Gilroy, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PAUL W. BERTUCCIO, dba BERTUCCIO FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 81-CE-91-SAL 82-CE-29-SAL 15 ALRB No. 15 (10 ALRB No. 16)

SUPPLEMENTAL DECISION AND MODIFIED ORDER

On July 21, 1988, in a partially published decision, the California Court of Appeal for the Sixth Appellate District remanded the above matters to the Agricultural Labor Relations Board (ALRB or Board) for disposition consistent with its resolution of the issues contained in the petition for review filed by Paul W. Bertuccio, dba Bertuccio Farms (Respondent).

Specifically, the court ordered the Board to annul those portions of its Decision finding Respondent had committed violations of the Agricultural Labor Relations Act (ALRA or Act) by refusing to furnish bargaining-related information in a timely fashion to Charging Party United Farm Workers of America, AFL-CIO (UFW or Union) and by bargaining directly with members of the certified unit rather than with the Union. The court also ordered the Board to annul its finding that Respondent's acceptance of the Union's April 8, 1982, package proposal on July 25, 1982, came too late to bind the Union to the terms of the package.

The court further directed the Board to set aside those portions of its remedial Order which awarded bargaining makewhole for the period of bargaining litigated, April 2, 1981, through July 24, 1982 (and thereafter until Respondent commenced good faith bargaining leading either to a contract with the Union or good faith impasse), and which also awarded such makewhole under Admiral Packing Co. (1981) 7 ALRB No. 43 to unfair labor practice strikers who went on strike on or about July 10, 1981. In conjunction with its treatment of the Board's makewhole order, the court ordered the Board to afford Respondent the opportunity to show that strike violence during the period April, 1981 to July 25, 1982, rendered the imposition of a makewhole award inappropriate, and also ordered the Board to allow Respondent to present evidence under William Pal Porto & Sons, Inc. v. ftLRB (1987) 191 Cal.App.3d 1195 [206 Cal.Rptr. 237] that no contract would have been entered into even in the absence of Respondent's bad faith bargaining.

On April 28, 1989, General Counsel, Respondent, and the Union entered into a stipulation that the makewhole remedy would not be imposed for the entire period litigated, April 2, 1981, to July 25, 1982. The Board approved the remedial stipulation on May 17, 1989.

In conformity with the order of the court on remand, and pursuant to the approved agreement of the parties, the Board issues the following Supplemental Decision and Modified Order. The Board hereby annuls its findings that Respondent failed to bargain in good faith with the Union by failing to furnish

bargaining-related information in a timely fashion and by bargaining directly with members of the collective bargaining unit rather than with the certified collective bargaining representative of the unit. In conformity with the court's decision, we now find the record evidence insufficient to support a finding of a violation of the Act on those grounds.

The Board hereby also annuls its finding that Respondent's acceptance on July 25, 1982, of the Union's package proposal of April 8, 1982, was ineffective to bind the Union to the terms of the proposal. Again pursuant to the court's order, we enter our finding that Respondent's acceptance was effective to bind the Union to the terms of the proposal.

While affirming all other aspects of its prior Decision and Order in this matter, the Board, pursuant to directive of the Court of Appeal for the Sixth Appellate District, hereby sets aside its prior remedial order, and enters in its place the following Modified Order.

MODIFIED ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Paul W. Bertuccio, dba Bertuccio Farms, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Implementing any changes in its agricultural employees' wages, hours, or other working conditions without giving prior notice to the UFW, and an opportunity to bargain over such changes.

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

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

(a) Upon request of the UFW, rescind the wage increases granted in January, 1982 and, thereafter, meet and bargain collectively with the UFW, at its request, regarding such changes.

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

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

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

(e) Mail copies of the attached Notice in all appropriate languages, within thirty (30) days after the date of issuance of this Order, to all agricultural employees employed by Respondent between April 2, 1981, and July 24, 1982.

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all

appropriate languages, to all of its employees on company time and property at time(s) and placets) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice and/or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(g) Notify the Regional Director in writing, within thirty (30) days after the date of issuance of this Order, of the steps which have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing of further actions taken to

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comply with this Order.[1/]

DATED: September 29, 1989

GREGORY GONOT, Acting Chairman[2/]

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

[1/] In addition to the modifications to our former remedial order specifically required by the Court of Appeal in its remand order, the Board has been forced to make additional modifications which are necessary to harmonize the apparent intent of the court's order with the Board's prior remedies. For example, although the court found that the Union "wrongfully" withheld its recognition of Respondent's acceptance of the Union's April 8, 1982, package proposal, it nevertheless upheld the Board's finding that the Union was not guilty of bad faith bargaining at any time during the course of the conduct at issue herein. Thus the court, in effect, found that both the Union and Respondent were bargaining in good faith at the time of Respondent's acceptance of the Union's proposal on July 25, 1982. The court, however, also upheld the Board's findings of Respondent's bad faith bargaining as to the composition of the bargaining unit, surface bargaining, and unilateral wage increase issues. The court's discordant conclusion, viz., that Respondent was guilty of ongoing bad faith bargaining in these three critical areas while ultimately returning to good faith bargaining via its acceptance of the Union's proposal, forces the Board to devise remedies for that conduct which also recognize the court's determination that Respondent was bargaining in good faith as of July 25, 1982. The Board, therefore, has deleted references in its remedial order to the bargaining unit composition and surface bargaining issues that would imply a continuance of Respondent's bad faith bargaining in those areas. We have also deleted our usual extension of certification remedy because, if as the court has apparently found, Respondent was bargaining in good faith as of July 25, 1982, it would be a futile exercise of the Board's remedial jurisdiction to decree at this time a one-year extension of certification from that date (i.e., when Respondent commenced good faith bargaining). Similarly, we have had to reduce the period of time for which Respondent's employees will receive mailed copies of the Board's Notice in order to reflect the court's finding as to the termination of Respondent's bad faith bargaining.

[2/] The signatures of Board Members in all Board Decisions appear with the signature of the Chairperson first, if participating, followed by the signatures of the participating Board Members in order of their seniority. The Board currently has two vacancies.

CASE SUMMARY

Paul W. Bertuccio, dba
Bertuccio Farms (UFW)

Case Nos. 81-CE-91-SAL
82-CE-29-SAL

15 ALRB No. 15 (10 ALRB No. 16)

Board Decision

Pursuant to the remand order of the Sixth District Court of Appeal entered in Paul W. Bertuccio v. ALRB (1988) 202 Cal.App.3d 1369 [249 Cal.Rptr. 473], the Board annulled its prior findings in Paul W. Bertuccio, dba Bertuccio Farms (1984) 10 ALRB No. 16 that Paul W. Bertuccio, dba Bertuccio Farms (Respondent) had failed to timely furnish bargaining-related information to Charging Party United Farm Workers of America, AFL-CIO (UFW or Union), and had bargained directly with members of the collective bargaining unit. In accordance with the court's order, the Board entered a new finding that the record was insufficient to support a violation in those areas. The Board, again pursuant to the court's remand order, annulled its finding that Respondent's acceptance on July 25, 1982, of the Union's package proposal of April 8, 1982, was ineffective to bind the Union to the terms of that proposal, and entered instead a new finding that Respondent's acceptance was effective to achieve that result. In conformity with that portion of the court's remand order to provide Respondent the opportunity to offer evidence of Union strike violence and to reconsider the makewhole award in light of William Pal Porto & Sons, Inc. v. ALRB (1987) 191 Cal.App.3d 1195, and in agreement with the parties' stipulation approved by the Board on May 17, 1989, the Board vacated its prior award of bargaining makewhole for the period litigated, April 2, 1981, to July 25, 1982. Finally, the Board modified other provisions of its former remedial order to accommodate the court's finding that Respondent was bargaining in good faith as of the date of its acceptance of the Union's offer, July 25, 1982.

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