not agreed upon) and to provide that unilateral action occur only after good faith bargaining has been exhausted. We follow federal precedents in performing this task (see § 1148 of the Act), and we evaluate not the content of, but the negotiations over, such plans only because they are mandatory subjects of bargaining. (See, e.g., Clear Pine Molding v. NLRB (9th Cir. 1980) 632 F.2d 721, 129 [105 LRRM 2132]; Keystone Steel & Wire (7th Cir. 1981) 653 F.2d 304 [107 LRRM 3143].)

It is clear that our order in this case, if enforced, would empower the employees, through their bargaining agent, to require BCI to return levels of coverage in certain of its health and pension plans to their status at an earlier stage of

bargaining. The terms and conditions of BCI's benefit plans, both at present and before the unilateral changes, were not dictated in any manner by this agency or the State, but were designed by one or more of the parties to the collective bargaining relationship. The remote effect on such plans which our decision might have, coupled with the important state interest to be protected by the ALRA, leads to the conclusion that ERISA was not designed to preempt full enforcement of the order at issue here.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Bruce Church, Inc., its officers, agents, successors, and assigns, shall take the following affirmative actions which are deemed necessary to effectuate the purposes of the Agricultural Labor Relations Act:

(1) If the United Farm Workers of America, AFL-CIO (UFW) so requests, rescind the unilateral changes in wage rates, health plan, pension plan or any other such unilateral change determined to be a violation herein.

(2) Meet and bargain collectively in good faith with the UFW as the certified bargaining representative of its agricultural employees concerning wages, hours and working conditions and concerning any unilateral changes heretofore made and embody any understandings reached in a signed agreement.

(3) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each

language for the purposes set forth hereinafter.

(4) 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 September 1, 1980 to August 31, 1981.

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

(6) Provide a copy of the attached Notice, in all appropriate languages, to each agricultural employee hired by Respondent during the 11-month period following the issuance of this Order.

(7) 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 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.

(8) 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.

(9) Because of the nature of the Remand from the Court of Appeal, the execution of this order is hereby stayed until forty (40) days following the final decision of the Court of Appeal in this case.

DATED: December 29, 1988.

BEN DAVIDIAN, Chairman[7/]

JOHN P. MCCARTHY, Member

GREGORY L. GONOT, Member

[7/] 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. Members Ramos Richardson and Ellis did not participate in this case.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office by the United Farm Workers of America, AFL-CIO (UFW), the certified exclusive bargaining agent for our agricultural employees, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Bruce Church, 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 unilaterally changing our employees' wages, benefits and terms of employment without first bargaining in good faith with the UFW about those changes, thereby failing to bargain in good faith with the UFW. 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 other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT do anything in the future that forces you to do or not to do, any of the things listed above.

WE WILL NOT make any changes in your wages, benefits or terms of employment without first notifying the UFW and giving them a chance to bargain on your behalf about the proposed changes.

Dated: December 29, 1988. BRUCE CHURCH, INC.

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California, 93907. The telephone number is (408) 443-3161.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Bruce Church, Inc.
(UFW/Hector Diaz, Juan Castro)

14 ALRB No. 20
Case No. 79-CE-176-3C
79- CE-87-SAL
79-CE-215-SAL
80-CE-151-EC
80-CE-167-EC
80-CE-192-EC
80-CE-255-EC
80-CE-261-EC
80-CE-284-ED
80-CE-26-SAL
80-CE-26-1-SAL
80-CE-64-SAL
80-CE-168-SAL
80-CE-168-1-SAL
80-CE-168-2-SAL
80-CE-168-3-SAL
80-CE-168-4-SAL
80-CS-168-5-SAL

Background

Pursuant to instructions on remand from the Court of Appeal, the Board considered whether impasse existed when the employer implemented unilateral changes in wages and working conditions on February 27, 1980, and September 1, 1980. The Board also provided its view on the issue of whether the preemption clause of the Employee Retirement Income Security Act of 1975, 29 USC sections 1001-1461 (1982) (ERISA) has any effect on the Board's decision or order in light of Fresh International Corp. v. ALRB (9th Cir. 1986) 805 F.2d 1353.

In Bruce Church, Inc. (1983) 9 ALRB No. 74, the Board determined that the employer engaged in bad faith bargaining. Based upon that determination, the Board concluded that impasse did not exist. The Court of Appeal reversed the Board's findings of bad faith and remanded the case to the Board to decide whether the parties were at impasse when the employer implemented the unilateral changes. Bruce Church, Inc. v. Agricultural Labor Relations Board, (1986) 5 Civ. No. F003587.

Board Decision

The Board held that the findings of the Court of Appeal compelled the conclusion that the parties were at impasse on February 5, 1980 when they ceased bargaining. There being no significant intervening event between February 5, 1980 and February 27, 1980, when the employer implemented unilateral changes consistent with its prior bargaining proposals, it was concluded by the Board that impasse continued to exist and that the unilateral implementation by the employer of its February 27, 1980, wage and

benefits proposals was lawful. As to the second unilateral change the Board cited, inter alia, the passage of time, the end of a strike, and the union's concession on a major union security provision as factors indicating impasse was broken prior to the employer's implementation of its proposals on September 1, 1980.

The Board confirmed its earlier decision with regard to the preemption provision of ERISA finding that it does not regulate ERISA covered plans and is not concerned with their content. The Board further noted that any effect of the Board's order on such plans is minimal.

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This Case summary is furnished for information only and is not an official statement of the case, or the Agricultural Labor Relations board.

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