Gilroy, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CERTIFIED EGG FARMS AND OLSON FARMS, INC., Respondents, and GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 890, Charging Party.	)	Case Nos. 86-CE-86-SAL 88-CE-6-SAL 16 ALRB No. 7

DECISION AND ORDER

On April 25, 1989, Administrative Law Judge (AL J) Barbara D. Moore issued the attached Decision and recommended Order in this proceeding. Thereafter, Respondent timely filed exceptions to the ALJ's Decision and General Counsel filed a response to Respondent's exceptions.

The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the ALJ's Decision in light of Respondent's exceptions and has decided to affirm the rulings, findings, and conclusions[1/] of the ALJ and to adopt her

[1/] General Counsel moved to strike Respondent's exceptions as not conforming to the requirements of Title 8, California Code of Regulations, section 20282 which governs the filing of exceptions to Decisions of Administrative Law Judges. Specifically, General Counsel excepted to Respondent's failure to serve other parties to this proceeding with an appropriate proof of service as well as its failure to set forth the grounds for its exceptions. The Board dismissed General Counsel's Motion to Strike, without prejudice, but, on its own Motion, extended to Respondent an opportunity to file a brief in support of its exceptions or to, in some other manner, articulate any pertinent or intelligible

(fn. 1 cont. on D. 2)

recommended Order, as modified herein.[2/]

ORDER

By authority of Labor Code section 1160.3,[3/] the Agricultural Labor Relations Board (ALRB or Board) hereby orders that Respondents Certified Egg Farms and Olson Farms, Inc. and their officers, agents, successors and assigns, jointly and severally, shall:

1. Cease and desist from:

(a) Failing or refusing to bargain collectively in good faith with the General Teamsters, Warehousemen and Heloers, Local 890 (Union) with respect to wages, hours, and other terms and conditions of employment of its employees in the bargaining

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(fn. 1 cont.)

legal argument which may permit the Board to consider its exceptions. We also advised Respondent that further failure to comply with the Board's regulations governing the filing of exceptions would be grounds for a determination by the Board that the exceptions lack merit. Respondent's subsequent filing suffers from virtually the same defects as its initial filing inasmuch as it has again failed to follow the proof of service requirements and has not articulated a legally cognizable argument or provided even a valid citation in support of exceptions, leaving the Board no choice but to conclude that Respondent cannot assert a meritorious challenge to the ALJ's Decision and therefore the exceptions should be, and they hereby are, dismissed.

[2/] We delete those portions of the ALJ's recommended Order that direct Respondent to effects bargain the stock shares transaction and the portion that awards the bargaining makewhole remedy for failure to effects bargain. The Board recognizes that a mere transfer of stock should not materially change an operation so as to require the employer to notify and bargain with the union over the effects of the stock transaction. (Swift Independent Corporation, et al. (1988) 289 NLRB No. 51 [131 LRRM 1173], remanded on other grounds, sub nom Esmark, Inc. v. NLRB (7th Cir. 1989) 887 F.2d 739 [132 LRRM 2710].)

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

unit certified by the Board in Certified Egg Farms, case number 75-RC-25-M, (hereafter the term "employees" shall be so understood), or the negotiation of an agreement covering such employees, or in any other manner failing or refusing to so bargain with the Union regarding employees in the certified bargaining unit;

(b) Failing or refusing to recognize the Union as the exclusive bargaining representative in the certified bargaining unit;

(c) Failing or refusing to provide the Union with information requested regarding the stock transfer and change of ownership of Certified which occurred in or about April 1986;

(d) Failing or refusing to hear and resolve grievances filed by the Union arising out of the collective bargaining agreement executed by the Union and Certified Egg Farms pursuant to the terms of said agreement including, if appropriate, submitting said grievances to arbitration on the merits;

(e) Failing or refusing to remit dues and initiation fees (hereafter referred to collectively as "dues") to the Union for employees for whom dues were deducted prior to the cessation of such deductions in March 1986, and any other employees who submitted dues deduction authorizations, until the termination of the collective bargaining agreement on February 15, 1988;

(f) Unilaterally instituting or implementing any changes in any of its agricultural employees' terms and conditions of employment without first notifying and affording

the Union a reasonable opportunity to bargain with Respondents concerning such changes;

(g) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of their rights as guaranteed by Labor Code Section 1152.

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

(a) Resume recognition of the Union as the exclusive bargaining representative of the employees in the certified bargaining unit;

(b) Upon request, meet and bargain collectively in good faith with the Union, as the certified bargaining representative of the employees in the certified bargaining unit, with respect to said employees' rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if agreement is reached, embody such agreement in a signed contract;

(c) Makewhole the employees in the certified bargaining unit for all economic losses they have suffered as a result of Respondents' failure to recognize and bargain with the Union over said employees' terms and conditions of employment; such amounts to be computed in accordance with Board precedent, with interest thereon to be computed in accordance with the Board's Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5. The makewhole period shall extend from the effective date of the aforedescribed stock transfer, in or about April 1986, until the date on which Respondents commence good faith

bargaining with the Union which results in a contract or a bona fide impasse;

(d) Makewhole the grievants, whose grievances were not heard or resolved, for all economic losses they have suffered as a result of Respondents' failure to process said grievances as required by the collective bargaining agreement (Agreement) executed by Certified Egg Farms and the Union;

(e) Upon request by the Union, process said grievances as required by the Agreement including, if appropriate, submitting said grievances to arbitration on the merits;

(f) Maintain in effect, as required by law, the terms and conditions of employment embodied in the Agreement;

(g) Reimburse the Union for the amount of union dues that Respondents unlawfully failed to withhold and transmit in accordance with the Agreement for all employees for whom deductions were made prior to Respondents' cessation thereof in March 1986, and also for any employees who thereafter submitted written authorization for dues deduction from the date such dues were not deducted to the termination of the Agreement on February 14, 1988. The amounts due under this paragraph shall be offset against any lost wages or benefits required to be paid under paragraph 2(d) above. Further, no payment shall be required for any dues which were paid voluntarily by said employees;

(h) Provide the Union with all relevant information requested by the Union regarding the aforedescribed stock

transfer;

(i) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and duplication by other means, all records in its possession relevant and necessary to a determination by the Regional Director, of the make-whole period and the amount due employees under the terms of this Order;

(j) Sign the Notice to Agricultural Employees, attached hereto, embodying the remedies ordered and, after its translation by a Board Agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereunder;

(k) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on Respondents' property for 60 days, the places 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;

(1) Provide a copy of the attached Notice in all appropriate languages to each unit employee hired by Respondents during the twelve month period following the date of issuance of the Board's Order;

(m) Mail copies of the attached Notice in all appropriate languages, within thirty days after the date of issuance of the Board's Order, to all unit employees employed by Respondents at any time during the period from October 22, 1986, to the date of the Board's Order in this matter;

(n) Arrange for a Board agent to distribute and read

the attached Notice in all appropriate languages to all of Respondents' employees in the certified bargaining unit, on company time and property, at times and places to be determined by the Regional Director. A representative of the employer will be present for the reading. 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 attached 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 in order to compensate them for time lost at this reading and during the question and answer period;

(o) Notify the Regional Director, in writing, within 30 days after the date of issuance of the Board's Order, as to what steps have been taken to comply with it. Upon request of the Regional Director, Respondents shall notify him periodically thereafter in writing what further steps have been taken in compliance with this order.

DATED: June 15, 1990

BRUCE J. JANIGIAN, Chairman[4/]

GREGORY L. GONOT, Member JOSEPH C.

SHELL, Member

[4/] 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, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, CERTIFIED EGG FARMS AND OLSON FARMS,"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: (1) refusing to continue to recognize the General Teamsters, Warehousemen and Helpers, Local 890 (Union), as the certified bargaining representative of our employees in our Gilroy operations; (2) refusing to bargain collectively in good faith with the Union as the certified representative of bargaining unit employees in our Gilroy operations regarding a new collective bargaining agreement and regarding any changes in the terms and conditions of employment embodied in the collective bargaining agreement (Agreement) between the Union and Certified Egg Farms; (3) refusing to provide the Union with information relevant to its collective bargaining duties which it requested; (4) refusing to hear and resolve grievances filed by the Union as required by the Agreement; and (5) ceasing and refusing to pay the Union dues and initiation fees as required by the Agreement.

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 stops you from doing, any of the things listed above.

Especially, WE WILL NOT refuse or fail to recognize the Union as the certified bargaining representative for employees in the bargaining unit at the Gilroy operations of Certified Egg Farms/Olson Farms, Inc.

WE WILL NOT refuse or fail to maintain, as required by law, the terms and conditions of employment contained in the Agreement with the Union.

WE WILL NOT refuse or fail to hear and resolve grievances filed by the Union as required by the Agreement with the Union.

WE WILL NOT refuse or fail to deduct and transmit to the Union dues and initiation fees as provided for in the Agreement with the Union.

WE WILL make our employees in the bargaining unit whole for all losses of pay and other economic losses they have suffered as a result of our failure and refusal to bargain with the Union.

WE WILL meet and bargain in good faith with the Union as the certified bargaining representative.

WE WILL hear and resolve the grievances filed by the Union including, if appropriate, submitting the grievances to arbitration on the merits.

WE WILL pay the Union, as ordered by the Board, the amount of the dues and intiation fees we failed or refused to deduct.

DATED:

CERTIFIED EGG FARMS AND OLSON FARMS, INC.

By: _____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California. If you have a question concerning your rights as farmworkers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at Il2 Boronda Road, Salinas, California 93907. The telephone number is (408)443-3161.

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

Certified Egg Farms and Olson Farms, Inc. (Teamsters)	16 ALRB No. 7 Case Nos. 86-CE-86-SAL, 88-CE-6-SAL

Background

In 1985 and 1986, members of the Olson family engaged in a stock transfer among themselves whereby previously held family shares in Certified Egg Farms would be wholly absorbed by those family members who controlled Olson Farms and the former Certified operations would thereafter be known only as Olson Farms. Certified adopted the position that, as a result of the change in ownership among family members, Certified would cease to exist as would its status as an agricultural employer subject to the jurisdiction of the Agricultural Labor Relations Act (ALRA or Act). Thus, Certified reasoned, it was no longer obligated to honor the existing collective bargaining agreement between Certified and its employees' exclusive representative, General Teamsters, Warehousemen and Helpers, Local 890 (Teamsters or Union). Following Certified's repudiation of the contract, the Union filed unfair labor practice charges. Pursuant to an investigation of the charges, the Regional Director issued a complaint alleging that Certified had failed or refused to bargain in good faith within the meaning of the Act by, among other things, refusing to provide information requested by the Union, ceasing to deduct and remit Union dues and initiation fees, refusing to hear and resolve grievances filed pursuant to the agreement, particularly those concerning layoffs and the use of non-union drivers, refusing to acknowledge the Union's request to commence negotiations for a new contract and implementing the stock transfer without providing prior notice to the Union and the opportunity to bargain over the effects of the change in ownership. Matters alleged in the unfair labor practice charges and complaint were the subject of a full evidentiary hearing before an Administrative Law Judge (ALJ) in which all parties participated.

ALJ's Decision

As a preliminary matter, the ALJ found that Certified continued to exist as a corporate entity after the transfer of 100 percent of its stock to the Olson brother who also acquired all of Olson Farms and that there were no legally significant changes in Certified's organization for purposes of ALRA jurisdiction since its product line, mode of operation and business purpose remained constant. She concluded that Certified and Olson comprise an integrated agricultural enterprise and thus are a single employer under the Act. Therefore, the collective bargaining agreement remained viable. The ALJ also found that Certified/Olson had failed to meet its bargaining obligations in essentially the same manner as alleged in the unfair labor practices and complaint and recommended that the Board follow standard remedial provisions.

Board's Decision

Following the filing of exceptions to the ALJ's Decision, the Board found that Respondents had failed to assert a meritorious challenge to the ALJ's Decision and thus adopted her findings of fact and conclusions of law, as well as her recommended Order, with the exception that the Board struck her provision ordering Respondent to, upon request of the Union, offer to bargain about the effects of the stock transfer as the Board believes that a mere transfer of stock should not materially change an operation so as to require an employer to notify and bargain with the union concerning the change.

* * *

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

CERTIFIED EGG FARMS AND OLSON FARMS, INC.,[1]

Case Nos . 86-CE-86-SAL
88-CE-6-SAL

Respondents,
and

INTERNATIONALBROTHERHOOD TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 890,

Charging Party.

Appearances:

Mr. Marvin Brenner, Esq. ALRB Salinas Regional Office for the General Counsel

Mr. Norman Jones, Esq. Jones, Jones & Jones of San Simeon, California for the Respondents

Before: Barbara D. Moore
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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[1]/General Counsel, in the Second Amended Complaint, amended the names of the companies pursuant to representations by Norman Jones, counsel for both companies, that these were the correct names. The Complaint and First Amended Complaint had referred to the companies as "Certified Egg" and "Olson Farms." In the underlying representation case, see pp. 14-15 below, Certified Egg Farms was referred to by that name and also as "Certified Egg Farms, Inc." and also as "Certified Eggs, Inc." Even letters from Mr. Jones

BARBARA D. MOORE, Administrative Law Judge:

This case was heard by me on December 14, 1988, in Salinas, California. It arose out of two charges filed with the Agricultural Labor Relations Board (hereafter "ALRB" or "Board") against Respondents Certified Egg Farms and Olson Farms, Inc. (hereafter either referred to individually by name or collectively as "Respondents") by the Charging Party, General Teamsters, Warehousemen and Helpers Union Local 890 (hereafter "Charging Party," "Teamsters" or "Union") on October 14, 1986, and on February 18, 1988.

The General Counsel of the ALRB issued a complaint based on the charges. A First Amended Complaint issued on October 5, 1988. The Second Amended Complaint issued on December 5, 1988, and alleges that Respondent has violated sections of 1153(a) and (e) of the Agricultural Labor Relations Act (hereafter ALRA or Act).[2] The complaint alleges that:

(1) Olson Farms, Inc. (hereafter "Olson Farms") at all times material was and is an alter ego or successor of Certified Egg Farms (hereafter "Certified");

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refer to that company in different ways. (Joint Exhibits 4, 5, 6, 12 and 14.) Based on the copies of statements filed with the California Secretary of State (Joint Exhibits 16 and 17), as well as Mr. Jones[1] representations as counsel for both entities, I find the companies are correctly named in the current caption.

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

(2) Respondents refused to provide information requested by Charging Party in order to carry out its responsibilities as the exclusive bargaining representative of Respondents' agricultural employees;

(3) Respondents ceased deducting and remitting dues and initiation fees to the Union in May 1986;

(4) Respondents, on or about July 23, 1986, refused to hear and resolve Union grievances regarding layoffs and use of non-union drivers and other matters arising out of the collective bargaining agreement between the parties;

(5) Respondents, on or about November 2, 1987, refused and continue to refuse to negotiate and to provide information to the Union for negotiating a new contract despite requests by the Union to do so;

(6) Respondent Certified sold its business to Respondent Olson Farms without providing prior notice to the Union thereby preventing the Union from engaging in meaningful negotiations over the effects of this decision.

Respondents filed answers to the Complaint and First Amended Complaint on September 7, 1988, and October 15, 1988, respectively, denying that Certified is an agricultural employer subject to the Board's jurisdiction, denying that Olson Farms is the alter ego or successor to Certified, and denying that either committed any unfair labor practices.

General Counsel and Respondents appeared through counsel

and were given full opportunity to participate in the hearing.[3] Only the General Counsel filed a post-hearing brief. Upon the entire record,[4] including my observation of the witnesses, and after careful consideration of the arguments at hearing and the brief submitted by the General Counsel, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT I.

Jurisdiction

As admitted by Respondents in the answer,[5] charging Party

[3]The Charging Party did not file a motion to intervene.

[4]I left the record open for the limited purpose of receiving into evidence documents relating to the Union's withdrawal of a charge (Joint Exhibit 3) with the National Labor Relations Board (hereafter NLRB or national board) on the matters at issue herein. General Counsel submitted the documents which consist of copies of: (1) a letter dated February 24, 1988, from NLRB Field Examiner Alan Nagata to Tony Gonzales, Charging Party's Business Representative, re withdrawal of NLRB Case No. 32-CA-9437; (2) a withdrawal request relating to the same case; (3) a letter dated February 24, 1988, from Tony Gonzales to Region 32 of the NLRB (Oakland) withdrawing the charge in the above cited case; (4) a cover Letter from Tony Gonzales to Region 32 of the NLRB dated March 1, 1988; and (5) the completed NLRB Withdrawal Request Form in the case, dated February 29, 1988. The above documents are hereby received into evidence as Respondents' Exhibits l(a); l(b); l(c); l(d) and l(e), respectively.
Also after the close of hearing, General Counsel submitted the moving papers and requested their introduction into evidence. Since the record has already been closed except for the limited purpose described above, I decline to reopen the record to admit these documents. Rather, I take administrative notice of the moving papers as part of the official case file.

[5]Respondents amended the answer at hearing to admit that the Charging Party is a labor organization as defined in section 1140.4(f) of the ALRA as well as within the meaning of the National Labor Relations Act (NLRA). (Reporter's Transcript p. 1. All references hereafter to the hearing transcript will be cited RT: page.)

is a labor organization within the meaning of section 1140.4(f). For the reasons set forth below, I find Respondents are a single, integrated agricultural enterprise and thus are an agricultural employer as the term is defined in section 114.04(c) of the Act. Thus, they are subject to this Board's jurisdiction.

II. The Employer Issue

As noted above, Respondents deny that they are agricultural employers within the meaning of the Act and subject to this Board's jurisdiction. I have set forth below the relevant history of Certified, the relationship between Certified and Olson Farms and other relevant matters I have relied on in determining that they are an agricultural employer.

A. History of Ownership of Certified and Olson

The parties reached extensive stipulations and, except where noted, the statement of facts is derived from their stipulations. (Joint Exhibit 19)[6] Certified and Olson Farms are both California corporations, and both are owned by C. Dean Olson and his family which consists of his wife Stacy, his son Peter Olson and his daughters Linda Olson and Deanne Placey.[7]

In 1985 and early 1986, Certified was owned 25 percent by Dean Olson, 25 percent by Dean's brother and 50 percent by a third

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[6]joint Exhibits will be identified as JX number; General Counsel's exhibits as GCX number, and Respondents' exhibits as RX number.

[7]Deanna Placey died several months prior to the instant hearing. Her stock will revert to her father Dean Olson and her brother Peter Olson.

individual. This 50 percent interest was sold in April 1986, one-half to Dean Olson and one-half to another company, Olson Industries (hereafter "Industries"), which Dean and his brother owned.

Further changes were made in stock ownership interests in the various entities. These were completed by April 1986. These changes resulted in Dean's brother giving up his interest in Olson Farms and in Certified.[8] Thereafter, C. Dean Olson, his wife and children owned 100 percent of Certified and 100 percent of Olson Farms.[9]

There were no changes in the business organization, product line, mode of operation, or business purpose of Certified after Olson Farms took control over Certified.

B. The Present Structure and Business Operations of Certified and Olson

Peter Olson is President of both Certified and Olson. He and his father Dean are on the Board of Directors of each company. Peter Olson is responsible for the day to day management of both Olson Farms and Certified.

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[8]Dean's brother became the majority owner of Industries. After this time, Industries had no involvement with, nor any interest in, Certified or Olson Farms and has no relevance to the issues in this case.

[9]The above transactions did not involve the transfer of cash. The various properties were simply divided per agreement between Dean Olson and his brother.

The parties stipulated that Olson Farms is a holding company which owns 100 percent of the stock of Certified and controls Certified's business enterprise.[10] Certified's business operation consists of three ranches located near one another in the area of Gilroy, California. The three ranches are identified as Canada, Foothill and Day Road.[11]

Certified owns the land and the buildings at the three ranches where the company produces and processes eggs for sale by Olson Farms. Olson Farms obtains contracts with retail grocery chains such as Alpha Beta and with U.S. military to sell them eggs. Olson Farms then purchases the necessary eggs from Certified.

In order to meet its contractual commitments, Olson Farms will instruct Certified how much Certified has to produce, and Certified will respond as necessary to meet the production requirements. For example, Certified may buy more chickens if needed to meet its production quotas.

In addition to being the holding company for Certified, Olson Farms also owns property, including egg processing plants,

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[10]Elsewhere, they stipulated that Dean Olson and his family own 100 percent of the stock of Certified and also 100 percent of the stock of Olson Farms. (JX 19, paragraph 11, p. 7.) My conclusions as set forth below would be the same no matter which is the case, but I reconcile the stipulations by inferring that Olson Farms owns 100 percent of the stock of Certified, and Dean Olson and his family own 100 percent of the stock of Olson Farms.

[11]The Day Road Ranch closed in October 1988, and Foothill is expected to close in approximately March 1989.

in several locations. In California, it has facilities in Fresno and in Fontana. It also has facilities in Hawaii, Utah, Oregon, and, until last year, in Texas. These operations perform basically the same functions as are performed at Gilroy except they do more buying and selling than Certified, and they sell eggs in a frozen and liquid form as well as fresh.

The business license for the Gilroy operation has at all times been held in Certified's name. The parties stipulated that at the end of the 1988 tax year, Certified will cease to exist, and the entire operation will be known as Olson Farms. They further stipulated that Certified and Olson Farms have separate bank accounts and separate Internal Revenue Service (IRS) identification numbers. (JX 19, paragraph H, p.9.)

C. Further Points of Commonality Between Certified and Olson

1. Common Management and Supervision

Peter Olson manages both Certified and Olson Farms. Supervisors at the three Gilroy ranches take their orders from him. Peter Olson and Dean Olson are both supervisors within the meaning of the ALRA and are agents of Certified and Olson Farms.

2. Labor Relations Policies

There is a common labor relations policy for both Certified and Olson Farms including Olson Farms' operations in Hawaii, Utah and Oregon. Peter Olson sets the labor relations policies for both Certified and Olson Farms.

3. Interchange of Managers and Supervisors

Managers and supervisors transfer, on both a temporary and permanent basis, between the Gilroy operations of Certified and the other operations run by Olson Farms.

4. Interchange of Employees

Employees do not interchange from Gilroy to other operations although they do interchange among the three ranches that comprise the Gilroy operation as will be discussed below.

D. Operations at The Gilroy Ranches

At the times material herein, there were three ranches which form the Gilroy operation. All three ranches house chickens which lay eggs. The eggs are transported to Certified's only processing plant which is located on the Canada Ranch. The eggs are processed and placed in cartons for customers which have contracted with Olson Farms to buy the eggs.

The following duties are involved in taking care of the chickens and in the production of eggs. These duties apply to all three ranches. The chickens are housed in coops. Truck drivers pick up feed purchased from independent sources and bring it to the ranches. Other employees feed the chickens, clean the coops and gather eggs. Employees and outside contractors vaccinate the chickens, occasionally moving them from one coop to another, and trim the chickens' upper beaks so they cannot peck one another thereby causing injury.

Eggs are usually gathered six or seven days per week and are loaded onto trucks and driven to the processing plant at

Canada. In the case of eggs gathered at the Canada Ranch, they are moved to the processing plant either by truck or by being rolled over on pallets.

At the processing plant, various operations are performed. A mechanical arm picks up the eggs, which are washed, dried, sorted, given a light coating of food oil to preserve them, weighed, sized, passed over a light for inspection (candling), and placed into cartons either automatically or by hand. The eggs are packed into the customers' cartons (e.g., cartons labeled "Alpha Beta"),[12] and transported to the various retail stores or warehouses owned by the retail chains. When sold to the U.S. Government, eggs are transported to railway stations.

E. The Workforce at the Gilroy Ranches

The above-described job functions, with the exception of the delivery driver and *a* mechanic, were performed by employees covered by a collective bargaining between Certified and Charging Party.[13]

If the processing plant is running at full capacity, usually eight or nine employees are involved. Including these employees, the Gilroy operation usually employs between 16 to 18 workers. These numbers exclude office employees, employees at a

[12]Alpha Beta is a retail grocery chain.

[13]The bargaining history of the parties, including their collective bargaining agreement, is discussed below.

small retail store operated by Certified at Canandā, as well as supervisorial and managerial employees.

The number of employees varies from month to month. At the time of hearing, the total worker complement at the three ranches including the processing facility was 22-25 employees.

F. Interchange of Employees Between the Processing Plant at Canadā and the Other Gilroy Operations

Except for some part-time workers who work only in processing, the employees work interchangeably between the processing plant and other job functions performed at the three ranches. Employees who unload chicken feed also feed the chickens, clean out the chicken coops, gather eggs, and perform maintenance work. These same employees may also work in the processing plant as needed. Employees may clean up the chicken coops and, when finished with that task, drive forklifts.

Employees who drive trucks may also feed chickens and otherwise help out on the ranch. Employees may also perform repairs at the chicken houses and make minor repairs at the processing plant. Further, if the processing plant is not operating, plant employees will help with the chickens. In addition to this interchange, occasionally employees will move between the three Gilroy sites.

G. Operations at Certified Following Olson Farms' Assumption of Control

There were no changes in the business organization, product line, mode of operation, or business purpose at Certified after Olson Farms assumed control over Certified. The supervisors and foremen that had been employed at the three Gilroy ranches, including the processing plant, remained the same following the transfer of control to Olson Farms.

The employees at the three Gilroy ranches, including the processing plant, remained the same following the transfer of control to Olson Farms. They continued to work at the same locations using the same equipment. Their job duties remained the same.

The employees at the three Gilroy ranches, including the processing plant, continued to receive the same rate of pay after the transfer of ownership to Olson Farms as they had before.[14] This rate of pay was the same as provided in the collective bargaining agreement between Certified and Charging Party.

The employees at the three Gilroy ranches and at the processing plant continued to receive the same benefits after the transfer of ownership to Olson Farms as they had before, e.g.,

[14]Prior to the change in ownership, and for a short time afterwards, employees continued to be paid by checks from Certified. In July of 1986, employees began began receiving checks from Olson Farms. Thereafter, employees were again paid by checks from Certified. At the time of the hearing, employees were again being paid by Olson Farms.

holiday, sick leave, vacation, leave of absence, meal and relief periods, seniority. These benefits were the same as provided in the collective bargaining agreement between Certified and the Charging Party.

H. Eggs Processed by Certified/Olson Farms which are Processed by Others; Eggs Purchased by Certified/Olson Farms from Others

At all times material herein, the Gilroy operation has not processed eggs for other egg producers. At times, Certified has purchased eggs from one of the other Olson Farms operations, e.g., Fresno or Fontana, when it had insufficient eggs to cover its own orders. This was particularly true for a one and one half year period during 1986-87. There were also times, because of insufficient supply, that eggs were purchased from outside business entities. Such purchases were not typical and were avoided whenever possible as Certified/Olson Farms made less profit on such transactions.

At no time within the five years preceding the instant hearing did the Gilroy operation's egg purchases from outside entities exceed an average of five to ten percent. The egg purchases that Certified made from other Olson Farms operations within these last five years, (e.g. purchases from Fresno or Fontana, varied between an average of 10 to 25 percent.[15]

[15]During this same five year period, an average of 10 to 15 percent of the eggs produced at the Gilroy operation were transported outside the State of California. This percentage includes sales to the U.S. Military. In 1987, Certified had gross sales in excess of three million dollars ($3,000,000).

Once the eggs are purchased from the outside or from in-house entities, the eggs become the property of Olson Farms. The outside or in-house entities no longer have any interest in the product. Thereafter, Olson Farms processes the eggs, pursuant to sales contracts it has obtained, for distribution to the buyers, e.g., Alpha Beta. As soon as they are placed in the carton of the buyer, e.g., Alpha Beta, they become the property of the buyer.

I. Bargaining History of the Parties

I take administrative notice of the Board's official case file in case number 75-RC-25-M, the underlying representation case, and find that on September 11, 1975, the Board conducted a representation election at Certified's three Gilroy ranches.[16] A Tally of Ballots issued on the same date showing Charging Party to have received a majority of the votes cast.

Objections to the election were filed by the United Farm Workers of America, AFL-CIO, which charged denial of access. Thereafter, on November 19, 1975, the Board issued a decision certifying the election in spite of finding a denial of access and therein issued its Certification of Representative declaring

[16]I inquired at the Prehearing Conference whether there had been an ALRB election and whether the Union had been certified as the exclusive bargaining representative. Respondents' counsel stated there had been no election. No party ever provided information to the contrary, but my research revealed the Union was certified pursuant to a Board election.

Charging Party to be the exclusive bargaining representative for all of Certified's agricultural employees in its processing and field operations.[17]

Certified and the Charging Party executed a collective bargaining agreement effective February 15, 1984, through February 14, 1987, which automatically renewed each February 15 for a one year term unless one party provided written notice to revise or terminate the agreement. (JX 1, Article XXI.) No notice to revise or terminate the agreement was given by any party prior to February 15, 1987, and the contract remained in effect as of that date.

Certified laid off various employees in January, April and July of 1986, action that was opposed by Charging Party and over which it filed certain grievances.[18] I note the grievances also charge that the company was using non-union workers to perform union work.

Tony Gonzales, the Union's vice-president and Business Representative, represented employees at Certified from late 1985 to late 1986. Mr. Gonzalez testified that a meeting was scheduled

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[17]Certified Eggs, Inc. (1975) 1 ALRB No. 5. No objections were filed by Certified, which at no time contested its status as an agricultural employer.

[18]The grievances referred to are OCX 2 through 4, inclusive. GCX 1 is *a* grievance filed in October 1986 protesting the use of less senior employees to perform work.

on July 23, 1986,[19] to discuss the grievances. In addition to Mr. Gonzalez, Ms. Rosemary Perez, the Union's Secretary-Tresurer, and Camarino Trejo the shop steward, were present for the Union. For the company, Peter Olson[20] and Norman Jones, counsel representing Certified and Olson Farms, attended.

According to Gonzalez, Peter Olson said the contract between the Union and Certified was no longer in existence because Certified had been sold. Mr. Olson maintained that the contract provided it would continue in effect if Certified were leased but made no mention of continuation if the company were sold.[21]

The Union representatives raised the issue of grievances, and Mr. Olson maintained Olson Farms had no obligation to discuss the grievances in view of his interpretation of the contract.[22] (RT:11.) The parties stipulated that if called to testify Ms. Perez would testified to the same essential facts as Mr. Gonzalez.

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[19]All dates hereafter are 1986 unless otherwise specified.

[20]The transcript incorrectly spells the name as "Olsen" and is hereby corrected to "Olson."

[21]Article 1 of the contract entitled "Recognition" provides in pertinent part: "If any of the egg ranches or processing operation owned by Certified Egg Farms are leased, then this Agreement shall be binding on the lessee."

[22]One grievance, regarding employee Carmino Greco, a truck driver, was discussed to the extent that company representatives told the Union that had Greco not been laid off he would have been terminated due to a prior ticket and an accident he had.

The July 23 meeting was the first time Gonzalez had heard there had been a change of ownership at Certified despite the fact that he had on several occasions met with supervisors and also with the personnel manager of Certified. (RT:17.) He also had occasion to meet Peter Olson at the Foothill Ranch in May or June. (Id.) Gonzalez testified that prior to the July 23, meetings, he had not been notified in writing or otherwise that the ownership of Certified had changed and to his knowledge no one else at the Union had been so notified. (RT:11.) His testimony is uncontradicted.

Although July 23 was the first time Mr. Gonzalez learned of the change in ownership at Certified, he knew previously of the existence of Olson Farms because the trucks which picked up eggs at Certified for delivery to retailers such as Alpha Beta and to warehouses had the name "Olson" on them. Respondent stipulated that since 1979 these trucks were owned and operated by Olson Farms. (RT:15.)

Following the meeting on July 23, Mr. Jones wrote to Mr. Gonzales on behalf of Certified and Olson Farms on July 25, and informed Charging Party that Certified had changed its ownership in April. The letter referred to the series of layoffs between January and July which had reduced the work force from 30 to 7 employees. Mr. Jones reiterated Mr. Olson's position that Olson Farms was not responsible for Certified's collective bargaining agreement and would not process the previously filed grievances.

Mr. Jones also stated he had informed Certified that it had a duty to bargain over severance pay and offered to do so if the Union requested. (JX 6)

On July 30, Charging Party wrote to Certified requesting an immediate meeting on the change in ownership. (JX 7) The company did not respond, and so on August 5, Counsel for the Charging Party wrote to Certified/Olson Farms and requested information regarding the change of ownership and the opportunity to bargain over the effects of the decision. (JX 8)

On August 25, still having had no substantive reply from Respondents, counsel for Charging Party again wrote to Certified/Olson Farms and repeated its request for information concerning the change in ownership and requested beginning negotiations for a new contract although it maintained the contract (JX 1) remained in effect and Olson Farms was bound by it (JX 10)

A week and a half later, Mr. Gonzalez on behalf of the Charging Party followed up with a letter on September 5, to Certified/Olson Farms proposing that the parties execute an agreement to remain bound to the collective bargaining agreement until its termination date of February 14, 1987. (JX 11)

On September 8, Certified and Olson Farms responded to Charging Party's letters of August 5 and August 25 and offered to meet to discuss severance pay. (JX 12) No information was provided regarding the change in ownership.

On September 17, Counsel for Charging Party again wrote and repeated its request for information about the change in ownership. Counsel reiterated Charging Party's position that Olson Farms was bound by the terms of the contract between the Union and Certified. (JX 13)

Certified and Olson Farms acknowledge that they never provided any of the information requested by Charging Party and that they have refused to bargain with Charging Party since July 1986 on any matters except severance pay. On October 22, 1986, the Charging Party filed a charge with the ALRB regarding Respondent's conduct.[23]

Thereafter, Charging Party notified Certified in writing on November 2, 1987, of its intention to revise or terminate the agreement as of February 14, 1988 and its desire to negotiate a new agreement. (JX 2a and 2b) Neither Certified nor Olson Farms responded to this letter. On January 25, 1988, Charging Party again wrote Certified requesting negotiations over a new agreement. (JX 15) Again, neither Certified nor Olson Farms responded to the request for negotiations.

Respondents also failed to reply to a letter Charging Party wrote Certified and Olson Farms requesting payment of all dues and initiation fees owed the Union under the contract. (JX 18.) Prior to the transfer of ownership to Olson Farms, in March

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[23]Mr. Gonzalez testified that since the filing of the charge with the ALRB did not produce any results in getting a response from Certified/Olson Farms, the Union filed a charge with the NLRB on February 16, 1988. (JX 3). Mr. Gonzalez circumspectly avoided

1986, Certified had ceased deducting and remitting dues and initiation fees to Charging Party pursuant to the collective bargaining agreement between Certified and Charging Party on the grounds that the company discovered that it did not have individual signed authorization cards to allow such deductions. No dues were deducted and transmitted to the union after this time.

ANALYSIS AND CONCLUSIONS

Resolution of the issues presented by this case requires answering the following questions: (1) who is the employer; (2) is the employer an agricultural employer within the meaning of the ALRA; and (3) what is the employer's duty to bargain? The first step in resolving these questions is to examine the nature of the relationship of the two corporations.

A. The Relationship of Certified and Olson Farms

1. The Events of April 1986

General Counsel has several alternate theories as to the legal status of Certified and Olson Farms following the change in

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attributing the filing of the charge with the NLRB to inaction by the ALRB even though no complaint issued from the ALRB on the charge filed on October 14, 1986, until August 26, 1988. Gonzalez testified without contradiction that the Union withdrew the charge with the NLRB when Gonzales was informed by an NLRB agent that the national board did not have jurisdiction. (RT:26) On March 1, 1988, the NLRB Regional Director for Region 32 wrote to Certified (JX 3) stating that the charge had been withdrawn following correspondence from Tony Gonzales. (See, RX 1(a)-1(e).)

ownership. He contends that: (1) Olson Farms is the alter ego of Certified, or (2) if not, then Olson Farms is the successor to Certified; or (3) if not, Certified and Olson Farms constitute a single integrated enterprise or single employer. As a corollary to the successor argument, General Counsel contends that an analysis of the events in April as a stock transfer is appropriate.

Respondents apparently contend that Certified ceased to exist at the time of the changes in ownership culminating in April since (1) they address subsequent actions in terms of Olson Farms' responsibilities and (2) offer no other rationale to support the position they took that Certified was relieved not only of its obligation to comply with its contract with the Union (which contract Respondents concede was still in effect) but also of any continuing obligation to bargain with the Union.[24]

To assess the relationship between Olson Farms and Certified and to determine their responsibilities, the first task is to resolve what happened in April. I conclude it is appropriate to analyze the events as a stock transfer.[25]

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[24]Respondents offer no theory by which Olson Farms would be justified in its refusal to bargain with the Union even accepting their position that upon the sale Certified ceased to exist.

[25]This is true whether the changes resulted in Dean Olson and his family owning 100 percent of the stock of each entity, Certified and Olson Farms, or whether, as I have interpreted the parties' stipulations, Certified became owned 100 percent by Olson Farms. (see fn. 10, supra.)

The NLRB distinguishes between a case of successorship and a stock transfer. In an off-quoted footnote in the case of TKB International Corp. t/a Hendricks-Miller Typographic Co. (hereafter TKB) (1979) 240 NLRB 1082 [100 LRRM 1426], the NLRB described the differences between the two concepts:

> The concept of 'successorship'...contemplates the substitution of one employer for another, where the predecessor employer either terminates its existence or otherwise ceases to have any relationship to the ongoing operations of the successor employer. Once it has been found that this "break between predecessor and successor has occurred, the Board and courts then look to other factors to see how wide or narrow this disjunction is, and thus determine to what extent the obligations of the predecessor devolve upon its successor. We have stated in Miami Industrial Trucks, Inc. and Bobcat of Dayton, Inc., 221 NLRB 1223, 1224 (1975), that the "keystone in determining successorship is whether there is substantial continuity of the employing industry....The Board looks to several factors [in this regard]....These factors include whether there is a substantial continuity in operations, location, work force, working conditions, supervision, machinery, equipment, methods of production, product, and services." Citing Georgetown Stainless Mfg. Corp. 198 NLRB 234 (1972). Having examined these factors the Board then decides whether or not the break between the predecessor and successor entities can be bridged.
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> The stock transfer differs significantly, in its genesis, from the successorship, for the stock transfer involves no break or hiatus between two legal entities, but its, rather, the continuing existence of a legal entity, albeit under new ownership.
>
> It is true that the "secondary characteristics" of a successor are often identical to those of a stock transfer: continuity in operations, location, work force, conditions of employment, supervision, machinery, equipment, methods of production, produce, and/or services. It is therefore, essential that any consideration of the nature of such a transaction begin with an examination of its "primary characteristics." (at p.1083.)

The initial inquiry, the national Board noted, is "...did the two entities in question cease to have any relation, one to the

other, or did ownership of the initial entity merely pass into new hands?" (Id.)

In the case of Dunkirk Broadcasting Corporation (hereafter Dunkirk) (1958) 120 NLRB 1588 [42 LRRM 1226], the NLRB rejected the respondent employer's argument that the acquisition of Dunkirk stock by a second corporation resulted in a new entity. The NLRB held that the change in stock ownership alone clearly did not change Dunkirk's corporate identity.[26] The NLRB went on to find that despite changes in management and some changes in the methods of operation, "...the significant fact remains that these changes did not alter the fundamental character of the business." (at p.1589.)

Similarly, in M. B. Farrin Lumber Co. (hereafter Farrin) 117 NLRB 575 [39 LRRM 1296], the national board held that "[t]he stock sale had no manifest effect upon the legal entity or responsibility of the corporate employer."[27] (at p.576) The NLRB

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[26]See also Miller Trucking Service, Inc. (hereafter Miller) (1969) 176 NLRB 556 [71 LRRM 1277] rev'd on other grounds (10th Cir. 1971) 445 F.2d 927 [77 LRRM 2964] where the national board held that the transfer of corporate stock did not change the corporate entity.

[27]See also Topinka's Country House, Inc. (hereafter Topinka's)(1978) 235 NLRB 72 [98 LRRM 1298], enf'd. (6th Cir. 1980) 624 F.2d 770 [105 LRRM 3419] where despite the sale of 100 percent of the corporation's stock to an individual with no prior financial interest in the corporation, it was held that the same entity continued to exist after the change in ownership and was not absolved of its continuing responsibilities under the NLRA, including being bound to its pre-existing contract.

noted that although the changes resulted in new management for the company, there was little change among the rank and file employees, and the company continued the same type of business operations.

The D.C. Circuit has ruled that in the stock transfer case, as in the successorship case, the focus should be on the relative change or continuity in the company's operations "as they impinge on union members." (United Food and Commercial Workers International Union, AFL-CIO, Local 152 (Spencer Foods, Inc.) v. NLRB (hereafter Spencer Foods) (D.C. Cir. 1985) 768 F.2d 1463 [119 LRRM 3473, 3478]. The court reversed the NLRB's finding[28] that what occurred was more than a mere stock transfer and that there were sufficient changes so that the new employer was not even a successor.

It agreed with the Administrative Law Judge and found that despite Spencer Foods, Inc. becoming a subsidiary of Land O' Lakes, Inc. and despite various operational changes, including a reduction of workers because of a change from two shifts to one shift, some changes in supervisory and managerial personnel, and some changes in employee tasks, "'the same work continued...at the same place, with the same or substantially similar procedures, processes and machinery.'" (at p. 3480 quoting from the ALJ's decision at p.1509.) While the changes noted, as well as some

[28]Spencer Foods, Inc. (1984) 268 NLRB 1483 [115 LRRM 1251] rev'd. in relevant part Spencer Foods, supra, 768 F.2d 1463.

others, were not cosmetic, the court found they also did not change "'the essential nature of unit work, nor...the essential operations of the Spencer plant." (Id.)[29]

Here, the parties have stipulated that after the stock transfer, the nature of Certified's business continued the same as before. There was no hiatus in operations.

The same employees continued the same work at the same locations using the same equipment. There were no changes in the business organization, product line, mode of operation, or business purpose at Certified after Olson Farms assumed control over Certified. (See discussion, supra, pp.12-13.)

The only change among rank and file employees was the layoffs in June and July. The court of appeals in Spencer Foods, supra, 119 LRRM 3473, found no substantial change in operations despite a reduction in the number of employees due to cutting back from two shifts to one. The NLRB has indicated that it is the uninterrupted nature of the corporate entity rather than strict continuity of the work force which characterizes the stock

[29]The court reversed the NLRB's finding that Spencer Foods, Inc. was justified in refusing to continue to recognize or bargain with the union and remanded the case to the national board to fashion an appropriate remedy. To date, the NLRB has not issued a decision on remand. In at least one subsequent case involving a stock transfer, the NLRB has utilized the court's standard of analyzing the company's operations as they impinge on the unit employees. (Phillip Wall & Sons, Inc. d/b/a Phil Wall & Sons Distributing (1988) 287 NLRB No. 116.)

transfer.[30] (Miller, supra.)

This board addressed the stock transfer situation in Claeys Luck, S.A. and Neuman Seed Growers, Inc. (hereafter Neuman Seed) (1983) 9 ALRB No. 52. Finding that a stock transfer analysis rather than a successorship analysis was appropriate, this board observed that Claeys Luck merely purchased the stock of Neuman Seed which continued as an entrepreneurial concern and operated much as it had before

The national board in Western Boot and Shoe, Inc. (hereafter Western Boot) (1973) 205 NLRB 999 [84 LRRM 1140] held that "...it is a fundamental principle of corporate law that the transfer of stock does not affect the liabilities of the corporation." (at p.1005.)

In both Western Boot, supra, and Miller, supra, the national board held the continuing corporate entity responsible for its obligations under the National Labor Relations Act (NLRA), refusing to pierce the corporate veil which it noted is done for the benefit and protection of third parties, not at the behest of the shareholders or corporate officers so as to shield the corporation from legal responsibilities.

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[30]This case is factually distinguishable from that of MPE, Inc. (hereafter MPE) (1976) 226 NLRB 519 [93 LRRM 1325] where the NLRB found there was a substantial change in the structure of MPE in view of the complete change of management and ownership and other factors. Here, Peter Olson manages both Certified and Olson Farms, and his family owns both entities.

A recent NLRB case is of interest in several respects. In EPE, Inc. (hereafter EPE) (1987) 284 NLRB No. 21 [125 LRRM 1166], EPE, Inc. a California corporation, operated two plants in California, and one in Fredricksburg, Virginia. The stockholders of EPE, Inc. sold all of the stock to a Connecticut corporation, Echlin, Inc.

The NLRB adopted the ALJ's decision rejecting the Respondent employer's argument that "...the liabilities and responsibilities of that corporate entity ceased to exist once the controlling shares therein were acquired by another shareholder...and the new shareholder set about making and executing plans for an enlargement or improvement of the business." (ALJ decision p.12.)

The judge reasoned that

> [t]his rule, if consistently followed, would mean that every day's transactions on every major stock exchange and every purchase or sale of a corporate subsidiary would carry with it the potential for total disruption of the labor relations of the business being bought or sold. It is a rule which is at a marked variance with most Board and court holdings, and it flies squarely in the face of traditional corporation law as it has developed in this country over many years because it is irreconcilable with the fundamental rule of corporation law that the corporation and its shareholders are separate and distinct entities.

The judge refused to find that EPE, Inc. had somehow ceased to exist and thereby avoided its liability for prior unfair labor practices (the subject of three prior NLRB decisions) and escaped from its bargaining and contractual responsibilities vis a

vis the union. The judge cited a ruling in a U.S. Supreme Court decision holding that:

> [o]ne who has created a corporate arrangement, chosen as a means of carrying out his business purpose, does not have the choice of disregarding the corporate entity in order to avoid the obligation which the statute lays upon it for the protection of the public. (Schenley Distillers Corp. v. United States (1946) 326 U.S. 432, at 437.)

The judge illustrated the point by citing the case of Miami Foundry Corporation v. NLRB (hereafter Miami Foundry) (6th Cir. 1982) 682 F.2d 587 [111 LRRM 2367], noting that the court upheld the NLRB's decision that the "...labor relations obligations persisted despite the corporate merger of three companies...." (EPE, supra, ALJD at p.13.) In Miami Foundry, supra, the Sixth Circuit rejected the companies' argument "that Miami still exists for tax purposes but does not exist for purposes of the labor agreement with Miami workers." (at p.589.)

Based on the foregoing, I find that the events which resulted in the change of ownership of Certified are best described as a stock transfer. Thereafter, Certified continued to exist as a corporate entity[31] and its bargaining obligations and

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[31]There are numerous indications of Certified's continued existence following the stock transfer. First, there is no evidence the corporation was dissolved. On the contrary, Respondents stipulated Certified continued to have a board of directors as of the time of hearing. Further, Certified continued to own the land and the buildings at the three Gilroy ranches after April. Also the business license continued in Certified's name. (See Dunkirk, supra.)

Certified had its own bank account and Internal Revenue Service (IRS) identification number. The parties stipulated that it was intended that Certified would cease to exist at the end of the 1988 tax year--indicating that Certified continued to exist as

contractual responsibilities remained intact.[32]

Before turning to a consideration of the specific allegations of refusals to bargain, I will first discuss the nature of the relationship between Certified and Olson Farms to determine the latter's responsibilities.

2. Certified and Olson Farms Constitute a Single Intergrated Enterprise

Although I have found that Certified's duty to recognize and bargain with the Union and to honor the contract continue, there remains General Counsel's contention that Olson Farms bears the same responsibilities because it is the alter ego of Certified or because the two companies constitute a single integrated enterprise and should be treated as a single employer.

The concepts of single employer and alter ego often are used interchangeably. (J. M. Tanaka Constr. Inc. v. NLRB (hereafter Tanaka) (9th Cir. 1982) 675 F.2d 1029 [110 LRRM 2296].) While they are not the same, they are closely related and often exist together. In the instant case, the issue of Olson Farms' responsibilities and obligations are resolved by finding that Olson Farms and Certified are a single employer, and I do not reach the question of whether they are also alter egos.

In determining whether two or more entities constitute a single employer, the NLRB and the courts consider the following

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a corporate entity until at least that time.

[32]in rejecting the employer's argument that EPE, Inc. ceased to exist and was relieved of its obligation to bargain, the ALJ in EPE, supra, noted that:

factors: (1) common management; (2) central control of labor relations; (3) common ownership and financial control and (4) interrelation of operations. (Tanaka, supra, and cases cited therein). The ALRB utilizes the same criteria. (Andrews Distribution Company, Inc. (hereafter Andrews) (1988) 14 ALRB No. 19.

It is not necessary that all four factors be present; nor is any one factor controlling. The weight accorded the factors varies, however, with centralized control of labor relations

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> [o]ne of the many factors relied on by the General Counsel to demonstrate a continuity of employment is the fact that the 1985 contract contained severance pay provisions. No employees at Fredericksburg were paid any severance pay. The discontinuance of an employment relationship between the old EPE and the initiation of a new employment relationship with the new EPE would, at the very least, give rise to an obligation to pay severance pay. (at p.12, fn.8.)

The 1985 contract referred to was the result of negotiations in which EPE, Inc. was represented by the same attorney who is counsel for Respondents herein, Norman Jones, who was the attorney of record for EPE, Inc. in the previous NLRB proceedings referred to above. Respondents' position here is essentially that rejected by the NLRB in EPE, supra, as well as the other cases cited. Here, it will be recalled that the one item Respondents offered to negotiate was severance pay, even though the contract does not include a provision for severance pay. The failure to bargain about severance pay was but one of many factors in EPE, supra, which indicated continuity of EPE, Inc. The mere addition of offering to bargain about severance pay does not persuade me that Respondents' position is any more tenable here than in EPE, supra, or convince me that Certified ceased to be the employing entity in light of the contrary factors I have discussed above.

generally deemed the most significant, and common ownership the least. (Morris, The Developing Labor Law 2d ed. supra, p. 1442; Tanaka, supra.)

Single employer status was found by the NLRB where a manufacturer of staples and staple machines and its wholly owned subsidiary, which manufactured industrial nailing and stapling equipment, had common owners, officers and directors, shared the same locations and administered a common labor relations policy. (Swingline Co. (1981) 256 NLRB 704 [107 LRRM 1421]. Similarly, in Soule Glass and Glazing Co. v. NLRB (1st Cir. 1981) 652 F.2d 1055 [107 LRRM 2781], the NLRB found a single employer relationship between a holding company and a series of other companies performing related functions, all of which companies were owned by the same family.

It is clear that Olson Farms and Certified are a single employer. All four of the requisite criteria are present.

There is common ownership and financial control. Olson Farms owns 100 percent of Certified.[33] After the stock transfer, employees at the Gilroy ranches were paid interchangeably by Certified and Olson Farms at least for a time.

There is also common management. Peter Olson manages both companies. He is president of both companies and is on the board of directors of both. Dean Olson is also on the board of

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[33]There would be common ownership even if both companies were owned by Dean Olson and his immediate family--the other possible interpretation of the parties' stipulations. (See footnote 10, supra.) As the court noted in Soule Glass, supra, "'the ownership

directors of both entities. Supervisors at the Gilroy ranches take their orders from Peter Olson.

There is centralized control of labor relations. Peter Olson directs the labor relations of both companies.

There is also interrelationship of operations. Olson Farms took over the Certified operations in Gilroy intact. Olson Farms' trucks deliver the eggs produced and processed at Certified to customers obtained by Olson Farms which sells Certified's eggs and tells Certified how many eggs to produce. There is interchange of supervisors between Certified and Olson Farms although no interchange of rank and file employees.

The case of Miami Foundry, supra, 252 NLRB 2, is especially relevant regarding the relationship between Certified and Olson Farms and their labor relations obligations. In that case, the NLRB held that the company whose stock was sold, Miami Foundry Corporation (hereafter MFC), and the purchasers of its stock, Ravenna Industries (hereafter Ravenna) and A.C. Williams (hereafter Williams), of which Ravenna was a division, were a single integrated enterprise.

In order to realize certain tax advantages from MFC's high debts, the sole shareholder of MFC, one Robert Tormey,

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and financial control of the various Soule enterprises rests solidly in the hands of the Soule family...." (at p. 2789, quoting from the ALJ's decision in the underlying case before the NLRB reported at (1979) 246 NLRB 792 [102 LRRM 1693]). The same may be said of Dean Olson and his family vis a vis Olson Farms and Certified.

retained 41 percent of the stock, and Williams bought 59 percent. After the sale, Tormey did not vote any of the stock and no longer occupied any position as an officer or director of MFC.

The NLRB analyzed the transaction as a stock transfer and found that MFC continued as a distinct corporate entity which retained all its obligations under the NLRA including an obligation to honor the existing collective bargaining agreement. The NLRB found Ravenna and Williams had a similar duty since they and MFC were a single employer.

The NLRB found "a great degree" of common management, officers and directors, and centralized control of labor relations based on factors such as: (1) Ravenna operated MFC as a manufacturing division of Williams on the same premises MFC had always used, (2) although all of MFC's employees were terminated by Tormey at the time of the transfer, the new employees of MFC worked at jobs that were essentially the same as those of the employees terminated by Tormey, using the same system of production, the same equipment, material, job classifications and methods, (3) there was no evidence of competition. The national board concluded that MFC "continued[d] to operate as an iron foundry through Ravenna, with management, finances, ownership and labor relation policies resting in the hands of A.C. Williams." (at p.6)

The NLRB did not discuss whether there was an alter ego relationship among the companies, but addressed the issue only in

the context of a motion to include Tormey in his individual capacity which was denied given the traditional reluctance to pierce the corporate veil and the presence of an adequate remedy. The NLRB noted there was no union animus involved in the transaction.[34]

The NLRB found all three corporations had violated the act by abrogating the collective bargaining agreement, by refusing to recognize and meet with the Union, by unilaterally abolishing the jobs of the employees, and by terminating the employees. It ordered the companies to recognize and bargain with the Union as the exclusive representative of the employees of MFC[35] and to comply with the terms of the existing contract between MFC and the Union.[36]

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[34]The NLRB made this finding despite noting that Tormey had misled the union regarding negotiations between MFC and Williams, and despite the fact that Williams had indicated the company did not want a union. The national board opined that even though the respondents may have been happy to get rid of the union, that was not the objective for the transfer; rather, the motive was legitimate financial considerations. In reaching this conclusion, the national board found it significant that the union committeemen were offered jobs after the transfer when the plant reopened after a shut down of some 10 days.

[35]In Miami Foundry, supra, the bargaining unit which the three companies were ordered to bargain about was the unit of MFC employees as it existed at the time of the stock transfer, not a unit composed of employees of all three companies. Similarly, here, the unit consists of only the employees in the unit certified by the board, to wit, those at the three Gilroy ranches. Appropriate board procedures, i.e. unit clarification, exist should there be a desire to extend the unit.

[36]On appeal, the Sixth Circuit enforced the NLRB' s decision and found the NLRB had correctly applied the relevant factors to determine the relationship among the three corporations although the court characterized them as joint employers rather than a

The interrelationship between Certified and Olson Farms is at least as strong as that in Miami Foundry, supra. Therefore, I find they are a single employer.

As such, they are jointly and severally liable for unfair labor practices. They also share the same bargaining obligations, including being bound to the contract executed by the Union and Certified.

B. Status as an Agricultural Employer

There is no question but that Certified is an agricultural employer subject to this Board's jurisdiction. As noted above, Charging Party was certified as the exclusive bargaining representative for "all agricultural employees of [Certified's] processing and field operations" on November 19, 1975. (Certified Eggs, Inc. (1975) 1 ALRB No. 5.) The parties have stipulated that these operations consist of the three ranches in the Gilroy area described above. At no time during the

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single employer. Historically, the NLRB and the courts have failed to use the terms "single employer" and "joint employer" consistently. Sometimes they are used almost interchangeably, but in other cases the two concepts are distinguished. (Morris, supra, at p.1444). The distinction is said to lie in the fact that single employers are only nominally separate entities, whereas joint employers are truly separate except that they share control over labor relations policy. (NLRB v. Browning-Ferris Industries (3d Cir. 1982) 691 F.2d 1117 [119 LRRM 1123]). The Sixth Circuit's use of the term "joint employer" rather than "single employer" is of no great moment since the bargaining obligation of the two is the same. (Morris, supra, fn. 125 at p.1445.)

underlying representation case did Certified contest that it was a agricultural employer within the meaning of the ALRA. Nor did it present any evidence that there have been any material changes in the operation since the certification which would render the enterprise nonagricultural.

Both this Board and the NLRB refuse to permit relitigation of an issue in an unfair labor practice proceeding which was, or could have been, litigated in the prior representation proceeding. Therefore, I find that Certified cannot at this juncture deny that it is an agricultural employer subject to this Board's jurisdiction. (Sunny Cal Egg & Poultry, Inc. (hereafter Sunny Cal) (1988) 14 ALRB No. 14)[37]

Certified's status as an agricultural employer is not changed because of its relationship to Olson Farms since it continues to exist as a corporate entity. Respondents contend either that only Olson Farms, or that neither Olson Farms nor Certified, is not subject to this Board's jurisdiction because Olson Farms is engaged in interstate commerce and has operations in states other than California. Respondents have cited no authority to support this contention.

Any number of agricultural employers that are subject to this Board's jurisdiction are engaged in interstate commerce. Many also have operations in states in addition to California. I

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[37]If I had not concluded that Certified's status has already been resolved and that it is precluded from relitigating the issue, I would reject Respondents' arguments on the merits and find the Certified is an agricultural employer. This Board's recent

find no merit to Respondents' assertions that this Board is divested of jurisdiction over Olson Farms in California.

As noted, it is not clear whether Respondents' were also extending this argument to encompass Certified. If so, it is rejected as to Certified as well.

Certified is a corporation which has operations only in California. The fact that it may be a subsidiary of Olson Farms in no way affects this Board's authority over Certified.

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decision in Sunny Cal Egg, supra, sets forth applicable precedent under which it is clear that Certified's egg processing, raising of chickens and attendant operations are agricultural.

At the Prehearing Conference, Respondents' counsel asserted there was authority that an egg processing operation such as that of Certified/Olson Farms was non-agricultural. He cited a case, Norco Ranch Inc. 113 NLRB 1126, to support his contention. He also referred to the same case in a letter he wrote to the Salinas Regional Office. (JX5.) At trial, I informed counsel that I was unable to find any such case. Despite his promise to provide a citation, he did not do so, and my research does not reveal any case with a similar name in the time frame counsel indicated. The clear weight of authority as discussed in Sunny Cal Egg, supra, holds that such operations are agricultural.

Respondents' counsel also cited to this Board's decision in The Careau Group dba Egg City (1988) 14 ALRB No. 2 to support Respondents' position. That case is distinguishable on its facts because the Board found it did not have jurisdiction because there the NLRB previously had found that Egg City's processing plant employees were within its jurisdiction because 28 percent of the eggs it processed were purchased from outside sources. (p.3.) Here, no more than five to ten percent of the eggs at the Gilroy ranches were processed from outside entities, and such practice was avoided whenever possible. This percentage is below the rule of thumb used by the NLRB and this Board for distinguishing commercial from agricultural enterprises. (Sunny Cal, supra; Employer Members of Grower-Shipper Vegetable Association of Central California (1977) 230 NLRB 1011 [96 LRRM 1054]. Further, the fact that Certified and Olson Farms tried first to obtain eggs necessary to fill orders from other Olson Farms entities negates a finding that the business at Gilroy was substantially a commercial enterprise designed to process the eggs from independent companies.

I also reject Respondents' argument that Olson Farms is not engaged in agriculture. The parties stipulated that Olson Farms' operations in other parts of California and in other states are essentially the same as that at Certified's Gilroy ranches.[38] As noted, Certified never contested the fact that the Gilroy operation was agricultural. Further, precedent of both the ALRB and NLRB hold that the nature of the work performed at Gilroy, and operations like it, is agricultural.

C. The Alleged Refusals to Bargain

Respondents admit that after April 1986, both Certified and Olson Farms refused to process the grievances filed by the Union, refused to bargain with the Union about any matter except severance pay, and refused to provide any of the information requested by the Union regarding the change in ownership of Certified so the Union could determine the bargaining obligations of Certified and Olson Farms. These issues are dealt with below in separate sections.

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[38]This case does not raise the issue of the ALRB's jurisdiction over employees in other states since all that General Counsel and Charging Party claim is that Olson Farms, as well as Certified, is required to recognize and bargain with the Union, and is bound by the terms of the contract, regarding the employees at the Gilroy operation.

D. Failure To Notify The Union and To Bargain About The Effects of The Stock Transfer

The General Counsel contends Respondents were required to notify the Union regarding what he termed the sale of Certified to Olson Farms and to bargain about the effects thereof. An employer has an obligation to bargain with the Union regarding wages, hours and terms and conditions of employment.

While there is controversy regarding an employer's duty to bargain about various management decisions such as subcontracting, going out of business, closing parts of a business, and selling a business, there is no debate about the principle that an employer has a duty to bargain about the effects of such decisions. (First National Maintenance Corp. v. NLRB (hereafter First National Maintenance) (1981) 452 U.S. 666 [107 LRRM 2705], (duty to bargain about effects of decision to shut down part of its business); General Motors (1971) 191 NLRB 951 [77 LRRM 1537] enf'd sub nom International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW and its Local 864, UAW v. NLRB (D.C. Cir. 1972) 470 F.2d 422, (duty to bargain over effects of decision to sell a dealership); National Car Rental (1980) 252 NLRB 159 ([105 LRRM 1263] enf'd (3rd Cir. 1982) 672 F.2d 1182 [109 LRRM 2832], (duty to bargain over effects of decision to relocate); Gourmet Harvesting and Packing, Inc. and Gourmet Farms (hereafter Gourmet) (1988) 14 ALRB No. 9, (duty to bargain over effect of closure.)

The only case I have found which addresses the bargaining obligation specifically in the context of a stock transfer is not

precedential. In Miller, supra, as a condition of the stock sale, the seller, one Hilary Miller, was required by the purchaser, Tulsa Crude Oil Purchasing Company, to terminate all of the employees. Tulsa rehired only 6 of the 10 employees whom Mr. Miller terminated.

The NLRB found merit in the General Counsel's contention that the Respondent (Miller Trucking Service, Inc.) had failed to bargain about the effects of the sale on the rights of the employees. The NLRB opined that there were

> many questions which might profitably have been the subject of collective bargaining...[including] whether mass terminations were necessary at all; and if so, when the terminations would occur; notice to employees of the impending terminations; and the rights of employees with respect to rehiring. Thus, the Respondent's bargaining with the Union might well have affected those very terms which Hilary Miller agreed to with the purchasers of his stock, with respect to the job tenure of its employees." (at p.558)

The Tenth Circuit found the NLRB was not warranted in issuing a bargaining order where the union, which possessed valid authorization cards from a majority of employees, had sought recognition shortly before the stock sale because the NLRB had failed to make the type of specific findings required by the Supreme Court to justify a bargaining order where no election had been held. (NLRB v. Gissel Packing Co., Inc. (1969) 395 U.S. 575 [71 LRRM 2481]). The NLRB had not made such findings because Gissel, supra, had not issued at the time the NLRB rendered its decision.

Here, there is no such consideration because the Union has been certified as the bargaining representative through an

election. Given the specific circumstances in Miller, supra, the NLRB decision cannot be cited as precedent for the proposition that effects bargaining is required, although the NLRB's view of this issue is clear.

Based on the numerous types of cases in which effects bargaining is required, I conclude that the reasons for requiring bargaining in those cases are also present in the stock transfer case at least where, as here, such transfer involves the sale of 100 percent of the stock. Thus, I find that Certified had a duty to notify the Union about the impending stock transfer and to bargain regarding the effects of the transfer.

Further, Certified was required to bargain "in a meaningful manner and at a meaningful time." (First National Maintenance, supra, at pp.681-682.) Meaningful bargaining requires timely notice. (Penntech Papers, Inc. v. NLRB (1st Cir. 1983) 706 F.2d 18 [113 LRRM 2219], cert.den. (1983) 464 U.S. 892 [114 LRRM 2648].

Absent proof of emergency circumstances, timely notice means notice prior to the implementation of the decision which gives rise to the bargaining duty. (Metropolitan Teletronics Corp. (hereafter Teletronics) (1986) 279 NLRB 957 [122 LRRM 1107] enf'd (2d. Cir. 1987) 127 LRRM 2048.) Notice after the decision is a fait accompli is not timely notice. (National Car Rental, supra.)

Certified's belated offer to bargain about severance pay did not satisfy its duty to effects bargain. The offer was too

little, too late. Severance pay is only one possible effect. Effects bargaining is not so limited, and Respondents could not unilaterally restrict the scope of such bargaining.[39] (First National Maintenance, supra).

Certified violated sections 1153(e) and (a) by its failure to provide timely notice to the Union and to give the Union an opportunity to bargain about the effects of the stock transfer.

The appropriate remedy is an order to bargain, upon request, regarding the effects of the stock transfer. (Gourmet, supra.) General Counsel requested a limited backpay order similar to that required in Transmarine Navigation Corp. (1968) 170 NLRB 389 [67 LRRM 1419] in addition to a bargaining order.[40]

Although such an order is the normal remedy where a refusal to effects bargain has occurred, the Transmarine remedy is applied in the context of a plant closing or some sort of shutdown where employees are terminated. Here, the parties stipulated

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[39] In fact, the offer to bargain over severance pay was not even made as an attempt to meet the obligation to bargain over the effects of the transfer. I have explained (see footnote 32, supra,) that I view the offer as an attempt to buttress Respondents' argument that Certified ceased to exist at the time of the stock transfer. This view makes sense given Respondents' counsels' involvement in EPE, supra, and follows logically from the fact that it is the only subject Respondents offered to bargain about, and it was presented as an obligation belonging to "the old Certified." (JX 6)

[40] In Transmarine, supra, the NLRB not only ordered the employer to bargain over the effects of the shutdown, but also ordered backpay for a minimum of two weeks to the employees terminated. As the NLRB explained, simply issuing a bargaining order in such a case is insufficient to remedy the unlawful refusal to bargain. The

that the employees at the three ranches stayed the same following the transfer.

There were layoffs some two months after the transfer, but there is insufficient evidence to conclude they were an effect thereof. Consequently, I find no basis to order a Transmarine remedy. Instead, I find that it is more appropriate here to order the traditional make whole remedy for any actual economic losses suffered by the employees because of Certified's refusal to bargain.[41] (Topinka's, supra, 235 NLRB 72).

E. Refusal To Provide Information

After the Union learned of the change in ownership, both Mr. Gonzalez, the Union business agent, and the attorney for the

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limited backpay order is necessary to " "make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the [employer]." (Teletronics , supra, at p. 961, quoting from Transmarine, supra, at p. 390.) The national board noted that:

> "...it is impossible to reestablish a situation equivalent to that which would have prevailed had the Respondent more timely fulfilled its statutory bargaining obligation. In fashioning an appropriate remedy, we must be guided by the principle that the wrongdoer, rather than the victims of the wrongdoing, should bear the consequences of his unlawful conduct...." (at p. 289)

[41]This case is distinguishable from Gourmet, supra. There, the Board declined to award makewhole because there were no employees working at the time of the refusal to bargain. Here, the entire work force was employed at the time of the unlawful refusal to bargain.

Union made repeated requests for information about the change. In all, the Union wrote five letters seeking information.

Respondents' concede that neither Certified nor Olson Farms ever provided the information. In fact, they essentially ignored the repeated, legitimate requests by the Union, never substantively responding in any way.

It is black letter labor law that an employer must provide all information requested by the bargaining representative which is relevant and necessary to enable the representative to carry out its duties as the employees' exclusive bargaining representative. (Richard A. Glass Company, Inc. (hereafter Glass) (1988) 14 ALRB No. 1 and cases cited therein at p.22.)

As found by this Board in Glass, supra, this duty does not terminate when the parties reach a collective bargaining agreement but "continues unabated during the terms of the agreement in order to permit the union to police and administer the contract." (Id.)

The Board continued, "It is equally well settled that an employer has a duty to provide information which would allow the union to determine at the outset whether there has been a breach of the bargaining agreement." (Id. at p.23.) Here, Olson Farms asserted it was not bound by the agreement, and Certified also refused to concede it was bound by the contract it had signed.

The nature of the change in ownership was clearly relevant and necessary to the union determining what the

relationship was between the two companies and what obligation each had to bargain. The Union detailed that these were the reasons it desired the information.

It was not sufficient for Respondents to simply assert that there had been a sale. The Union was entitled to the requested information to determine for itself what the nature of the transfer was and what effect it had on the bargaining obligations of the two entities. (NLRB v. New England Newspapers (1st Cir. 1988) 856 F.2d 409 [129 LRRM 2305].

The refusal to provide the requested information is a violation of the duty to bargain and violated sections 1153(e) and (1) of the Act. As discussed, infra, Certified and Olson Farms share responsibility for the unfair labor practice.

F. Refusal To Process Grievances

Respondents admit that no party served the required notice to terminate the contract before it automatically renewed on February 15, 1986, for another year. Thus, the contract was still in effect when the layoffs occurred in June and July, and when the grievances were filed.[42]

Respondents' only stated reason for refusing to process the grievances was that which was given by Peter Olson, namely,

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[42]The grievances (G.C.X 2-4) indicate the Union presented them in a timely manner, and Respondents introduced no evidence to the contrary.

that since Olson Farms was not a lessee, it was not bound to honor the contract. Although not stated, this position presumably is also predicated on Respondents' argument that Certified was extinguished by virtue of the change in ownership.

I have found that Certified continued to exist as a corporate entity after the stock transfer. Certified was a signatory to the contract which Respondents admit had not been terminated. As such, Certified had an obligation to process the grievances. (Nolde Brothers, Inc. v. Local 358, Bakery and Confectionary Workers Union (hereafter Nolde) (1977) 430 U.S. 243 [94 LRRM 2753]; John Wiley & Sons v. Livingston (hereafter Wiley) (1964) 376 U.S. 543 [55 LRRM 2769].

Even though the contract later expired, Respondents continue to have a duty to resolve the grievances since they arose before the termination of the contract. (Nolde, supra; Wiley, supra.) In United Crome Products, Inc. and United Saw Service (1988) 288 NLRB No. 130, the employer was required, upon request by the Union, to process grievances pursuant to the arbitration procedure established by the collective bargaining agreement.

In that case, arbitration was ordered even though the grievances occurred after the contract expired, since the NLRB found that they arose under the contract. Here, there is no question but that the grievances were filed while the contract was still in effect.

The unilateral refusal to abide by the contractual grievance procedure was a violation of the duty to bargain and

violated sections 1153(e) and (a) of the Act. As discussed, infra, by virtue of its status as a single employer with Certified, Olson Farms is similarly bound to have processed the grievances under the contract and similarly is liable for the unfair labor practice.

Based on the foregoing, it is appropriate to require Respondents to comply with their bargaining obligation and to process the grievances. It is also appropriate to order Respondents to make the grievants whole for any actual economic losses resulting from Respondents' failure to process the grievances.[43]

G. Refusal to Bargain For a New Contract

The Union served notice on November 2, 1987, that it was terminating the contract and wanted to negotiate a new agreement. (JX 2(a) and 2(b).) Section 1155.3 of the ALRA requires that where a collective bargaining agreement exists, a party desiring to terminate or modify the agreement must provide written notice of the proposed termination or modification not less than 60 days prior to the expiration date of the agreement. Article XXI of the agreement herein imposes a 60 day notice requirement as well. The Union's notice on November 2, 1987, was more than 90 days prior to

[43]By grievances, I refer to GX 2 through 4, inclusive. I include the grievance filed regarding Carmino Greco as the refusal to consider any grievances included this one, regardless of the fact that Respondents stated a position regarding the merits.

the expiration date of the contract which was February 14, 1988, and thus was timely.[44]

General Counsel argued at hearing that the letters[45] from the Union signified that it wished to negotiate a new contract. Since he also seeks to have Olson Farms bound to the contract by virtue of its alleged alter ego status, I conclude that he also contends the contract is still in existence. Respondents argued at hearing that the letters from the Union terminated the contract.

The letters state that the Union wishes to "terminate" the agreement and to negotiate "a new agreement to become effective upon such termination." In addition to the fact that the Union chose the terminology it did rather than requesting a modification, the fact that it sought to negotiate a new agreement indicates that it meant to terminate not modify the existing agreement. (South Texas Chapter, Associated General Contractors (hereafter AGO (1971) 190 NLRB 383 [77 LRRM 1210]; The Oakland Press Co. (hereafter Oakland Press (1977) 229 NLRB 476 [96 LRRM 1542], modified on other grounds (6th Cir. 1979) 606 F.2d 689 [102

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[44]Respondents at no time properly served notice to terminate the contract. They merely unilaterally asserted neither was bound by the contract although it had not expired.

[45]The letters (JX 2(a) and 2(b)) are identical except that 2(a) is addressed to Certified Egg Farms and 2(b) is addressed to Olson Farms, Inc.

LRRM 2537].)[46]

Certified had an obligation to bargain with the Union regarding a new contract following the Union's termination of the existing agreement. (AGC, supra.) Its complete failure to respond to the Union's requests to do so, and its absolute refusal to bargain violated sections 1153(e) and (a) of the Act. (NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177]). Olson Farms is similarly liable.

H. The Current Status of Bargaining

An employer must maintain the terms and conditions of an expired contract regarding the mandatory subjects of bargaining until the employer affords the Union the opportunity to bargain. (Hinson v. NLRB (8th Cir. 1970) 428 F.2d 133, 139 [73 LRRM 2667]).[47] Thus, Certified and Olson Farms cannot make any changes in such terms and conditions until they either bargain to agreement about such changes or reach a bona fide impasse after

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[46]in Oakland Press, supra, the NLRB found the union's letter, which stated it wanted to make changes in the contract but also wanted to continue it, was a request to terminate the contract rather than modify it. The NLRB determined that negotiating a new contract implies termination of the old. The NLRB also looked to the past bargaining history where the union previously had sent essentially the same letter, and all parties had treated that communication as a termination of the then existing contract.

[47]in Hinson, supra, the court upheld the NLRB's decision that the employer's unilateral changes, including changing health, welfare and retirement benefits, while refusing to bargain about a new contract after serving notice to terminate the contract, violated its duty to bargain even though the terms of the contribution were set by the contract. The court opined that the more persuasive authorities hold that no unilateral changes in the terms and conditions of employment are permitted.

The NLRB ordered the employer to make whole employees by

good faith bargaining.[48] Respondents' continuing refusal to bargain about terms and conditions of employment and a new contract, as requested by the Union, constitutes a violation of sections 1153(e) and (a).

I. The Cessation of Dues Deductions

Certified unilaterally ceased deducting union dues and initiation fees in March 1986, which deductions were required by Article 2 of the contract (JX 1). Certified stopped the dues deductions in March which was before the stock transfer. Thus,

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paying all the contributions to the funds which had not been paid and to continue to pay them until the parties bargained to agreement or to bona fide impasse. (Harold W. Hinson, d/b/a Hen House Market No. 3 (1969) 175 NLRB 597 [71 LRRM 1072].) The Eighth Circuit enforced the order. This case is distinguishable from Gordon L. Rayner and Frank H. Clark d/b/a Bay Area Sealers (hereafter Bay Area Sealers) (9th Cir. 1982) 665 F.2d 970 [109 LRRM 2564] where the court refused to enforce a similar NLRB order because in tnat case the employer followed its refusal to bargain with a timely notice of termination and a subsequent offer to bargain for a new contract which the Union did not respond to. The court reasoned that the make whole order should apply only to the expiration date of the contract because the employer offered to bargain following the termination of the contract, and to apply make whole after that date would be punitive. Here, Respondents never cured their refusal to bargain.

The NLRB in Hinson, supra, reasoned that, as with any other unilateral change case, the appropriate remedy was to restore the status quo ante, i.e., the status quo before the employer's unlawful acts, and to maintain it until the parties bargained to impasse or to agreement.

[48]It appears from the parties' stipulation that the major terms such as wages, hours, etc. did not change immediately after the stock transfer. There is no evidence whether there were any changes thereafter or following the termination of the contract on February 14, 1988.

Respondents' have no argument that Certified was not still in existence and bound by the contract which they concede was in effect.

Respondents assert that Certified took the action because it "discovered" it had no valid authorization cards. The agreement had been in effect for over two years by the time the employer made its "discovery."

Respondents provided no evidence that, in fact, they had no authorization cards. They offered nothing more than a bare assertion.

Based on the fact that Respondents offered no evidence to support the defense to the admitted unilateral action, I find the unilateral change in terminating dues checkoff violated Certified's duty to bargain and constitutes a violation of section 1153(e) and (a). As a single employer, Olson Farms is jointly and severally liable for Certified's unfair labor practice.

General Counsel seeks to have Respondents resume the dues checkoff. In view of my holding that the Union terminated the contract as of February 14, 1988, such an order is inappropriate.

While, as noted above, the general rule is that an employer may not make unilateral changes in the terms and conditions of a contract following the contract's expiration, there is a narrow class of exceptions to this rule. Dues checkoff is one of these exceptions.[49]

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[49]In Oakland Press, supra, the ALJ rejected one of the bases for the Respondent's argument that the Union had not intended to terminate

Once a contract has expired, an employer is permitted to discontinue dues checkoff.[50]

In Southwestern Steel, supra, the court of appeals discussed the basis for such exceptions, finding that "[t]he well established exceptions for union-shop and dues-checkoff provisions are rooted in §8(a)(3) of the NLRA....and §302(c)(4) of the...LMRA which are understood to prohibit such practices unless they are codified in an existing collective bargaining agreement."[51] (at p.3292.)

Since the dues checkoff provision does not extend beyond the life of the contract, the appropriate remedy is to order that Respondents reimburse the Union for all the dues and initiation fees (hereafter referred to collectively as "dues") which it did not receive as a result of the unlawful failure to deduct and remit them to the Union, plus interest thereon, up to the date the

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the contract, namely, that the Union would not have wanted to lose the dues checkoff which would cease with the termination of the contract because the ALJ observed that it did not necessarily follow that the checkoff clause in the contract would automatically terminate. He cited no authority for this observation, and the cases establish that such provisions do terminate upon the expiration of the contract.

[50]Marine & Shipbuilding Workers v. NLRB (3d Cir. 1963) 320 F.2d 615 [53 LRRM 2878], cert. denied (1964) 375 U.S. 984; Southwestern Steel & Supply v. NLRB (hereafter Southwestern Steel) (D.C. Cir. 1986) 806 F.2d 1111 [123 LRRM 3290].

[51]Section 302 of the Labor Management Relations Act (LMRA) provides in pertinent part:

> (a) It shall be unlawful for any employer or association of employers...to pay. . . any money or other thing of value--
> ...(2) to any labor organization...which represents...any employees of such employer....

contract terminated, i.e., February 14, 1988.[52] Such an order ensures that any employees who voluntarily paid dues will not have those amounts reimbursed to the union which would thereby receive a windfall.[53]

Further, the reimbursement order shall apply only to those employees for whom Certified had deducted dues prior to its cessation in March 1986. As noted above, there is no evidence that Certified did not have authorizations for these individuals.

I infer that proper authorizations had been filed or Respondent would not have instituted dues checkoff for those employees. As to any employees for whom dues were not deducted at that time, or who became employed thereafter and did not submit checkoff authorizations, it is not appropriate to require reimbursement.[54] (Ogle II)

> (c) The provisions of this section shall not be applicable...(4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, that the employer has received from each employees, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.

[52](Creutz Plating Corporation (1968) 172 NLRB [68 LRRM 1513]; Ogle Protection Service, Inc. (hereafter Ogle) (1970) 183 NLRB 682 [76 LRRM 1715] enf'd. in relevant part (6th Cir. 1971) 444 F.2d 502 [77 LRRM 2832].

[53]It is also appropriate to order that the amount of dues deduction be offset from any sums due for lost wages or benefits pursuant to the make whole remedy for Respondent's refusal to bargain.

[54]The ALRA does not contain language similar to §302 of the LMRA requiring written authorizations for dues deduction. I have found no case where the Board squarely addressed the question of whether

CONCLUSION

I have found that Certified continued to exist after the transfer of 100 percent of its stock to Olson Farms and is precluded from disputing its status as an agricultural employer.

The Union has been certified as the exclusive bargaining representative of all of the agricultural employees of Certified's processing and field operations which the parties stipulated consisted of operations at the Cafiada, Day Road and Foothill ranches near Gilroy, California. Certified and the Union entered into a collective bargaining agreement which terminated on February 14, 1988.

Following the change in ownership, Certified's obligations under the ALRA, including its duty to bargain with the Union and to comply with the contract, continued unabated. Certified failed to meet these duties by: (1) withdrawing recognition from the Union; (2) refusing to bargain about the effects of the stock transfer; (3) refusing to provide relevant information to the Union pursuant to its repeated requests for relevant information regarding the change in ownership; (4) refusing to bargain with the Union about a new contract following

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such dues deductions would be permitted only where there were employee authorizations for the deductions. However, I find that such a requirement is implied by virtue of the Acts' incorporation of Section 302 of the LMRA via section 1155.6 (see United Farm Workers of America, AFL-CIO (J. Jesus R. Conchola) (1980) 6 ALRB No. 16, the Board

the Union's timely request to do so, (5) refusing to recognize its continuing bargaining obligation to the Union; (6) unilaterally refusing to abide by the contractual grievance process; and (7) unilaterally ceasing deduction of union dues and initiation fees as required by the contract.

I have further found that Certified and Olson Farms are a single, integrated enterprise and are a single employer under the Act. As part of this finding, I have rejected Olson Farms' argument that it is not an agricultural enterprise subject to this Board's jurisdiction.

As a single employer, Certified and Olson Farms are treated as a single entity for purposes of labor relations under the Act. They are jointly and severally liable for unfair labor practices. Therefore, the remedies ordered are equally the responsibility of Certified and Olson Farms.

REMEDY

I shall order Respondents Certified and Olson Farms to: (1) bargain with the Union regarding the effects of the stock transfer on bargaining unit employees;[55] (2) provide information

[55]I find the Union has not waived bargaining over severance pay for two reasons. First, I have found that Respondents' offer was not related to its obligation to bargain over the effects of the change in ownership. Second, and more importantly, by refusing to provide the Union with any of the information it requested regarding the change in ownership, Respondents made it impossible for the Union to determine the bargaining obligations of Certified and Olson Farms. The Union was not required to bargain in the dark.

requested by the Union regarding the stock transfer; (3) resume recognition and bargaining with the Union as the exclusive representative of employees in the bargaining unit; (4) maintain the terms and conditions of employment regarding mandatory subjects of bargaining unless they provide timely notice to the Union and an opportunity for the Union to bargain about any changes in such terms and conditions; (5) process the grievances filed by the Union regarding the layoffs in June and July 1986, (6) make whole the bargaining unit employees for the refusals to bargain including the refusals to process the grievances; and (7) reimburse the Union for the cessation of deduction of Union dues and initiation fees regarding bargaining unit employees as set forth in my decision, supra.

By bargaining unit employees, I mean only the employees in the unit certified by the Board in Certified Egg Farms, case number 75-RC-25-M, to wit, the unit employees at the Canada, Day Road and Foothill Ranches near Gilroy, California, who were covered by the collective bargaining agreement between Certified and the Union effective February 15, 1984.

RECOMMENDED ORDER

By authority of Labor Code section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondents Certified Egg Farms and Olson Farms, Inc. and their officers, agents, successors and assigns, jointly and severally, shall:

1. Cease and desist from:

(a) Failing or refusing to bargain collectively in good faith with the General Teamsters, Warehousemen & Helpers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 890 (Union) with respect to wages, hours, and other terms and conditions of employment of its employees in the bargaining unit certified by the Board in Certified Egg Farms, case number 75-RC-25-M, (hereafter the term "employees" shall be so understood), or the negotiation of an agreement covering such employees, or in any other manner failing or refusing to so bargain with the Union regarding employees in the certified bargaining unit;

(b) Failing or refusing to recognize the Union as the exclusive bargaining representative in the certified bargaining unit;

(c) Failing or refusing to provide the Union with information requested regarding the stock transfer and change of ownership of Certified which occurred in or about April 1986;

(d) Failing or refusing to give notice to and bargain with the Union over the effects of the change in ownership by means of the stock transfer regarding Certified Egg Farms and Olson Farms, Inc.;

(e) Failing or refusing to hear and resolve grievances filed by the Union arising out of the collective bargaining agreement executed by the Union and Certified Egg Farms

pursuant to the terms of said agreement including, if appropriate, submitting said grievances to arbitration on the merits;

(f) Failing or refusing to remit dues and initiation fees (hereafter referred to collectively as "dues") to the Union for employees for whom dues were deducted prior to the cessation of such deductions in March 1986, and any other employees who submitted dues deduction authorizations, until the termination of the collective bargaining agreement on February 15, 1988;

(g) Unilaterally instituting or implementing any changes in any of its agricultural employees' terms and conditions of employment without first notifying and affording the Union a reasonable opportunity to bargain with Respondents concerning such changes;

(h) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of their rights as guaranteed by Labor Code Section 1152.

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

(a) Resume recognition of the Union as the exclusive bargaining representative of the employees in the certified bargaining unit;

(b) Upon request, meet and bargain collectively in good faith with the Union as the certified bargaining representative of the employees in the certified bargaining unit concerning the effects of the change in ownership by virtue

of the transfer of stock regarding Certified Egg Farms and Olson Farms, Inc.;

(c) Upon request, meet and bargain collectively in good faith with the Union, as the certified bargaining representative of the employees in the certified bargaining unit, with respect to said employees' rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if agreement is reached, embody such agreement in a signed contract;

(d) Makewhole the employees in the certified bargaining unit for all economic losses they have suffered as a result of Respondents' failure to recognize and bargain with the Union over said employees' terms and conditions of employment, including the failure to bargain over the effects of the aforesaid stock transfer; such amounts to be computed in accordance with Board precedent, with interest thereon to be computed in accordance with the Board's Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5. The makewhole period shall extend from the effective date of the aforedescribed stock transfer, in or about April 1986, until the date on which Respondents commence good faith bargaining with the Union which results in a contract or a bona fide impasse.

(e) Makewhole the grievants, whose grievances were not heard or resolved, for all economic losses they have suffered as a result of Respondents' failure to process said grievances as required by the collective bargaining agreement (Agreement) executed by Certified Egg Farms and the Union;

(f) Upon request by the Union, process said grievances as required by the Agreement including, if appropriate, submitting said grievances to arbitration on the merits;

(g) Maintain in effect, as required by law, the terms and conditions of employment embodied in the Agreement;

(h) Reimburse the Union for the amount of union dues that Respondents unlawfully failed to withhold and transmit in accordance with the Agreement for all employees for whom deductions were made prior to Respondents' cessation thereof in March 1986, and also for any employees who thereafter submitted written authorization for dues deduction from the date such dues were not deducted to the termination of the Agreement on February 14, 1988. The amounts due under this paragraph shall be offset against any lost wages or benefits required to be paid under paragraph 2(d) above. Further, no payment shall be required for any dues which were paid voluntarily by said employees;

(i) Provide the Union with all relevant information requested by the Union regarding the aforedescribed stock transfer;

(j) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and duplication by other means, all records in its possession relevant and necessary to a determination by the Regional Director, of the make-whole period and the amount due employees under the terms of this Order.

(k) Sign the Notice to Agricultural Employees, attached hereto, embodying the remedies ordered and, after its translation by a Board Agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereunder:

(1) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on Respondents' property for 60 days, the places 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;

(m) Provide a copy of the attached Notice in all appropriate languages to each unit employee hired by Respondents during the twelve month period following the date of issuance of the Board's Order;

(n) Mail copies of the attached Notice in all appropriate languages, within thirty days after the date of issuance of the Board's Order, to all unit employees employed by Respondents at any time during the period from October 22, 1986, to the date of the Board's Order in this matter;

(o) Arrange for a Board agent to distribute and read the attached Notice in all appropriate languages to all of Respondents' employees in the certified bargaining unit, on company time and property, at times and places to be determined by the Regional Director. A representative of the employer will be present for the reading. 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 attached 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 in order to compensate them for time lost at this reading and during the question and answer period;

(p) Notify the Regional Director, in writing, within 30 days after the date of issuance of the Board's Order, as to what steps have been taken to comply with it. Upon request of the Regional Director, Respondents shall notify him periodically thereafter in writing what further steps have been taken in compliance with this order.

DATED: April 25, 1989

BARBARA D. MOORE
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, CERTIFIED EGG FARMS AND OLSON FARMS, 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: (1) refusing to continue to recognize the General Teamsters, Warehousemen & Helpers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 890 (Union), as the certified bargaining representative of our employees in our Gilroy operations; (2) refusing to bargain collectively in good faith with the Union as the certified representative of bargaining unit employees in our Gilroy operations regarding a new collective bargaining agreement and regarding any changes in the terms and conditions of employment embodied in the collective bargaining agreement (Agreement) between the Union and Certified Egg Farms; (3) refusing to provide the Union with information relevant to its collective bargaining duties which it requested; (4) refusing to give the Union notice of the change in ownership of Certified Egg Farms, in or about April 1986, and refusing to bargain about the effects of that change in ownership on the terms and conditions of employment of employees in the certified bargaining unit; (5) refusing to hear and resolve grievances filed by the Union as required by the Agreement; and (6) ceasing and refusing to pay the Union dues and initiation fees as required by the Agreement.

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 stops you from doing, any of the things listed above.

Especially, WE WILL NOT refuse or fail to recognize the Union as the certified bargaining representative for employees in the bargaining unit at the Gilroy operations of Certified Egg Farms/Olson Farms, Inc.

WE WILL NOT refuse or fail to give the Union notice of any changes affecting the operations of Certified Egg Farms or Olson Farms, Inc. which affects employees in the certified bargaining unit or fail or refuse to bargain with the Union about the effects of any such changes on employees in the unit.

WE WILL NOT refuse or fail to provide the Union with all relevant information requested regarding the change in ownership of Certified Egg Farms.

WE WILL NOT refuse or fail to maintain, as required by law, the terms and conditions of employment contained in the Agreement with the Union.

WE WILL NOT refuse or fail to hear and resolve grievances filed by the Union as required by the Agreement with the Union.

WE WILL NOT refuse or fail to deduct and transmit to the Union dues and initiation fees as provided for in the Agreement with the Union.

WE WILL make our employees in the bargaining unit whole for all losses of pay and other economic losses they have suffered as a result of our failure and refusal to bargain with the Union.

WE WILL meet and bargain in good faith with the Union as the certified bargaining representative.

WE WILL hear and resolve the grievances filed by the Union including, if appropriate, submitting the grievances to arbitration on the merits.

WE WILL pay the Union, as ordered by the Board, the amount of the dues and intiation fees we failed or refused to deduct.

DATED:

CERTIFIED EGG FARMS AND OLSON FARMS, INC.

By: _____

(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE,