Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BRUCE CHURCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 87-CE-8-SAL 87-CE-72-VI 87-CE-41-SAL 87-CE-59-SAL 88-CE-66-SAL 17 ALRB NO.1

DECISION

This case is before the Agricultural Labor Relations Board (ALRB or Board) on exceptions filed by the respondent, Bruce Church, Inc. (Respondent), to the attached decision issued by Administrative Law Judge (ALJ) Thomas Sobel on May 7, 1990. The ALJ found that Respondent violated section 1153, subdivision (e) of the Agricultural Labor Relations Act (ALRA)[1/] by making the following unilateral changes in terms and conditions of employment: (1) implementing new wage and fringe benefit schedules on or about January 30, 1987; (2) introducing naked palletized machines in Huron, Santa Maria, and Salinas at various times in the spring of 1987; (3) laying off the members of Ground Crew No. 2 at the end of the harvest in Yuma, Arizona, without permitting them to follow the harvest to California; and (4) using

[1/]Section 1153, subdivision (e) makes it unlawful for an agricultural employer to refuse to bargain in good faith with a labor organization certified as the exclusive representative.

labor contractor crews/ instead of its seniority crews, to harvest its lettuce crop in Huron, Santa Maria, and Salinas from, the spring of 1987 forward. Respondent does not dispute that the changes were made unilaterally, but insists that it had a right to make the changes because: (1) the United Farm Workers of America, AFL-CIO (Union or UFW) had breached its bargaining obligation through dilatory and evasive conduct; and (2) the Union abandoned the bargaining unit.[2/]

The Board has considered the entire record, including the ALJ's decision, Respondent's exceptions and supporting brief, and the General Counsel's reply brief, and affirms the rulings, findings, and conclusions of the ALJ insofar as they are consistent with the decision herein, and adopts his proposed order, as modified. In sum, we find that the changes in wages and benefits and the introduction of naked palletized machines were lawful, while we affirm the ALJ's conclusions that the changes in transfer policy and in the use of labor contractor crews were unlawful.

FACTUAL SUMMARY

The present case focuses on the parties' bargaining relationship after 1985. The parties met on October 21 and November 7, 1985, but no proposals were presented. On January 28, 1986, Respondent notified the Union that it would not be operating a labor camp in Salinas, as it had done in previous years. Union

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[2/]Before the ALJ, Respondent also asserted that its actions were lawful because the parties were at impasse. The ALJ rejected that argument. As it is not mentioned in its exceptions, Respondent appears to have abandoned that defense.

representative Peter Cohen requested bargaining, in response to which Respondent challenged Cohen to demonstrate that closing the camp was a mandatory subject of bargaining. There is no evidence that the Union took any further action on that matter and the closing of the camp is not at issue in this case. On April 30, 1986, Arturo Mendoza notified Respondent's representative, Arnold Myers, that he would assume the role of UFW negotiator and would like to meet within the next two weeks. The parties met on May 22, 1986, at which time the Union presented what it termed a "modification" of its last proposal.

After an exchange of letters in which the parties disputed who had been confused about the content of proposals prior to May 22, the parties met again on June 24, 1986. At that session, Respondent submitted a partial response to the Union's prior proposals. Respondent did not present any economic proposals because it had planned to conduct a study of its competition first. Larry Silva, Respondent's personnel manager, was assigned that task. Though it is not clear exactly when he began or finished this task, a September 23, 1986 letter to employees states that such a study is under way, but "it will take a while longer to complete." Silva did testify as to the results of study:

> We were becoming very non-competitive . . . [W]e were not competitive in Arizona. We were not competitive in Santa Maria and San Joaguin and becoming less competitive in the Salinas area. Increased use of labor contractors. (Sic.) Contracts that had been signed with (Abatti and Sam Andrews) by the United Farm Workers. . . provided for substantially lower rates in harvest commodities than we were paying at the time.

A meeting scheduled for July 9, 1986 was cancelled by the Union, rescheduled for July 22, and then cancelled again by the Union. On August 7, Respondent notified the Union that it was implementing a new operation for a cauliflower harvest crew in Santa Maria. The Union did not respond, though it did notify Respondent by letter of August 16 that Humberto Gomez would be its new negotiator. On October 15 and October 31, Respondent wrote to the Union requesting that meeting dates be scheduled. There was no response. The October 15 letter asserted that the purpose of the requested meeting was to have the Union provide a promised response to Respondent's June 23, 1986 counterproposal.

On December 5, 1986, Respondent's attorney wrote again to the Union, stating:

> Bruce Church, Inc. is again requesting negotiations between the United Farm Workers and Bruce Church, Inc. The last negotiating session was held on June 24, 1986. The Company had provided a proposal and the Union promised a counter response. Meetings were set for July 9, 1986. Both meetings were cancelled by the Union.
>
> Since the June 24, 1986 meeting, Bruce Church, Inc. has requested meetings on at least five occasions. The Union has not responded. You are aware that the agricultural industry is experiencing wage reductions. These issues must be addressed at the table. We repeat our continuing request for a negotiating session. Please suggest available dates.

Again, no response was received.

On January 13, 1987, the Union tried to contact Respondent's attorney by phone, and told a legal assistant that it was requesting Respondent's economic proposal. This request was reiterated on January 23 to Respondent's attorney at the close of a negotiating session involving another employer. On

January 29, 1987, Respondent sent a notice to employees announcing reductions in wages and benefits. The reductions were based on the results of the study done by Silva. On January 30, the changes were implemented, and notice of that fact was sent to the Union. On January 30 and February 2, the Union wrote to Respondent and objected to the unilateral implementation of wage and benefit changes. Respondent answered on February 11, asserting that the Union had seriously breached the collective bargaining process, and that it was the company which was awaiting a counterproposal from the Union. A negotiating session was held on March 19, at which time the Union resubmitted, with one change involving the medical plan, its proposals of May 22, 1986. Respondent presented a complete proposal at that time.

On April 8, 1987, one of Respondent's three regular ground crews, No. 2, was laid off at the end of the Yuma, Arizona harvest.[3/] It is undisputed that Respondent had an established practice of allowing members of its ground crews to "follow the harvest" to the next location of its operations. That opportunity was not extended to the members of Ground Crew No. 2 at the end of the Yuma harvest in 1987.

At various times in April, Respondent for the first time introduced the use of naked palletized machine harvesting at its operations in Huron, Santa Maria, and Salinas. Respondent mailed notices dated April 10 to laid off members of Ground Crew No. 2, alerting them to eleven openings on a machine crew in Santa

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[3/]At the time in question, Respondent harvested iceberg lettuce nearly year-round in Arizona and in three locations in California.

Maria.

On April 14, 1987, Respondent sent a letter to the Union requesting its counterproposal and suggesting meeting dates. The Union's April 15 response stated that it was still in the process of reviewing Respondent's economic proposals. On May 8, Respondent again requested meeting dates and the Union responded on May 13, stating that its review of Respondent's proposal would take longer than expected. The Union also put forth an "interim" proposal that wages and benefits remain at December 31, 1986 levels. Respondent replied on May 22, accusing the Union of stalling negotiations and demanding that any proposals be formally presented at a face-to-face bargaining session. The Union wrote to Respondent on May 29 and requested certain information. Respondent provided responses to the information request on June 19 and July 6.

On May 29, 1987, the members of the two remaining ground crews, known as No. 1 and No. 7, were laid off and then consolidated into one crew designated as No. 7. At the same time, laid off members of the ground crews were advised of twenty-three openings in the naked palletized machine operations in Salinas.

On September 1, 1987, Respondent wrote to the Union and asserted that, because it was apparent that the Union had abandoned negotiations and that the parties were at impasse, it would continue to implement its March 19, 1987 proposals. There is no evidence that the Union responded until January 21, 1988, when it requested to meet. After exchanging correspondence on several occasions concerning the meeting time and its purpose, the

parties agreed to meet on February 29, 1988. At the February 29 session, the Union presented a comprehensive proposal. Respondent presented a counterproposal on March 24. A subsequent bargaining session was scheduled for April 14, but was later changed to April 27. At that session, Respondent presented a complete counterproposal that included economic issues. The Union said it would review the proposals and respond. On May 20, Ground Crew No. 7 was laid off in Salinas due to the use of an additional palletized machine. Ground Crew No. 7 members were given preferential hiring rights on the machine crew.

RESPONDENT'S EXCEPTIONS

First, Respondent claims that the ALJ failed to accord sufficient significance to the documentary evidence in this case, particularly the written correspondence reflecting the many unsuccessful attempts to arrange bargaining sessions that Respondent asserts is critical to understanding the parties' bargaining history. Respondent asserts that the ALJ viewed this documentary evidence with disdain, as reflected by the ALJ's statements that "Myers is clearly punctilious about making a record," and that "silence ... is not the equivalent of consent; such a doctrine would place the whole world at the mercy of letter writers." (ALJ Dec., at p. 48, citing Security First National Bank v. Spring Street Properties (1937) 20 Cal.App.2d 618 [167 P.2d 720].) Respondent asks the Board to exercise independent judgment in evaluating the documentary evidence.

Respondent does not argue in its exceptions that the alleged changes were made other than unilaterally. Instead,

Respondent's exceptions rely solely on its assertion that the Union's conduct permitted it to make the changes lawfully. Moreover, Respondent no longer asserts, as it did before the ALJ, that the parties had reached an impasse in bargaining. Rather, the focus of the exceptions is on the claims that the Union engaged in dilatory and evasive conduct and that it abandoned negotiations. In pursuing the latter claim, Respondent does not address the standard cited by the ALJ for judging whether abandonment occurred, but offers argument that is virtually indistinguishable from that used to bolster its claim of dilatory and evasive conduct.

Respondent insists that the record shows that the Union did nothing but stonewall negotiations during the period in question, as evidenced by its cancellation of meetings, refusal to set meeting times, and failure to respond to Respondent's inquiries. In response to that conduct, Respondent claims that it did only what it was forced to do to run its business. In addition, Respondent claims that its actions were consistent with its March 19, 1987 proposal and, therefore, the Union had the notice necessary to permit implementation under the standard enunciated by the National Labor Relations Board (NLRB) in &AA Motor Lines, Inc. (1974) 215 NLRB 793 [88 LRRM 1253] (dilatory or evasive conduct by Union sufficient to excuse unilateral action). In particular, Respondent states that its wage and benefit changes had earlier been prepared for inclusion in the proposal that was eventually presented on March 19, but, due to the Union's refusal to meet earlier, it was forced to implement those changes when it did on January 30, 1987.

DISCUSSION

As a preliminary matter, Respondent is correct when it suggests that the proper standard of review of the ALJ's decision is one of independent judgment. With the exception of credibility resolutions based on demeanor, the Board conducts an independent review of the record. (See, e.g., Armstrong Nurseries, Inc. (1983) 9 ALRB No. 53, at p. 9; Tit. 8, Cal. Code Regs., § 20286, subd. (b).[4/])

Abandonment

As noted above, when Respondent argues that the Union's conduct constituted "abandonment" it seems to employ a meaning quite different from that associated with its use as a legal term of art. Rather than claiming that the Union abandoned the unit, Respondent asserts that the Union abandoned or evaded negotiations. Thus, it is not entirely clear if Respondent's "abandonment" defense is intended to be analytically distinct from its dilatory and evasive bargaining conduct defense. In any event, as the ALJ observed, the Board has held that a Union remains the certified representative until decertified "or until the Union becomes defunct or disclaims interest in continuing to represent the unit employees. ..." (Lu-Ette Farms (1982) 8 ALRB No. 91, at p. 5.) Moreover, the Board has defined abandonment

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[4/]Section 20286, subdivision (b) states:

> Where one or more parties take exception to the decision of the administrative law judge, the Board shall review the applicable law and the evidence and determine whether the factual findings are supported by a preponderance of the evidence taken.

as a showing that the Union was either unwilling or unable to represent the bargaining unit. (O. E. Mayou & Sons (1985) 11 ALRB No. 25, at p. 12, fn. 8.) The above standards were set out by the Board in the context of rejecting employer claims that, as under the National Labor Relations Act (NLRA), the bargaining obligation may cease upon a showing of good faith belief in the loss of majority support. The Board found that the language of the ALRA instead required formal decertification or, in essence, a showing that the Union had effectively left the scene altogether.

In the present case, while there is evidence of evasive bargaining conduct, there is nothing that indicates that the Union disclaimed interest in, or was unwilling or unable to represent, the bargaining unit.[5/] For example, no evidence was presented to show the amount of contact, or lack thereof, with unit employees, or to show that the Union had stopped representing employees in grievance or other nonbargaining matters. Consequently, on this record, we agree with the ALJ's conclusion that the Union did not abandon the unit.[6/] However, as the arguments that Respondent put forth are relevant to its evasive bargaining defense, they will be considered in that context.

Dilatory or Evasive Conduct

As the ALJ observed, the NLRB has allowed employers to unilaterally implement changes in terms and conditions of

[5/]Obviously, the UFW was not defunct, nor did Respondent argue that it was.

[6/]As this is an affirmative defense, Respondent bore the burden of proving that abandonment occurred.

employment, consistent with prior proposals, where the employer has earnestly sought negotiations but the Union's dilatory or evasive conduct has prevented further negotiations from taking place. In AAA Motor Lines, Inc., supra, 215 NLRB 793, the employer had notified the Union of its intention to terminate the existing contract and submitted a proposal for a new one, but for two and one half months thereafter the Union refused or ignored requests to bargain. The NLRB found no violation when the employer then implemented its proposal after the existing contract expired. In M & M Building and Electrical Contractors, Inc., (1982) 262 NLRB 1472 [110 LRRM 1512], the NLRB found that the employer lawfully implemented its proposal which had been submitted to the Union only five days earlier, where, for the previous seven months, the Union refused to agree on a date for bargaining sessions. In Stone Boat Yard v. NLRB (1983) 264 NLRB 981 [111 LRRM 1427], enf'd (9th Cir. 1983) 715 F.2d 441 [114 LRRM 2407], the NLRB found the employer's unilateral implementation to be unlawful because the Union was never given notice of the proposed changes.

When compared to the facts in AAA Motor Lines, Inc. and M & M Building and Electrical Contractors, Inc., there is little question that the Union's conduct in the present case was dilatory and evasive. Despite numerous requests from Respondent for further bargaining, there was only one bargaining session between June 24, 1986 and March 14, 1988. Bargaining sessions for July 1986 were twice scheduled, then cancelled by the Union. Over the next five months, four requests by Respondent to schedule another

session were ignored.[7/] Only after the unilateral implementation of new wages and benefits on January 30, 1987, did the Union show enough interest in negotiations to allow the scheduling of the March 19, 1987 session. After that session, another ten months of evasiveness began and continued until January 21, 1988, when the Union requested a meeting date. During this period the Union's only response to Respondent's requests for further negotiations consisted of statements that it was still reviewing Respondent's economic proposals of March 19, 1987. The Union also made a request for information with which Respondent complied.

Since the ALJ concluded that Respondent had not provided the requisite notice prior to the unilateral implementation, the ALJ did not directly address the question of whether the Union's conduct was, in fact, dilatory or evasive. However, in his discussion of the abandonment defense the ALJ reached a conclusion which, if correct, would be inconsistent with finding that the Union's conduct was dilatory or evasive.

[7/]Our dissenting colleagues' claim that the dilatory conduct in the instant case does not compare with that in AAA Motor Lines, Inc., supra, is puzzling. In AAA Motor Lines, the union stonewalled negotiations for less than three months, claiming that negotiations were not possible until after a new master agreement was settled. Here, the Union's actions were patently more egregious, as it simply ignored repeated requests to bargain for a period of over five months. Nor is there any evidence that Respondent was itself dilatory in conducting its study of competitor rates. Moreover, it is difficult to imagine why Respondent would want to delay negotiation of proposals to reduce wages and benefits. Our dissenting colleagues also note that Respondent, unlike the employer in AAA Motor Lines, did not file charges alleging bad faith bargaining, but the filing of such charges is not an element of the dilatory or evasive conduct exception to the requirement to bargain to impasse.

The ALJ found that it was more likely than not that it was the Union that was waiting for a proposal from Respondent, rather than the other way around as claimed in several of the letters from Respondent's attorney. This conclusion had three bases. First, at the June 24, 1986 bargaining session, Respondent's counterproposal did not include economic proposals, which were to be based on an as yet uncompleted study of competitor rates. Second, the Union's silence in response to Respondent's letters should not be considered the equivalent of consent. Third, Gomez's call to Myers[1] legal assistant on January 13, 1987, during which he claimed that the Union was still waiting for Respondent's economic proposals, is highly probative because Gomez could not have known to make such a claim for strategic reasons. We do not agree with these assessments.

While Respondent's counterproposal on June 24, 1986 did not include economic matters, Respondent could have reasonably expected a response from the Union on noneconomic matters so that those issues could have been resolved while the study was being conducted. That is not an uncommon course for negotiations to take. Further, since the Union, despite numerous opportunities, did not claim until January 13, 1987 that it was awaiting Respondent's economic proposals, we find it very difficult to believe that that was the basis for its silence the previous six months. Even if that was the Union's motivation for ignoring Respondent's requests, it fails to justify such conduct. Respondent was ready and willing to discuss noneconomic matters

throughout the period in question, and was ready and willing to discuss economic matters prior to its unilateral implementation. Given the pattern of Union evasiveness over the previous six months, it was reasonable for Respondent to conclude at the end of January of 1987 that further attempts at securing meaningful negotiations would be futile. Moreover, we believe that the reasonableness of that conclusion was not vitiated by the isolated bargaining session which the Union agreed to on March 19, 1987, which was then followed by another extended period of evasiveness.

Notice

Since we have found that the Union's conduct was, in fact, dilatory and evasive, the lawfulness of Respondent's unilateral actions turns on whether the Union was given sufficient notice of the intended changes.

a. Wages and Benefits

It is undisputed that Respondent did not give the Union specific notice of its wage and benefit proposals before making the changes at issue, though it was known that the proposals would be based on the results of Respondent's survey of its competition. While the September 23, 1986 notice to employees stated that the survey of the competition was not yet completed, Respondent requested bargaining sessions three more times, on October 15, October 31, and December 5, before implementing its changes at the end of January. This further demonstrates Respondent's earnest efforts in seeking negotiations. The December 5 letter alerted the Union that the industry was experiencing wage reductions and

that this must be addressed at the table. Silva testified that his survey showed Respondent's wages and benefits to be higher than those of the competition, and that this was the basis for the proposal that was unilaterally implemented. In sum, though no specific wage and benefit proposal was presented to the Union, it was apparent that Respondent would propose reductions of some level.

The lack of a specific proposal, however, on the facts of this case, is not determinative. In the present case, a pattern of evasive conduct had developed by the time that Respondent had completed its survey, rendering futile further efforts to get the Union to negotiate in a timely fashion. Nevertheless, Respondent tried on three occasions to get the Union to meet so that wages and benefits could be agreed upon. On the third occasion, December 5, 1986, Respondent indicated its intent to propose wage and benefit reductions. Moreover, the parties' established practice was to present all proposals in face-to-face bargaining sessions. In addition, it is important to note that by January of 1987, the Union had established a pattern of consistently ignoring written correspondence from Respondent. For these reasons, we do not consider the Union's off-hand remarks in January that it was waiting for Respondent's economic proposals to have negated the reasonableness of Respondent's view that further attempts to negotiate would be futile.

In light of all the circumstances discussed above, we believe the content of the December 5 letter constituted sufficient notice of Respondent's intent to reduce wages and

benefits to allow for lawful unilateral implementation.[8/] We wish to emphasize that our conclusion that sufficient notice was afforded prior to the unilateral implementation is based on the peculiar facts of this case, and should not be read to obviate the need in other circumstances to provide detailed proposals prior to implementation.[9/]

b. Change in Transfer Policy

Unlike the situation Respondent faced in trying to secure bargaining over its wage and benefit proposals, it did have the opportunity to present specific proposals on the other three matters at issue here prior to the unilateral implementation which began in April of 1987. The March 19, 1987 bargaining session provided Respondent with that opportunity, and it took advantage of it by presenting a comprehensive proposal. Therefore, the legality of these changes must be determined by judging whether the March 19 proposal provided the notice that is required prior to a unilateral implementation of changes in response to dilatory or evasive bargaining conduct by a union.

[8/]In Stone Boat Yard, Inc., supra, 264 NLRB 981, where the NLRB found a violation for failure to present any proposal to the Union before implementation, there was no indication that the employer provided any notice of the types of changes it sought. Nor did the NLRB make any finding as to evasive conduct. Similarly, in Auto Fast Freight, Inc. (9th Cir. 1986) 793 F.2d 1126 [122 LRRM 3058], a case relied on by our dissenting colleagues, a violation was found because the employer, inter alia, gave no notice prior to implementation.

[9/]Contrary to the assertion of our dissenting colleagues, we are not departing from existing NLRB precedent. Rather than mechanically applying the principle of adequate notice, we choose to apply it in light of the facts of the case before us.

As noted earlier, it is undisputed that Respondent's practice prior to April of 1987 was to allow the ground crews to transfer to the next harvest location if they so desired. The March 19, 1987 proposal, like previous proposals, makes no mention of this policy and contains nothing inconsistent with it. Therefore, Respondent is in error when it asserts that this change was consistent with prior proposals. The ALJ properly concluded that the Union received no notice of the proposed change. Consequently, we affirm the finding that this unilateral change violated Respondent's duty to bargain. c. Change in the Use of Labor Contractor Crews

The ALJ correctly concluded that the use of labor contractor crews from April of 1987 forward did not comport with the language of Article 18 of the March 19, 1987 contract proposal. Personnel Manager Silva testified that the company's practice had been to use labor contractor crews whenever there was excess product that could not be handled by the regular crews or if there was a particular need that lasted less than the 14 days required for a recall of the regular crews. Respondent contended in its post-hearing brief that it historically used labor contractor crews "whenever necessary," and that its past practice was reflected in Article 18. However, as the ALJ pointed out, the language of Article 18 provides for the use of labor contractor crews only in very limited circumstances and is consistent with

Silva's testimony.[10/] As the ALJ concluded, Joint Exhibit No. 5 evidences the displacement of available regular crews. Respondent has provided no argument that seriously questions that conclusion. Consequently, this unilateral change also violated Respondent's duty to bargain.

d. Introduction of Naked Palletized Machines

The relevant portion of Respondent's March 19, 1987 proposal, Article 19, "New or Changed Operations," states:

> 19.1 In the event the Company, during the term of this Agreement, implements within the bargaining unit . . . ('5) the employment by the Company of different specialized equipment, then the Company shall notify the Union within 24 hours of such implementation giving a description of the change, any modifications to working conditions involved, and the pay rates it has implemented, if any, pursuant to the change. If the implementation of conditions (1), (2), (3), (4) and/or (5) are [sic] common in the industry, the Company agrees to pay the prevailing wages currently paid in the local agricultural community. However, any such new or changed operations shall not be subject to the arbitration provisions provided in this Agreement. (Emphasis added.)

The ALJ construed this provision as merely providing a bargaining mechanism should Respondent desire to introduce new machinery. However, on its face, as illustrated by the phrases underlined

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[10/]The pertinent portions of Article 18 can be found at fn. 8, pp, 15-16 of the ALJ's decision. The article sets out specific circumstances where the use of labor contractor crews is allowed. However, while Respondent generally has claimed that its use of labor contractor crews was consistent with Article 18, it has not asserted that such use was authorized by any of the specific provisions of the article.

above, the provision has a much different meaning.[11/] Rather than requiring bargaining prior to implementation, the provision clearly calls only for notice within 24 hours after implementation. Further, such notice involves only the description of the changes and makes no mention of bargaining. Instead, it gives Respondent complete discretion in making such changes, subject only to the payment of prevailing wages.[12/] Consequently, we find that this provision gave Respondent the right to unilaterally make the disputed change involving the use of palletized machines.[13/]

Remedy

Having found that Respondent made two unlawful unilateral changes in terms and conditions of employment, we shall adopt the relevant portions of the ALJ's proposed order. Respondent shall be ordered to cease and desist from engaging in the conduct found unlawful, rescind, upon request of the Union, the changes in

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[11/]The General Counsel argues that Article 19 does not apply except where a new or changed classification is involved. However, a new or changed classification is the first of five listed changes which are set out in a disjunctive manner ("or"), of which number five is the one relevant to this case. The General Counsel's interpretation is based on the erroneous assumption that the five examples of changes are set out in a conjunctive manner ("and").

[12/]While notice after the fact may seem relatively meaningless from the Union's perspective, it is important to remember that this provision was not the product of negotiations. It was instead a proposal with which Respondent's conduct need only have been in conformity given the Union's dilatory conduct.

[13/]In their dissent, our colleagues argue that Article 19 says nothing of Respondent's intent to introduce palletized machines. However, given the plain language ceding Respondent the discretion to introduce specialized equipment, which would include palletized machinery, notice of such specific intent is irrelevant.

transfer policy and the use of labor contractor crews, and make the affected employees whole for economic losses suffered as a result of the unlawful conduct. In the hope of minimizing confusion and dispute in the compliance phase of this decision, we stress that the change in transfer policy is remediable only to the extent that its impact was distinct from that of the introduction of the naked palletized machines which we have found to be lawful.

CONCLUSION

As discussed above, we find that the Union engaged in dilatory and evasive conduct that excused Respondent's unilateral changes where the Union was provided sufficient prior notice of such changes. Specifically, we find that the changes in wages and benefits[14/] and the introduction of the naked palletized machines met the above test and consequently were lawful. In contrast, the changes in transfer policy and the use of labor contractor crews were not consistent with prior proposals. Therefore, we affirm the ALJ's conclusion that these changes were unlawful.

ORDER

Pursuant to Labor Code section 1160.3, Respondent Bruce Church, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to give the UFW notice and an opportunity to bargain about changes in transfer policy?

[14/]As noted earlier, our holding with regard to the adequacy of the notice of the changes in wages and benefits is restricted to the facts of this case.

(b) Failing or refusing to give the UFW notice and an opportunity to bargain about the decision to use labor contractors to displace seniority ground crew employees;

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

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

(a) Upon request, rescind any and all unilateral changes made by Respondent with respect to (1) the change in transfer policy implemented in April 1987 and (2) the use of labor contractors from May 1987;

(b) Upon request of the UFW, as the certified collective bargaining representative of its agricultural employees, meet and bargain collectively in good faith over changes in transfer policy and the use of labor contractors;

(c) Offer to the seniority employees of former Ground Crew No. 2 who were unlawfully denied the right to transfer to other geographic areas immediate and full reinstatement to their former or substantially equivalent positions without loss of seniority in accordance with the seniority system in effect prior to April 1987, and make them whole for all losses of pay and other economic losses they have suffered as a result of the unlawful change in transfer policy, such losses to be computed in accordance with established Board precedent, plus interest thereon, computed in accordance with the Decision and Order in

E.W. Merritt Farms (1988) 14 ALRB No. 5. However, relief shall be afforded to remedy only those effects of the change in transfer policy that were distinct from those attributable to the introduction of naked palletized machines;

(d) Offer the seniority employees in its seniority ground crews immediate and full reinstatement to their former or substantially equivalent positions in accordance with the hiring system that was in effect at the time of their unlawful displacement by labor contractors without prejudice to their seniority or other employment privileges, and make them whole for all losses of pay and other economic losses they have suffered as a result of Respondent's contracting out work historically performed by them, such losses to be computed in accordance with established Board precedent, plus interest thereon, computed in accordance with the Decision and order in E.W. Merritt Farms (1988) 14 ALRB No. 5;

(e) Preserve and, upon request, make available to the Board and its agents for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the makewhole or backpay period and the amount of makewhole or backpay due under the Board's order;

(f) Sign the attached Notice to agricultural employees and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth in the Board's order;

(g) Mail copies of the Notice in all appropriate languages within 30 days after the date of issuance of the Board's order to all agricultural employees employed by Respondent at any time from April 1, 1987 until May 20, 1989, such date being one year from the layoff of the last remaining seniority ground crew;

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

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

(j) Provide a copy of the Notice to each agricultural employee hired to work for the company for one year following the issuance of a final order in this matter;

(k) Notify the Regional Director in writing within 30 days after the date of issuance of this order of the steps

Respondent has taken to comply with its terms, and continue to report periodically thereafter at the Regional Director's request until full compliance is achieved.

DATED: January 25, 1991

GREGORY L. GONOT, Member[15/]

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

[15/]The signatures of Board Members in all Board decisions appear with the signature of the Chairman first (if participating), followed by the signatures of the participating Board members in order of their seniority.

CHAIRMAN JANIGIAN AND MEMBER SHELL, Concurring and Dissenting:

We concur with our colleagues in the majority in finding, as did the Administrative Law Judge (ALJ), violations in the Employer's unbargained changes in transfer policy and use of labor contractor crews. We differ from the majority, however, on the question of whether Respondent gave the Union prior notice of the specific changes it intended to make in the terms and conditions of its employees' wages and its harvesting methods, thereby permitting the Union an opportunity to engage in meaningful negotiations about the proposed changes before implementation. Unlike the majority, we would find that Respondent did not comply with established notice requirements.

The controlling legal principles which govern this matter are clear. An employer who implements changes involving mandatory subjects of bargaining without prior notice to and consultation with the union engages in a per se violation of the duty to

bargain. (NLRB v. Benne Katz, etc., dba Williamsburg Steel Products Co. (1962) 396 U.S. 736 [82 S.Ct. 1107, 50 LRRM 2177].) It is incumbent upon an employer to "present the union with its detailed contract proposals and permit the union a reasonable time to evaluate the proposals." (M & M Building & Electrical Contractors, Inc. (1982) 262 NLRB 1472 [110 LRRM 1512], rev. den. sub nom. Carpenters Local 266 v. NLRB (9th Cir. 1983) 707 F.2d 516 [113 LRRM 3360].)

Thus, in Stone Boat Yard, Inc. v. NLRB (9th Cir. 1983) 715 F.2d 441 [114 LRRM 2407], the court found that the employer's "one-sentence" letter advising the union of proposed changes was inadequate due to its lack of specificity.[1/] Accordingly, the employer could not contend that the union sought to avoid or delay bargaining, and on that basis seek to excuse its duty to provide notice of proposed changes adequate to permit the parties to negotiate a new agreement or bargain in good faith to impasse. As the court observed, "[R]equiring notice of specific proposals before allowing unilateral changes after an unwarranted delay in bargaining is consistent with our cases that require such notice before impasse and before the right can arise to implement unilateral changes." (Id. at p. 444.) Similarly, in NLRB v. Auto Fast Freight, Inc. (9th. Cir. 1986) 793 F.2d 1126 1122 LRRM 3058], the court rejected the employer's attempt to

[1/]The employer's inadequate "notice" stated: "This notifies you . . . that it is the intent of Stone Board Yard, Inc. to offer substantial changes in the entire contract effective 1 July 1980."

justify its unilateral changes on various grounds, including the Union's alleged avoidance of the bargaining table. The court pointed out that "wholly apart from the issue of the union's willingness to bargain, [Respondent] never provided the union with the 'opportunity to bargain[1] . . . [by means of] detailed advance notice of the proposed changes, prior to unilateral implementation." (Id. at p. 1131.) The court explained that "[E]ven if the union had been avoiding the bargaining table, [Respondent] has failed to satisfy a basic pre-condition for excusing it from the duty to bargain." (Ibid.)

Consistent with the requirements of Labor Code section 1148, which requires that we follow applicable precedents of the National Labor Relations Act (NLRA or national act), as well as this Board's prior adoption of Katz, supra, 396 U.S. 736 (see, e.g., Montebello Rose Co., Inc., et al. (1979) 5 ALRB No. 64), we find no sound legal basis for departing from such prevailing authority that has guided this Board from the inception of the Agricultural Labor Relations Act (ALRA or Act). Thus, we would find that under such federal precedent and our own case law Respondent's purported "notice" was inadequate. Respondent's December 5, 1986, letter to the Union was a general economic statement and invitation to bargain, but it clearly did not rise to the required standards of specificity.[2/] (See Concord Metal, Inc. (1989) 295 NLRB No. 94 [131 LRRM 17031.)

[2/]The relevant language in Respondent's letter stated only that "You are aware that the agricultural industry is experiencing wage reductions. These issues must be addressed at the table."

The lack of adequate notice in this matter is determinative. However, we would also point out another shortfall in the majority's reasoning. By our reading of the record, dilatory bargaining practices were not confined exclusively to one party.[3/] Those exceptional cases justifying a noticed unilateral implementation of bargaining proposals have required a far greater showing of employer diligence and union delay than is presently before us. Respondent's conduct here is in stark contrast, for example, to the employer in AAA Motor Lines (1974) 215 NLRB 793 [88 LRRM 12531, who repeatedly presented the union with completed bargaining proposals and who pursued union evasiveness through charges for failure to bargain in good faith.[4/] In this case, the

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[3/]We recognize that the Board's inquiry into this matter should be limited inasmuch as the unfair labor practice charges and complaint are predicated only on specific and precise allegations of unilateral changes in the context of per se violations of the Act and, as such, would not require a showing of bad faith by the alleged wrongdoer. As no party has alleged a breach by the other of the duty to bargain in good faith, we have examined that bargaining history which is on the record only to shed light on the question of prior notice. It is not clear that the totality of bargaining vis-a-vis good faith bargaining is in issue, is crucial to resolving the issues herein, or was fully litigated by the parties in the context of overall bargaining.

[4/]In AAA Motor Lines, Inc. (1974) 215 NLRB 793 [88 LRRM 1253] the employer contacted the union early in April 1973, nearly three months before the anticipated expiration of the current collective bargaining agreement on June 30, 1973, with new contract proposals. (Id. at p. 793.) Receiving no reply, the employer again contacted the union one week later and proposed a subsequent date. Shortly before the new date, the union informed the employer that the meeting was not possible. When the employer again requested a bargaining date, the union replied that no date was possible until "after the master agreement was settled." When the employer pointed out the near expiration of the current agreement, the union agreed to a meeting date approximately a

(fn. 4 cont. on p. 5)

only completed bargaining proposal on the table during the period at issue was the Union's. The Respondent was preparing preliminary economic studies.[5/] The Respondent never alleged Union bad faith bargaining or impasse.

In summary, then, we would find that Respondent's terse statement concerning its perception of general economic trends in agriculture on December 5, 1986, failed to provide the Union adequate notice of its specific intended changes prior to their implementation. (Stone Boat Yard, Inc., supra.) We would also

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(fn. 4 cont.)

month later, but subsequently did not attend the newly set meeting or furnish promised proposals. (Ibid.) About the same time the employer received a letter from the international union informing the employer that a meeting would be possible "sometime in June." After the employer informed the international that this indefiniteness was unacceptable in light of the expiration of the present contract, and thereafter received no response within a reasonable time, the employer filed bargaining charges with the national board in early June 1973. Shortly thereafter the employer was notified by the union that a meeting would take place in Washington, D.C. on June 14, 1973. Although a meeting took place at the appointed time, the union was unprepared for the meeting, no meaningful negotiations took place, and the NLRB determined that the meeting was set up merely to avoid the effect of the employer's unfair labor practice charge. (Id. at p. 794.) Although the employer continued to seek meetings with the union, no further meeting was obtained despite the expiration of the contract, as the union continued to avoid such a meeting. On July 2, 1973, the employer unilaterally implemented its previous proposals.

[5/]Nor can we discern any valid reason why Respondent failed to notify the Union of its intended wage and benefit reduction. Respondent's argument that other issues could have been negotiated while it pursued its economic study appears dubious since a wage and benefit package could hardly be bargained until Respondent indicated it was prepared to bargain in these fundamental areas. The argument that the Union somehow abandoned the bargaining process appears specious in light of specific Union requests for the promised study on January 13 and January 23, 1987.

note a general disinclination to bargain efficiently on both sides, but, considering Respondent's own conduct, cannot conclude that the Union acted with such an egregious, level of dilatoriness and evasion as to justify unilateral implementation. (AAA Motor Lines, supra; Auto Fast Freight, supra.)

As a separate matter, with respect to harvest methods, Respondent simply proposes as justification for the unilateral changes the fact that it had submitted a proposal to the Union in which it reserved the right to utilize specialized equipment and notify the Union within 24 hours thereafter. We find nothing in the ALJ's Decision, the record, or the briefs of the parties to indicate that the parties had bargained in good faith to impasse over the harvest article so as to permit Respondent to implement the change without violating the Act. Moreover, as the ALJ correctly observed, proposed Article 19 says nothing about the Employer's intention to introduce such machines. Whatever the purpose of the 24-hour notification requirement, we do not consider the general language of this "opening proposal," as our colleagues in the majority characterize it, sufficient to give the Union specific notice and an opportunity to bargain over the introduction of the first machines.

Accordingly, we would sustain the ALJ's conclusions that Respondent engaged in unfair labor practices when it implemented changes in bargainable matters without first affording the Union prior notice and an opportunity to bargain.

DATED: January 25, 1991

BRUCE J. JANIGIAN, Chairman

JOSEPH C. SHELL, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we violated the law by making unilateral changes in terms and conditions of employment without notice to or bargaining with the UFW, the certified representative of our employees. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize themselves;
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 another; and
6. To decide not to do any of these things.

WE WILL NOT refuse to bargain over changes in transfer policy;

WE WILL NOT refuse to bargain over the use of labor contractors;

WE WILL make whole all agricultural employees for all losses sustained as a result of our refusal to bargain.

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

DATED:

BRUCE CHURCH, INCORPORATED

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Bruce Church, Inc. (UFW)

17 ALRB No. 1
Case No. 87-CE-SAL, et al.

Background

The employer was alleged to have made unlawful unilateral changes in terms and conditions of employment when it: (1) implemented wage and benefit reductions; (2) introduced naked palletized machines in Huron, Santa Maria, and Salinas at various times in the spring of 1987 and in Salinas in the spring of 1988; (3) laid off members of Ground Crew No. 2 without permitting them the opportunity to follow the harvest to California; and (4) used labor contractor crews instead of seniority crews to harvest its lettuce crop in Huron, Santa Maria and Salinas from the spring of 1987 forward. The employer did not dispute that the changes were made unilaterally, but insisted that it had the right to make the changes because: (1) the parties were at impasse; (2) the Union had breached its bargaining obligation through dilatory and evasive conduct; and (3) the Union abandoned the bargaining unit.

The parties met on June 24, 1986, at which time the Union presented a comprehensive proposal and the employer countered with its noneconomic proposals (its economic proposals were to be presented after a survey of its competition's rates was conducted). Despite numerous requests from the employer, the parties did not meet again until March 19, 1987, when both parties had the opportunity to present complete proposals. They did not meet again until February 29, 1988. The employer implemented reductions in wages and benefits on January 30, 1987 and began implementation of the other changes in April of 1987.

ALJ's Decision

Finding that the record did not demonstrate "insuperable disagreement," over substantive issues but, rather, a dispute over who owed whom a counterproposal, the ALJ concluded that Respondent failed to show that impasse had been reached. (Standard Rice Co., Inc. (1942) 46 NLRB 49, 53.)

Recognizing that the NLRB has long held that unilateral action may be excused by dilatory or evasive conduct by a union, if the union is first given notice of the intended changes and an opportunity to bargain, the ALJ found that no such notice had been afforded as to any of the unilateral changes. He relied on the fact that Respondent's contract proposals prior to the changes were silent on wages and benefits and the transfer policy, and concluded that Respondent's conduct with regard to labor contractor crews and the introduction of machinery was inconsistent with Respondent's proposals. The only exceptions were the introduction of an

additional palletized machine in Salinas in the spring of 1988, of which the Union was given notice and failed to request bargaining, and certain periods of time in Huron and Salinas where it was not clear from the record that the use of labor contractor crews was inconsistent with Respondent's established practices which were mirrored in Article 18 of Respondent's March 19, 1987 contract proposal. He did not address directly whether the Union's conduct had been dilatory or evasive.

Acknowledging that under ALRB precedent abandonment could be a defense to a refusal to bargain charge where the union had become defunct or disclaimed interest in continuing to represent the unit, the ALJ found that no such showing had been made. The ALJ did not find the Union's periods of inactivity to be sufficient to constitute abandonment, particularly because of the dispute over who was owed a proposal.

Board's Decision

In its exceptions to the ALJ's decision, Respondent pursued only its abandonment and dilatory conduct defenses. The Board affirmed the ALJ's rejection of the abandonment defense, noting that there was no evidence that the Union had disclaimed interest in, or was unwilling or unable to represent the bargaining unit. (Lu-Ette Farms (1982) 8 ALRB No. 91, p. 5; O. E. Mayou & Sons (1985) 11 ALRB No. 25, p. 12, fn. 8.)

A majority of the Board found that the Union had indeed been dilatory and evasive in its conduct between the bargaining sessions on June 24, 1986 and March 19, 1987, and between March 19, 1987 and January of 1988, as evidenced by its lack of response to Respondent's numerous requests to continue bargaining. The Board affirmed the ALJ's holding that no notice was given as to the change in transfer policy and the change in the use of labor contract crews because Respondent's contract proposals were silent on the transfer policy and its conduct was inconsistent with past practice and the use of labor contractor crews was inconsistent with Respondent's March 19, 1987 contract proposal. A majority of the Board reversed the ALJ's holdings with regard to the changes in wages and benefits and the introduction of palletized machines. The Board found that Respondent's December 5, 1986 letter, in which it reiterated its earlier requests for bargaining and specifically expressed the need to immediately talk about wage reductions, constituted sufficient notice under the rule set out in AAA Motor Lines, Inc. The majority emphasized that its holding was based on the peculiar facts of this case and would not obviate the need in other circumstances to provide detailed proposals prior to implementation. The majority found no violation with regard to the introduction of the palletized machines because, unlike the ALJ, the majority interpreted Article 19 of Respondent's March 19, 1987 proposal to essentially cede to Respondent the discretion to

introduce new machinery.

Dissenting and Concurring Opinion

Chairman Janigian and Member Shell concurred in the majority's findings that Respondent violated the duty to bargain by altering established policies governing transfers and use of labor contractor crews without prior notification to the Union and reasonable opportunity to bargain before the proposed changes were implemented. They departed from the majority inasmuch as they would have found a similar lack of notice and opportunity to bargain with respect to Respondent's additional changes concerning mandatory subjects of bargaining, namely modification of harvesting methods and reduction in employees wages and benefits.

* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: BRUCE CHURCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 87-CE-8-SAL 87-CE-72-VI 87-CE-41-SAL 87-CE-59-SAL 87-CE-66-SAL

Appearances:

Paul D. Gullion, Esq.
Abramson, Church & Stave
Salinas, California for the
Respondent

Stephanie Bullock Salinas
Regional Office Salinas,
California for the General
Counsel

No appearance for Charging Party

Before: Thomas Sobel
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

* After hearing, General Counsel and Respondent "stipulated" to correct the record in certain particulars; construing the parties' action as a motion, it is hereby granted. The list of corrections is attached to this decision.

THOMAS SOBEL, Administrative Law Judge:

This case was heard by me on November, 1989. Following the usual statutory course, a First Amended Complaint issued in March 1989 alleging that Respondent Bruce Church, Inc. unlawfully implemented a variety of changes in its employees' terms and conditions of employment without giving notice to, or bargaining with, their certified representative, the United Farm Workers of America, AFL-CIO, ("UFW"). Respondent insists that any changes in its practices were made lawfully after impasse, the union had breached its bargaining obligation, or abandoned its representation of the unit.[1]

I. FACTS

BACKGROUND

The UFW has been the certified bargaining representative for Respondent's agricultural employees (excepting those in the vacuum cooler and packing shed) since 1977. After certification the parties entered into a contract which, though it expired over a decade ago (December 31, 1978), was to be their last. In January 1979, bargaining for a new agreement began; a month later,

[1]I should note that in its Answer Respondent raised one other affirmative defense besides those already mentioned, namely, that the introduction of machinery did not deprive any worker of seniority. Third Affirmative Defense. I do not understand that to be at issue in this case. Although the complaint alleges loss of work that would have gone to employees by virtue of their seniority, the alleged unlawful change is the loss of work, not the loss of seniority.

the Union struck. Negotiations continued without success and resulted in the Union's lodging a series of unfair labor practice charges accusing Respondent of bad faith bargaining. The charges went to complaint and were not more or less resolved until March 1986 when, reversing a decision by our Board, the Court of Appeal found that Respondent had bargained in good faith to impasse at least through February 1980. Bruce Church, Inc. v. ALRB (1978) 5 Civil No. F003587.

This did not entirely end the matter: the case was remanded to the Board to determine if Respondent acted lawfully in implementing its first year bargaining proposals in February 1980, and its second year proposals in September 1980. In 1988, the Board found the February implementation to be lawful, but the September action to be unlawful. It specifically declined to "consider any events after September 1980. See 14 ALRB No. 20.

This case focuses on Respondent's relationship with the Union after 1985. About the intervening years little is known. Respondent was found guilty of unlawfully suspending members of a broccoli crew in 1982, but was exonerated from additional allegations of unlawful practices, including alleged refusals to bargain. Bruce Church, Inc. (1985) 11 ALRB No. 9. From the present record we also know that Respondent implemented a complete proposal, including a multi-year wage package, in 1982, the granting of which figures in the events presently under consideration.

The present history begins again on July 10, 1985 when the Union was notified that the law firm of Abramson, Church and Stave, and specifically Arnold Myers, would be representing Respondent in negotiations. At that time, Peter Cohen was representing the Union. Myers and Cohen subsequently met on October 21, 1985, but neither presented any proposals. Another meeting was held on November 7, 1985; again, no proposals were presented.

The next contact between the parties occurred on January 28, 1986 when Respondent advised the Union that it was closing down a labor camp in Salinas. Without saying so directly, the company took the position that the closing of the camp was not a mandatory subject of bargaining since the company's representative, Larry Silva, purported to be notifying the Union only "as a courtesy." When Cohen requested bargaining, Myers responded more directly and, while not completely shutting the door on bargaining, challenged Cohen to demonstrate that closing the camp was a mandatory subject of bargaining.[2]

Apparently no meeting on either the subject of the camp's closing, or the nature of the subject, was ever held. Indeed, there was no further communication until about a month later when,

[2]Myers wrote: "I am unaware of any legal authority which requires negotiation over the decision to close the single men's camp in Salinas. If you have such legal authority, please bring it to the meeting so I may review it." Jt. 1, Exhibit F.

on April 30, 1986, Arturo Mendoza notified Myers that he was taking over negotiations from Cohen and that he would like to meet within the next two weeks. In the meantime, on March 11, 1986, the Court of Appeal issued its decision finding that Respondent had bargained in good faith to impasse through February 5, 1980. The decision seemed to spur the Union: apparently for the first time, the Union took the initiative in requesting a meeting,[3] and when the parties did meet, Mendoza presented what he called a "modification" of the Union's last proposal.

Since only the "modification" is in evidence, it is unclear what else was on the table at that time. So far as the modification is concerned, the Union indicated willingness to accept the company's August 31, 1982 proposals on Discrimination and Mechanization, and the Company's August 16, 1982 proposal on .Jury Duty and Witness Fees. It also presented new language on Union Security, Subcontracting, RFK Medical Plan, Duration, Local Issues, and of greatest importance to this case, a proposal on wages.

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[3]Although it is not entirely clear, it appears from the grammar of Griffin's October 14th and 30th, 1985 letters to Cohen that it was Myers who scheduled the first two meetings. Thus, the October 14th letter reads: "This will confirm our...conversation during which we scheduled a meeting....(Joint 1, Exh. B, see also Exh. C, letter of October 30, 1985.) Although "we" may simply refer to mutual agreement in scheduling the meeting, on the record as a whole, I believe it more likely than not that it means that Respondent scheduled the meeting. Myers is clearly punctilious about making a record and I resolve the ambiguity in favor of his taking the initiative.

Although there is no testimony concerning what the parties discussed at the meeting, it appears from Mendoza's subsequent letter to Myers, that Mendoza understood Myers to have been confused about how the Union's "modifications" squared with its previous proposals. To clarify matters, Mendoza sent a copy of the "complete text of the Union's proposal for a collective bargaining agreement":

> At our last meeting May 22, 1986, we presented you the Articles we were changing from our last proposal (Union Security, Subcontracting, Jury Duty and Witness Pay, Discrimination, Mechanization, RFK Medical Plan, Duration and Wages). Since you could not understand from the Company's records the Union's position on the other articles we have proposed in the past, enclosed is a copy of the complete text of the Union's proposal for a collective bargaining agreement with Bruce Church, Inc.
>
> Jt. 1, Exhibit I, Letter of May 31, 1986

If I understand Mendoza correctly, he is contending that the "modification" together with the enclosed text represent a complete proposal.

By letter of June 12, Myers replied. He thanked Mendoza for the "complete text of the Union's proposal", but maintained it was not he, but Mendoza, who did not know where the parties stood at their last meeting. By letter dated June 17, Mendoza disputed Myers' contention that he did not have a complete record of his "own" proposals, and again insisted Myers' records were incomplete.

Despite this disagreement, the parties managed to agree to meet on June 23rd, but met on June 24 after Mendoza cancelled the earlier meeting because of an emergency. When they met, the

Company presented proposals regarding No Strike/No Lockout, New or Changed Operations, Grievance and Arbitration Proceedings, Health and Life Insurance, Company Housing and Food Service, Miscellaneous and Term of Agreement and Execution.

It appears from the text of the Company's proposal that Myers remained confused about the Union's position on (1) Union Security, since he claimed the Union's modification of May 22, 1986 reopened an issue upon which the parties had already agreed; (2) on Discrimination, since he claimed that the Union's purported agreement to the Company's August 31, 1982 proposal repudiated its earlier agreement to a January 24, 1983 proposal; and (3) on Jury Duty and Witness Pay, since he contended that the August proposal which the Union purported to accept had been superseded by a proposal advanced in November. Even as he was expressing confusion over how the Union's proposals dovetailed with its earlier actions, Myers himself proposed to modify the parties' previous agreement on the No Strike/No Lockout provision. Joint 1, Exhibit B, Article 17. The Company made no response to the Union's wage proposal.

Again, there are no details concerning the parties discussion: all we know is that the meeting was held, that, at least prior to the meeting, the Union was contending, and Respondent did not dispute, that a complete proposal was on the

table;[4] and that the Company submitted a partial response. Another meeting was initially scheduled for July 9, but was cancelled by the Union, which also cancelled the re-scheduled meeting set for July 22nd. On August 7, the Employer notified the Union that it was implementing a new cauliflower harvest operation in Santa Maria. The Union apparently made no reply. On August 16, Mendoza informed Myers that Humberto Gomez would be taking over negotiations for the Union.

A moment ago, I adverted to the absence of any proposal on wages in the Company's June 23rd counter to the Union's May 22nd proposal. I will now consider Respondent's explanation for the lack of response on wages as, moving from the bargaining table into the fields, we encounter the first of the alleged unlawful changes and Respondent's justification for it.

Larry Silva, Respondent's Personnel Manager, testified that Respondent was not ready to present a wage proposal in June, and did not even begin to consider formulating one, until sometime in August when the last of its previously scheduled pay raises

[4]Despite Myers' confusion over what the Union's actual position was on the items as to which there had been earlier "agreement," in the absence of any evidence concerning the ground rules for bargaining, and especially in view of the Company's proposal to modify the parties' previous agreement on the No Strike/No Lockout provision, I cannot conclude that the Union could not modify previously agreed-on provisions. In view of Myers' acknowledgment that he had received a complete proposal, it would appear that the Union's "current" position was embodied in the complete proposal.

(implemented in 1982) was to run out. In the meantime, Silva was told "to go out and look at the...lettuce industry—look at our competition, look at hourly rates, piece rates for various classifications and put together a summary of my research" (II:131) "for eventual meetings with the United Farmworkers." (II:133-34.) By letter dated September 23, 1986, the company told the employees exactly this:

> TO: ALL BRUCE CHURCH, INC. FIELD EMPLOYEES
>
> Typically it has been in September that we have announced and implemented any wage and benefit changes for the following year. There are two primary reasons we are not able to maintain that timing this year.
>
> The first reason is that for our California operations, we are still obligated to negotiate with the UFW because it is the certified bargaining agent for employees in California. While a couple of bargaining sessions have occurred concentrating on the same non-economic issues as before, economics have not yet been discussed. We anticipate other sessions before too long. Secondly, as I'm sure you are aware, there continues to be a lot of shifting of operations and changes in wages and benefits by many of the companies that we compete with, including a couple of new UFW contracts for Imperial Valley companies. For the above reasons, we feel compelled to take a very hard look at what is happening in the industry and determine its impact on our competitive position before making any proposals for California or changes in Arizona. A study is underway in this regard, but it will take a while longer to complete.
>
> I want to assure you that the philosophy of the Company regarding wages and benefits remains the same as in the past many years and relatively we will continue to be offering the best overall job opportunities in agriculture. However, it is imperative that your Company maintain its relative competitive position in order to remain viable and to continue providing employment.
>
> It is for these reasons that we are not in a position to comment anymore on the subject at this time. In the meantime, all wages and benefit levels are being maintained as they have been for the past year.

s/Ted Taylor

Taylor's letter speaks of the study as still "underway" as of September 23, 1986; in his testimony Silva provided no date upon which he completed it, though he did testify about what he discovered:

> we were becoming very non-competitive...[W]e were not competitive in Arizona. We were not competitive in Santa Maria and San Joaguin and becoming less competitive in the Salinas area. Increased use of labor contractors. Contracts that had been signed with [Abatti and Sam Andrews] by the United Farm Workers...provided for substantially lower rates in harvest commodities than we were paying at the time." (II:132.)

Two weeks after Taylor's letter, Myers wrote to Gomez saying that the Union had promised a response to the Company's June 23rd proposal, but had neither produced one nor kept any new meeting dates since it cancelled the July 9th date. Gomez did not respond. On October 31, 1986, Myers[1] Administrative Assistant again wrote to Gomez, asking him "to contact us to arrange an alternative date" or to "suggest a date for a negotiating session."

On December 5, 1986 Myers wrote again:

> Bruce Church, Inc. is again requesting negotiations between the United Farm Workers and Bruce Church, Inc. The last negotiating session was held on June 24, 1986. The Company had provided a proposal and the Union promised a counter response. Meetings were set for July 9, 1986 and July 22 1986. Both meetings were cancelled by the Union.
>
> Since the June 24, 1986 meeting Bruce Church, Inc. has requested meetings on at least five occasions.[5] The

---

[5]I count four.

> Union has not responded. You are aware that the agricultural industry is experiencing wage reductions. These issues must be addressed at the table. We repeat our continuing request for a negotiating session. Please suggest available dates.

Again, there was no response. On January 29, 1987 the Company distributed a notice to its employees, announcing the implementation of new wage rates and changes in benefits:

> Because the Company continues to find itself in a poor competitive position in relation to certain wage and benefit rates being paid by other companies in California, as well as certain benefits being paid in Arizona; and because the UFW has failed to respond to the Company's several requests to negotiate regarding the Company's California operations, we feel it is necessary, in order to become more competitive, to make changes at this time. Your foremen and supervisors will have specific details.
>
> Generally, however, hourly rates for Thinning and Weeding and General Ranch work in California will be decreased, but will [sic] continue to provide higher rates than outside contract crews make. It is our intent that the rates being paid for those jobs in Arizona will continue at current levels. Certain changes in wages and benefits paid to Tractor Drivers and Irrigators in California will also take place. In order to get fringe benefits a little closer in line with those of competitors, certain changes will take place in both California and Arizona regarding the Company's contribution to the Retirement Plan, holidays, vacations, medical insurance and overtime provisions.
>
> Hourly rates and piece rates for lettuce harvest in California are being changed to reflect those presently paid in Arizona. We know that contract crews are packing lettuce for nearly $.40 per box less than our costs, and employees of other companies that are working on Wrap & Palletized naked machines earn more than $1.00 less per hour than our rates will generally provide.

Wages were reduced in the Tractor Driver, Irrigator, General Ranch, Thin and Weed, Water Truck and Sprinkler classifications

and in most of the lettuce harvest classifications.[6] Compare GC 12a with GC 12b. There were changes in benefits too: the bonus for Tractor Drivers and Irrigators was eliminated; Holiday pay was reduced and the conditions for receiving it changed; Injury on the Job pay was eliminated; Retirement Plan contributions were reduced; certain paid holidays were eliminated; and finally, the schedule for computing vacation pay was changed. The next day Myers wrote to Gomez:

> The last negotiating session between Bruce Church, Inc. and the UFW was held on June 24, 1986 at which time we presented our counterproposal. We have still not received your response to that counterproposal. Since that time, the Union has cancelled meetings scheduled for July 9, 1986 and July 22, 1986. The Company has requested in writing on July 17, 1986; October 15, 1986; October 31, 1986 and December 5, 1986 dates for negotiations. To date, you have not responded to our requests. We have repeatedly expressed our concern and need to meet regarding economic conditions as well as other provisions of a collective bargaining agreement. Your failure to even respond to our requests for dates has been a serious breach of the collective bargaining process. The only logical conclusion that can be reach because of your actions is that you are refusing to bargain and the bargaining process is at an impasse. Because of your inaction and refusal to meet, we feel fully justified in implementing those wages and benefits that we deem appropriate at this time.

The same day Gomez wrote to Myers:

> The purpose of this letter is to demand that Bruce Church, Inc. refrain from implementing the unilateral changes as notified to the workers on January 29, 1987. Such implementation of unilateral changes affecting the working conditions, Wages and Benefits of the workers

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[6]General Counsel concedes that the flat pack lettuce piece rates for cutters/packers/closers "was not lowered," Post-Hearing Brief p. 16.

will be an illegal act under the ALRB.

> On January 13, 1987, I spoke with your Legal Assistant Lynn Griffin and I requested the economic proposal from Bruce Church Inc. to make a complete counter proposal to the Company. Also on Friday January 23, 1987 after the J & L meeting I told you that I was waiting for the economic proposal from Bruce Church Inc. to make a complete counter proposal.
>
> In such conversation you did not told [sic] me or mention anything in relation that Bruce Church, Inc. did have intention to make unilateral changes or requested to meet and discuss such changes Therefore the Union is objecting to any implementation of unilateral changes from Bruce Church, Inc.

Gomez also filed a charge accusing the company of refusing to bargain. On February 2, 1987, he wrote to Myers again, explaining that the Union had been waiting on the Company's economic proposal since June:

> As responce [sic] to your letter dated January 30, 1987 and to clarify the record, let me state that in the meeting of June 24, 1986 the Company did not presented [sic] the ecomomic counter proposal to the Union. In such meeting you stated that it will take you a couple of months to prepare the Company economic counter proposal.
>
> The Union up to now has not received the Company economic counter proposal.
>
> I have previously advised your Legal Assistant Lynn Griffin that I was waiting for the economic proposal from the Company, and more recently on January 23, 1987 I advised you the same, that I was waiting for the economic proposal from the Company so I can prepare a complete counter proposal. During such conversation you did not mention anything regarding the Company intention to unilateraly [sic] cut wages, benefits and working conditions nor you requested to meet to discuss such changes.

Myers responded about 10 days later. He did not deny Gomez's assertion that the week before Respondent implemented the

wage changes, Gomez had taken the position that the Union was waiting on Respondent's economic proposal:

> To reiterate our position as set forth in our letter to you of January 30, 1987, the company believes that your failure to respond to our written requests for dates is a serious breach of the collective bargaining process. We do not consider an offhand comment during a non-related telephone conversation to be a response, nor do we consider negotiations concerning another client to be an appropriate time or place to discuss Bruce Church, Inc. matters.
>
> We have been waiting for your proposal since June 24, 1986; however, you profess total ignorance of that fact. We urge you to review your notes to clarify in your mind the agreement made during the June 24, 1986 negotiating session. Since we have not received such proposal, we have contacted you numerous times in writing to request negotiating dates. We have received no response from you.
>
> Since I have been involved in Bruce Church, Inc. negotiations, the union has had five different negotiators representing it in regard to the Bruce Church, Inc. negotiations, namely, Peter Cohen, Oscar Mondragon, Tony Acosta, Arturo Mendoza and now Humberto Gomez.[7]
>
> It is obvious from the record of the negotiations that none of the negotiators know [sic] what has been or is going on. The union cannot however, expect the company to be responsible for the union's confusion. Therefore, it is the company's position that the union has refused to bargain in good faith and that collective bargaining between the parties is at impasse.
>
> Bruce Church, Inc. has been available to negotiate. It has been the union that has refused to take action. Should you wish to initiate a meeting by requesting dates, we will arrange to meet with you to negotiate those appropriate issues.
>
> (Emphasis added)

[7]I count only three and Respondent does not presently contend there were more than three.

By letter dated February 26, 1987 Gomez re-asserted the Union's position that the Company was in bad faith, requested the Employer's economic counter-proposal, and suggested meeting on various dates in March. The parties finally met on March 19, 1987. The Union re-presented its proposals of May 22, 1986 except that it included a new rate for the Medical Plan. The Company presented a complete proposal. Again, there is no evidence about the parties' discussions.

In light of later developments, Respondent's proposal concerning labor contractors requires particular attention. Silva testified that the company had previously used labor contractor crews "whenever there [was] excess product that [could not] be handled by the company's crews" or "if [there was] a need for a particular operation and that need [lasted] less than [the] 14 days [required for a recall.]" (1:43.) Respondent contends however, that its March 19th proposal concerning the use of labor contractors (set forth below in haec verba,)[8] reflects the company's past practice, which was to use labor contractors whenever necessary. Post-Hearing Brief, p. 29.

To the extent Respondent is correct that the March 19 proposal does summarize past practice, I cannot read language which requires the existence of certain specified conditions to justify the use of contractors (called "limited cases" by the

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[8]18.1 The Company shall not infringe upon the classification seniority rights held by any Company seniority employee by the use of labor contractors or subcontractors except in the limited cases described in

proposal itself) as authorizing their use whenever Respondent deemed it "necessary." Moreover, Respondent's present characterization of the sweep of its practice is not only

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18.2:

18.2 The Company shall not employ either labor contractors or subcontractors to accomplish any work performed historically for the Company by bargaining unit members if there are at the time the work must be done seniority employees in the classification covering the work to be done who are then available for recall, except in any of the following cases:

18.2.1 During the period of time required for the recall process in 5.3.

18.2.2 The work to be done will not last longer than the period required for the recall process in 5.3.

18.2.3 The work to be done is remote from existing Company operations by 50 miles or more.

18.2.4 There is no established classification for the work to be done.

18.2.5 Employees recalled for the work refuse the recall because housing is not available, or for any other reason.

18.2.6 A bona fide emergency exists which places crops at immediate risk.

18.2.7 The Company lacks the equipment/ expertise, license or specially skilled employees to perform the work involved.

18.2.8 The Company historically employed labor contractors or subcontractors for the work involved.

18.2.9 The work to be performed has not historically been performed for the Company by members of this bargaining unit.

(Emphasis added)

contradicted by Silva's testimony, but also by its July 6, 1987 statement (in response to a Union request for information) that it only used contractors "from time to time whenever the workload [was] excessive." Joint 5, Exhibit II.

Before describing the pattern of contractor use about which General Counsel complains, I must briefly interrupt the chronology in order to describe Respondent's historic practices because the controversy over the use of contractor-supplied labor, as well as the other changes shortly to be encountered, can only be understood against that background.

Respondent is a year-round supplier of iceberg lettuce, harvesting in three regions of California and in Arizona as crops mature. Lettuce is harvested in Arizona from January until the beginning of April when operations begin to wind down. In early April, harvest starts in Huron and terminates in Yuma by mid-April as it picks-up in Santa Maria. Operations overlap in the two California valleys until the end of April when, winding up in Huron, they move to Salinas where, along with those in Santa Maria, they continue through mid-October. As the harvest winds down in Salinas, it returns to Huron where, from October to mid-November, it again briefly overlaps Santa Maria operations. The calendar year ends in Arizona where the crop cycle is renewed.

Until the changes which are the subject of this hearing took place, Respondent utilized three different packing

techniques: the so-called "naked" flat pack, the "wrap" pack, and the "bulk" pack. I will be concerned only with changes in the "naked" pack. This sort of pack is done on the ground by groups of three to five workers, consisting of "cutters" who decapitate the lettuce, perhaps "windrowers" who line it up, and, finally, packers who trail the others and place the unwrapped heads in boxes in the fields. Prior to 1987, the naked flat pack was accomplished by three ground crews (called Ground Crew 1, Ground Crew 2 and Ground Crew 7) consisting of between 36-45 members each

Historically, Respondent permitted members of these crews to follow the harvest from region to region. Although it is not 'clear how many workers actually did so, Silva conceded that "some" did, (1:25) and the company's seniority system was constructed to permit them to do so: as Silva put it, if "a regular member of [a] crew [in one geographical area] expressed the desire to go to the next location," he was entitled to go. (Emphasis added 1:26.)[9]

In April of 1987, this practice was to change as the season wound down in Arizona. Although it is not clear how many of the crews were in Yuma at the start of the season, we do know

[9]I cannot find any provision in the Seniority Article which says this, see GCX 14. Nevertheless, the parties agree that this was Respondent's policy. Under such a policy, when Respondent had no need for ground crew no. 2 in Santa Maria, Huron became its "next' location.

that Respondent introduced machinery (the so-called "naked" palletized machines) at the beginning of the Yuma season, and that by the end of the season, only one ground crew (No. 2) was still at work. This crew was laid off on April 8, 1987 at the close of the Yuma season. Among those laid off were Alejandro Arellano, Isaias Barboza, Esau Cedillo and Jose Beas, each of whom testified that he would have followed the harvest to one of the California regions, but for his layoff. (107:11-14; 120:2-11; 122:14-20).

The crew was laid off, Silva testified, because Respondent had decided not "to have any ground crew operations in Santa Maria," (1:26-27) that is, to go exclusively with a machine harvest. On' April 10, 1987 Silva offered the laid off members of this crew the opportunity to apply for 11 open positions in the machine crew (a machine has about 22-23 positions), with the positions to be filled in order of company seniority.[10] When harvest began in Huron in April 1987, Respondent deployed naked palletized machines there, too, see GCX 15, 16, and, from April 20-28, used labor contractor crews, Jt. 5, p. 1,[11] along with the remaining seniority ground crews, numbers 1 and 7.

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[10]Silva kept a record of the number of responses he received to his offer: in all, 17 crew members responded, only five indicated willingness to accept work on the machines. It should be pointed out that wage rates on the machines were less than Respondent's naked pack rates.

[11]The parties prepared a joint stipulation summarizing labor contractor production during the pertinent time periods: the records show the number of cartons filled by contractor crews on April 20, 21, 22, 23, 24, 27 and 28, 1987 in Huron. For the ease of reference, the Stipulation has been attached as Attachment I.

While these events were taking place, the parties continued their almost purely epistolary relationship. On April 14, Myers wrote to Gomez to remind him, as he put it, that the Union had promised a counter proposal at the March 19th meeting. Gomez replied on April 15 that he was still studying the Company's proposal and needed more time, both because the Company had "reneged" on previous agreements and had only recently presented its economic package. On May 8, Myers wrote again to say that Gomez had "stated he would let [Myers] know when the Union was available to meet." On May 13, Gomez replied, again accusing the Company of causing the delay by reneging on all previous agreements and thereby requiring the Union to spend a great deal of time studying the new proposal. Gomez proposed restoration of all wages to the December 31, 1986 levels.

Myers responded on May 22. He noted that the Company had presented a proposal on June 24, 1986 and that through March 19, 1987, the Union had not responded to its requests for a meeting. He characterized the Union's March 19, 1987 proposal as evidencing "no new movement or attempts [sic] to resolve outstanding issues," and compared it unfavorably to the Company's proposal which he said had been restructured in order to more accurately reflect current conditions, and which, he argued, had not been presented earlier only because the Union had refused to negotiate. In this connection, he charged that Gomez's professed need for more time to study the Company proposal was merely a tactic covering a

refusal to meet. Finally, he wrote that Gomez's "proposal" to reinstate December 1986 wage levels was inappropriate because "it has never been the practice in these negotiations...to bargain by mail."

The Union's only response was to request information about: (1) crops harvested (including the number of acres/crop by the Company; (2) locations of fields harvested by the Company labels used by the Company; (3) Seniority lists, (4) wage schedules; (5) names of labor contractors used by the Company and the names and addresses of contractor-supplied employees.

By now the Salinas harvest was in "high-gear". When the harvest began in mid-April, the Company introduced naked palletized machines there too: by April 20, 1987, machine "82" was in Salinas, by May 1, machine "70" was in Salinas, by May 28, machine "71" was there. These machines did not entirely replace ground crew operations as they had in Santa Maria. When the season began, crews "1" and "7" were at work; by mid-May, they were supplemented by labor contractor ground crews (on May 13, 14, 15, 22, 23, 26, 28 and 29, See Joint 5). At the end of May, the Company laid-off both seniority ground crews and a single crew was created (number "7") from the 36-45 highest seniority members of both crews.[12] (1:60-61)

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[12]As he had done with the laid off members of Crew 2, Silva advised the laid-off members of the two crews that 23 positions would be available in the naked palletized operation. Twenty-two former members expressed interest in palletized jobs; however, only 12 of these actually applied for jobs within the open period.

After the crews were consolidated, Respondent continued to employ contractor-supplied ground crews in Salinas for a few days in June, throughout July and August, and on scattered days in October. Indeed, it appears from Joint 5 that there were some days during the Salinas season when Respondent offered work to contractor-supplied ground crews, but not to its by now solitary seniority crew. Compare Contractor "Cartons" and "0" hour days for the seniority crews on Joint 5, 7/10/87; 8/8/87; 10/7/87. At this point, however, I am getting ahead of events and it is necessary to return to the chronology.

It will be recalled that the Union responded to the company's proposal with a request for information. On June 19, Myers provided the Company seniority lists and the location of its Salinas operations; he further promised appropriate responses to Gomez's other "relevant" requests. On July 9, he provided the following additional "relevant" information: (1) labels used; (2) names of the Santa Maria and Huron ranches; (3) crop breakdown by variety and acreage. With respect to the request for wage information, Myers referred Gomez to the Company's last proposal; with respect to the request for the names of contractors and of contractor-supplied employees used by the Company, he responded by stating the company's policy for using contractors.

In the same letter, Myers told Gomez that the Company was still waiting for a promised response to its June 24, 1986 proposal and he again accused the Union of refusing to meet.

"Your only answer" he wrote, "was to file an information request on May 29, 1987. We have completely responded to [that] request...and are awaiting your response to set dates for a negotiating sessions." The Union did not reply.

On September 1, Myers wrote again; he emphasized his four "requests" for meetings (April 14, May 8, May 22, July 18), the failure to meet since June 24, 1986, and charged the Union with abandoning the unit. He further claimed that impasse had been reached and that, as a result, the Company had the right to "continue to implement" its last proposal.

When the harvest returned to Huron in October, the remaining ground crew was apparently transferred there while contractor crews continued to work in Salinas. (Jt 5.) Additionally, contractor crews supplemented the ground crew in Huron throughout the remainder of the 1987 California season.

On January 21, 1988 Gomez requested negotiations on February 17 or 18. Myers responded about a week later, agreeing to meet on other dates and advising the Union it would be modifying what he characterized as the Company's by-now out-dated proposal. By return mail, Gomez suggested a meeting date of February 28 or 29, requested copies of the employer's modifications as an aid to anticipated discussion, and reminded Myers that the Union had presented a proposal in March 1987. On February 10, Myers replied. He accepted the February 29 date and he wrote:

> In regard to proposals, the employer is expecting a response from the Union to our March 19, 1987 proposal. As you may recall, the Union presented a proposal on March 19, 1987, the employer caucused and then responded

with a complete proposal. At the conclusion of the meeting you stated you would study the employer's proposal and respond. In the approximately one year since the last meeting, we assume you have had sufficient time to prepare a response. Based on your response and the discussions at the bargaining table as well as other concerns which have arisen in the year since the last session, the employer will prepare a response.

On March 14, Myers continued the February session until March 24. The parties met and the Employer presented a proposal. Again, there is no evidence about what the parties discussed.

On April 5, 1988 Myers wrote to Gomez:

> As you have been previously informed, Bruce Church, Inc. had set a rate for its experimental flat pack machine palletized operations. In 1988 Bruce Church, Inc. intends to make the flat pack machine palletized system part of its regular operations. The rates have been set as follows:
>
> | | Hourly | 24's |
> |---|---|---|
> | 1. Flat Pack Machine | $6.902 | $ .8688 |
> | 2. Palletized Raked w/liner | $6.902 | .9367 |
> | 3. Palletized Machine Bag Lettuce | $6.902 | $1.40 |
>
> As a courtesy, we are informing you that we have changed the wrap machine system for lettuce to the bag wrap • machine pack for lettuce. The rates for wrap machine bagged lettuce have been set at $1.40/24's and $1.75/30's and the rates for the clean and trim lettuce part of that operation have been set at $.95 per carton.

In the first week of April, the harvest resumed in Huron. Respondent used contractor-supplied ground crews along with the remaining ground crew in Huron and, on at least one day (April 14, 1988), used only contractor crews in Salinas, perhaps because the ground crew was in the process of transferring to Salinas from

Huron. In any event, contractor crews continued to work alone in Huron until the end of April, 1988 and often had work in Huron when the ground crew in Salinas had none. At the beginning of May, 1988, Respondent began to use contractor crews to supplement the work of the ground crew in Salinas.

In the meantime, little was happening at the table; the parties had arranged to meet on April 14, 1988, but Myers put off the meeting for two weeks in order to prepare a new wage proposal. When the Union could not meet on the agreed upon date, the meeting was moved to April 27, 1988. When the parties met, Respondent resubmitted its March 24, 1988 proposal and its new economic proposals. The Union agreed to respond after review. On May 20, ' 1988 the members of the remaining ground crew were laid off in anticipation of the introduction of a new machine. Respondent once again advised the crew that they would be put in a preferential hire list for available positions on the machine. With the introduction of that machine, Respondent's naked pack seniority ground crew operations ceased. As Joint 5 shows, Respondent continued to offer ground crew work to labor contractor crews in all of its California locations at least through August 26, 1989.

II.

ANALYSIS

INTRODUCTION

Generally speaking, an employer violates its duty to bargain when it makes changes in its employees' terms and conditions of employment without bargaining with their certified representative. This is so because

> the duty to bargain collectively... is defined as the 'duty to meet...and confer in good faith with respect to wages, hours, and other terms and conditions of employment.'
>
> * * *
>
> A refusal to negotiate in fact as to any subject which is within [§1153(e)] and about which the union seeks to negotiate, violates [1153(d)l though the employer has every desire to reach agreement with the union upon an over-all collective bargaining agreement, and earnestly and in good faith bargains to that end. We hold that an employer's unilateral change in conditions of employment under negotiation is similarly a violation of [1153(d)], for it is a circumvention of of the duty to negotiate which frustrates the objectives of [1153(d)] much as does a flat refusal. NLRB v. Katz (1962) 369 U.S. 736, 743.

General Counsel alleges that Respondent acted unlawfully in making the following changes:

> (1) When it implemented new wage and fringe benefit schedules on or about January 30, 1987;
>
> (2) When it introduced naked palletized machines in Huron, Santa Maria and Salinas at various times in

spring 1987, and in Salinas in Spring 1988.[13]

(3) When it laid-off the members of Ground Crew No. 2 then finishing the harvest in Yuma without permitting them to transfer to California;

(4) When it used labor contractor crew to harvest its lettuce crop in Huron, Santa Maria and Salinas instead of its seniority crews at various times from spring 1987 forward.

There is no question that the implementation of the wage and fringe benefit rates and schedules on January 30, 1987 was a change and that it was made without notice or bargaining. Since it is clear that the matters of wages and fringe benefits are mandatory subjects of bargaining, Labor Code section 1155.2; General Motors Corp. (1949) 81 NLRB 779, it remains only to consider Respondent's defense in connection with this allegation. There is also no question that when the introduction of machines affects the amount of work available to bargaining unit employees, as the introduction of machines in this case plainly did,[14] that

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[13] Whenever the introduction of machines caused a reduction in the number of ground crews (in Santa Maria in April 1987, and in Salinas in May 1987 and May 1988), General Counsel also alleges that Respondent thereby unilaterally changed "the rate of pay and terms and conditions of employment of its ground crew employees." (First Amended Complaint paragraphs 15, 18, 19) I do not understand these to be alleged as separate unfair labor practices, but as consequences of the introduction of machinery and General Counsel seeks no separate remedy as a result of them.

[14]With the introduction of the naked palletized machine to Santa Maria in April 1987 three ground crews become two; in May 1987 in Salinas, the two crews became one, and by May 1988 there were none. While I cannot determine on this record exactly how many ground crew employees were displaced by the machines in each area during each season, I do not believe that such precision is necessary since a system-wide loss of work for the seniority ground crews has been plainly demonstrated.

mechanization is a mandatory subject of bargaining, 0. P. Murphy (1982) 7 ALRB No. 37; Joe Maggio (1982) 8 ALRB No. 72, p. 33; Lu-Ette Farms (1982) 8 ALRB No. 91, p. 3. Since, except for contending that its March 19, 1987 proposal provided notice that it intended to mechanize,[15] which I will discuss shortly, Respondent does not otherwise contend that it provided any other notice of its intent to mechanize, a unilateral change is also made out in connection with the Santa Maria, Huron and spring 1987 Salinas use of machines which, again leaves only the matter of Respondent's defenses to be discussed in connection with these changes.

But if the January 1987 implementation of the wage and benefit schedules and the introduction of machinery are "changes", it is more difficult to determine (1) if the Yuma layoff is a change and (2) if it is, if it had any different effect than the introduction of machinery (since, if it did not, no separate

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[15]Respondent simply put the machines to work and laid-off the seniority ground crews as necessary to make way for the machines. On this record, the Union could only have found out about the machines from reports by employees that they had lost work or that they had been offered jobs on the machines. Rumor cannot take the place of formal notice when notice when notice is required, Local 512, Warehouse Office Workers' v. NLRB (9th Cir. 1986) 795 F.2d 705, 711.

From the fact that charges were filed alleging loss of work to labor contractors, it appears likely that all the Union knew was that the seniority crews were losing work to contractors. Nevertheless, the record is too scanty to support any conclusion about what it actually knew; however, it is clear that the Union was nearly always reacting to a fait accompli. Insulating Fabricators, Inc. Southern Division (1963) 144 NLRB 1325.

remedy is necessary in the event the introduction of machinery is found unlawful.) The latter question applies equally to the use of labor contractor crews. I will deal with each in turn.

Since General Counsel alleges and Silva confirmed, that the Yuma layoff was caused by the introduction of the machine to Santa Maria, First Amended Complaint, Para. 15, it would seem that the "loss of work" about which General Counsel complains in connection with the layoff would be in Santa Maria where, presumably, Crew No. 2 would have been sent next. But it is not as simple as that: General Counsel also alleges that the Yuma layoff was an independent change which caused loss of work in Huron, and later, in Salinas.16 The theory underlying this allegation appears to be that because the employees could have transferred to Huron had they not been laid-off, the Yuma layoff had an effect in Huron different from the effect that the introduction of the machines had in Santa Maria.

Since the laid-off employees lost the opportunity to transfer to Huron and, then, in a kind of "cascade" effect resulting from their not being able to transfer to Huron, also lost the opportunity to transfer to Salinas, there does appear to

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[16]Thus, First Amended Complaint, Par. 12 reads: "Respondent unilaterally changed its past practices with regard to the transfer of its ground crew lettuce harvest employees from its Yuma to its Huron operations...by formally laying off all members of its lettuce harvest ground crew No. 2, instead of having them automatically transfer to Huron."

be a separate isolable effect flowing from the Yuma layoff. Although I cannot tell from this record how many members of Ground Crew No. 2 (in Yuma) would have desired to transfer to Huron and thence to Salinas, or how many openings were even available in the two crews in Huron to be filled by Crew No. 2 employees (as against members of Crews Nos. 1 and 7 who may have had greater seniority,) it seems to me that General Counsel has shown that an opportunity historically available to the members of Ground Crew No. 2 was foreclosed by the Yuma layoff.[17] So long as there was such an "effect" upon the availability of unit work in California, Respondent had a duty to provide notice and to bargain over it, Nish Noroian Farms v. Agricultural Labor Relations Bd. (1982) 35 Cal.3d 726, unless it was otherwise excused, which again leaves only the matter of Respondent's defenses to be considered.

There remains only the question whether or not General Counsel has proved there was a change in Respondent's historic use of labor contractors. Although I have rejected Respondent's argument that there was no change because it had the right to use contractors whenever necessary, there nevertheless remains some difficulty in identifying the change on this record. This is so

[17]General Counsel has chosen to characterize the change as a change in transfer policy. Since the layoff was used to abolish a whole crew, it could as easily be considered a change in layoff policy, which is also unlawful if made unilaterally. Adair Standish Corporation (1989) 295 NLRB No. 106, Slip Opinion.

because (1) it is undisputed that Respondent was entitled to use labor contractors, though in more limited circumstances than it presently contends, and (2) there is no evidence which permits me to compare the pattern of use of contractor employees in any of the three California regions during comparable points of the harvest cycle both before and after the introduction of naked palletized machines. It is within these limitations that I must look for proof of change.

If I understand General Counsel's contention, the change she has identified is that after April 1987 contractor-supplied employees essentially replaced the seniority employees by harvesting whatever lettuce was not harvested by machine;[18] that is, that contractor employees no longer supplemented seniority employees, but the machines.

The first change about which General Counsel complains occurred in Huron in April 1987. Joint 5 shows labor contractor crews at work in Huron on April 20, 21, 22, 23, 24, 27 and 28, 1987 when they harvested the following number of cartons:

[18]Obviously General Counsel's is essentially contending that the use of contractor ground crews affected the amount of work available to seniority ground crews. Although our Board has held that it is not necessary to show an "effect" on seniority employees in order to make out a bargaining violation with respect to the use of contractor supplied employees, Tex-Cal Land Management (1982) 8 ALRB No. 35, pp. 6-7; Valdora, Inc. (1984) 10 ALRB No. 3, ALJD at pp. 3-4, but only a "change" in the circumstances under which they are used, in this case, General Counsel measures the "change" by the effect it produced.

April 20, 1987 - 1989 cartons
April 21, 1987 - 1620 cartons
April 22, 1987 - 2300 total cartons (two contractor crew)
April 23, 1987 - 3638 total cartons (two contractor crew)
April 24, 1987 - 7096 total cartons (two contractor crew)
April 27, 1987 - 4975 total cartons (two contractor crew)
April 28, 1987 - 3569 total cartons (two contractor crew)

General Counsel suggests that a rough measure of the size of the labor contractor crews necessary to harvest the number of cartons for each of the days can be derived from the crew sheets in evidence:

> Joint Exhibit No. 5 is a summary showing the dates, locations and number of cartons processed by labor contractor ground harvest crews for the Employer contrasted with the regular ground harvest crews and the hours worked by them on the days when labor contractor services were provided.
>
> Various ground crew time cards were introduced as exhibits herein. It was stipulated that the "unit" count shown therein refers to the number of cartons. (TR:92:10-13). By comparing such unit counts with the number of cartons processed each day by the labor contractor crews, one can arrive at an approximation of the number of workers and hours that were provided by the labor contractors.
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> Post Hearing Brief, p. 4.

Ground crew time cards introduced indicate the following:

GC:31	40 workers	4.0 hours	2100 cartons
GC:23A	38 workers	6.5 hours	3296 cartons
GC:23B	39 workers	6.1 hours	3240 cartons
GC:24A	40 workers	10.0 hours	5180 cartons
GC.24B	40 workers	10.0 hours	5180 cartons
GC:29	39 workers	8.6 hours	4212 cartons

GC:31 40 workers 4.0 hours 2100 cartons[19]

Averaging each of the separate columns indicates the average size of a seniority crew was 39 workers (which is corroborated by Silva's testimony); that it worked 7.5 hours (which is corroborated by averaging the Ground Crew 1 and Ground Crew 7 hours from Jt. 5: 7.2 hours from April 20 - May 29, 1987 and 7.5 hours for combined Ground Crew 7 hours from June 4, 1987 until May 20, 1988); and that average production was 3683 cartons. With about 3600 cartons being average production on an average day for an average crew, 7200 cartons means a day's work for two seniority crews; 1800 cartons would be half a day's work.

With these figures as guides, it is possible to evaluate General Counsel's allegation that in April 1987, contractor crews displaced seniority crews in Huron. The first point that strikes me about the work pattern evident from Joint 5 is that on every day contractor crews were at work in Huron, the two remaining seniority crews were also at work. Since the introduction of machinery to Santa Maria already cost the members of ground crew No. 2 their jobs, I cannot see that the use of contractors to

[19]My "hours" figures differ from some of General Counsel's because not all members of the crew worked the same number of hours. Accordingly, I averaged the total number of hours worked. For the "rule of thumb" I am aiming at, there is no important difference between General Counsel's figures and mine.

supplement the work of the two remaining ground crews "displaced" any more employees than had already been displaced by the machines.

Against this, General Counsel argues that Joint 5 does show that the contractor crews "took work" from the seniority crews because on days when the seniority crews worked "short hours,"[20] they were essentially splitting the available work with the contractor crews. For example, Joint 5 shows that Castro and Serna contractor crews packed 4138 cartons of lettuce on April 23, 1987, while seniority crews Nos. 1 and 7 worked only 5 hours; and two contractor crews packed 3569 cartons on April 28, 1987 when the seniority crews averaged 4.75 hours.

I take it that General Counsel contends that based upon the scale previously worked out, the seniority crews could have worked a full day and packed at least the same amount of lettuce as one of the contractor crews packed. While it is reasonable to argue that had the seniority crews worked longer hours they would have produced more lettuce than they did, the gravamen of General Counsel's case is that the amount of work the seniority crews had in Huron relative to the amount of work the contractor crews had

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[20]General Counsel does not precisely define "short hours," but from a quick review of the seniority crew hours listed in Joint 5, I will take April 23, 1987 and April 28, 1987 as illustrative "short hour" days, since neither of the seniority crews worked more than five hours, which is below the approximately 7.5 hours I am using an average.

changed between 1986 and 1987. Without evidence to compare the amount of work the seniority crews had after the introduction of machinery with the amount of work they had prior to the introduction of machinery, and especially whether there were ever relative "short hour" days in previous seasons, I am reluctant to conclude that the work the contractors crews did in Huron from April 20, 1987 to April 28, 1987 (and, by a parity of reasoning, the work the contractor crews did in Salinas from May 22, 1987 until May 29, 1987) represents a "change" in historic practices.

After June 4, 1987, however, when the two crews in Salinas were consolidated into one, and labor contractor ground crews were still used, there is obviously a change for contractor crews now essentially replaced one ground crew. The same must be said of the period after May 1988 when the last ground crew was released and contractor ground crews remained.[21] Accordingly, I find that, after June 4, 1987 the pattern of use of contractor crews in Huron and Salinas represents a change in Respondent's historic practices.

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[21]Although General Counsel alleges that the use of contractor crews in Santa Maria reflects the same sort of change in practice, First Amended Complaint paragraph 16, I cannot tell from the episodic use of contractor crews in Santa Maria that any more work was lost to them than had already been lost to the machines. Put another way, since past .practice was to use contractor crews to supplement the work of seniority crews, and since the episodic use of contractor crews in Santa Maria makes them seem merely supplementary to the machines, it seems to me that it is the machines which replaced the seniority crew in Santa Maria, and not the contractor crews.

II.

RESPONDENT'S DEFENSES

Respondent has interposed three defenses: (1) that the Union bargained in bad faith; (2) that it justifiably instituted the changes it did because the parties were at impasse; and (3) that the union abandoned the unit. While the "bad faith" and abandonment claims are not necessarily inconsistent with each other,[22] both are inconsistent with impasse, since impasse presupposes (1) that the parties have bargained and (2) that they have done so in good faith. Indeed, the classic statement is that impasse occurs only after "good faith negotiations have exhausted the prospects of concluding agreement..." Taft Broadcasting Co. (1967) 163 NLRB 475, 478, aff'd sub nom American Federal of Television and Radio Artist, AFL-CIO (DC Cir. 1968) 375 F.2d 622, and indeed, because of the "good faith" requirement in impasse, the Board has taken pains to disentangle the concepts of impasse and abandonment. Thus, in Alsey Refractories Company (1974) 215 NLRB 785, the Board wrote:

> We affirm the conclusion reached by the Administrative Law Judge that the Respondent ran afoul of the Act by unilaterally instituting a general wage raise, as the parties herein had not reached an impasse in negotiations at the time the increase was put into effect. However, we do not deem relevant to such a determination...the Administrative Law Judge's

[22]To the extent that the "bad faith" entailed "surface bargaining[1] that is going through the motions without but without the requisite intent, it would tend to be inconsistent with "abandonment", which implies inactivity.

> observation that the "Respondent was not warranted in assuming...that the Union had abandoned any desire for continued negotiations..." Rather, we rely on what we believe to be a correct standard in determining deadlock determining deadlock in this case; namely, that the Respondent was no warranted in assuming that further bargaining would have been futile.
>
> 215 NLRB at 785, n. 1.

On this record, I cannot find impasse. To quote Taft Broadcasting, supra, again,

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

There is hardly anything to point to as grounds of disagreement: 'there is no history of the parties' discussions; no issues stand out as ones of bedrock principle. In fact, putting aside the overriding question of who breached the duty to bargain, the disputes in this case largely concern who owed proposals, hardly the sort that makes for "insuperable disagreement." Standard- Rice Company, Inc. (1942) 46 NLRB 49, 53.

Respondent's second defense is "bad faith" on the part of

the Union.[23] The NLRB has long held that Union "evasiveness" may justify unilateral imposition of contract terms. Thus, in AAA Motor Lines, Inc. 215 NLRB 793 the Board wrote:

> [It] is clear that Respondent had been [sic] and continued to, throughout the term of the expiring contract, diligently and earnestly seek bargaining sessions with the Union's representatives, and that the union representatives were equally insistent on not meeting with [it] until other matters which it considered of superior priority were resolved. It is also clear that, by virtue of its agents' conduct, Local 612 violated Section 8(b)(3) of the Act. It is also clear that, as of June 29, [the Employer] had no hope of discussing any of its proposed contract.
>
> Having refused to meet and bargain with the Respondent right up to the date the contract terminated, the Union placed the Respondent in the position of having to take immediate action to avoid losses of certain benefits to its employees. In doing so, we note that the Respondent instituted only those changes that had already been proposed to the Union; and that only matters of immediate concern to the employees were instituted as of July 1,

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[23]I should note Respondent's companion argument that the motive underlying the bad faith it attributes to the Union was the Union's desire to destroy the company:

> The Union showed no willingness to meet with Respondent. The reason for the Union's unwillingness is quite obvious—they knew as well as anybody that the company needed to reduce wage rates to remain competitive. The Union had shown animosity and hostility toward Respondent through unsuccessful boycotts and strikes. Now they wanted to penalize Respondent and destroy it by holding it hostage...The Union's approach was to stonewall and to destroy the company." Post-Hearing Brief, pp. 21-22.

While I believe I can take notice of the Union's boycott of Respondent, and the strike certainly, finds its place in decisions of our Board, I cannot conclude from the use of economic weapons (whether or not) that the Union wanted to destroy the company. But for these matters of record, no other evidence supports Respondent's argument as to motive, and I reject it summarily.

> 1973, those matters such as Respondent's proposed pension plan being left open for future negotiations with the Union.
>
> 215 NLRB at 795

Since AAA Motor Lines, the Board has made it clear that to warrant unilateral action under this rule, an employer must still provide the Union with notice of its proposed changes and an opportunity to bargain over them. M & M Building and Electrical Contractors (1982) 262 NLRB 1472, Stone Boat Yard v. NLRB (9th Cir. 1983) 715 F.2d 441, 444. In other words, even if the Union were guilty of dilatory tactics up to the time when Respondent made its changes, Respondent must still have shown its "good faith" by alerting the Union to what it intended to do.

As already discussed, it certainly did not do this when it implemented the new wage rates. Indeed, it presented no wage proposal at all prior to the implementation. Similarly, the Union had no notice that members of Ground Crew No. 2 would not be permitted to move to Huron before it laid them off. Respondent does insist that the Union had notice that it intended to introduce machinery and to utilize labor contractors by the terms of its March 19, 1987 proposal.[24] Accordingly, I next examine

[24]In this connection, I should point out that Respondent agreed at the Prehearing Conference that the Union had no notice of the changes alleged by General Counsel. See Prehearing Conference Order: "This case involves a number of changes in operations which the parties agree were carried out without first giving the UFW notice and an opportunity to bargain." Prehearing Conference Order, dated September 27, 1989. Part 3; Substance of Action.

this proposal, and specifically, Article 18, which deals with the use of labor contractors, and Article 15, which deals with New or Changed Operations.

The labor contractor article reads:

> 18.1 The Company shall not infringe upon the classification seniority rights held by any Company seniority employee by the use of labor contractors or subcontractors except in the limited cases described in 18.2.
>
> 18.2 The Company shall not employ either labor contractors or subcontractors to accomplish any work performed historically for the Company by bargaining unit members if there are at the time the work must be done seniority employees in the classification covering the work to be done who are then available for recall....

From the record as a whole, it seems clear that the layoffs of the seniority crews and the use of labor contractors were designed to facilitate the transfer to machine harvesting. With the introduction of the naked palletized machines, the historic function of labor contractor crews, which was to supplement the seniority ground crews, essentially gave way to that of supplementing the machines as the seniority ground crews were progressively laid off. Under these circumstances, I do not see, and Respondent has not attempted to point out, how the labor contractor article alerts the union to its intent to substitute contractor labor for seniority ground crew labor by laying off the seniority ground crews.

Does the proposal provide notice that machines will be introduced? The only article which I can see that relates to the subject is Article 15, New or Changed Operations, which provides:

ARTICLE 19 - NEW OR CHANGED OPERATIONS

19.1 In the event the Company, during the term of this Agreement, implements within the bargaining unit (1) a new or changed employee classification different from those specified in employee classifications existing on the date of execution of this Agreement, or (2) the use of a container or packing procedure which involves a unit count different from those covered by this Agreement or which requires different employee skills than are required for container and packing procedures in effect on the date of execution of this Agreement,

* * *

(5) the employment by the Company of different specialized equipment, then the Company shall notify the Union within 24 hours of such implementation giving a description of the change, any modifications to working conditions involved, and the pay rates it has implemented, if any, pursuant to the change.

The proposal itself says nothing about Respondent's .intention to introduce machines; it merely provides a bargaining mechanism for dealing with such an event. Moreover, because that mechanism requires specific notice that machinery will be introduced, along with a description of the changes that will be entailed by its introduction, I do not see how the proposal itself can qualify as the detailed notice requirement contained within it. It is true that the proposal contains rates and a separate seniority classification for the machines, but, once again, these do not clearly signal the intention to introduce the machines that Section 19 requires to be separately given.

However, I draw a different conclusion about the introduction of the last machine in Salinas in spring, 1988. On April 5, 1988 Myers told Gomez that the "flat pack" machine palletized operation was now going to be part of its regular

operation. Despite this notice, the Union never requested bargaining. Accordingly, I conclude that it waived bargaining over the introduction of this machine. City Hospital of East Liverpool (1978) 234 NLRB 58. Excepting the introduction of this "final" machine, which is justifiable on waiver principles alone, I otherwise reject the "Union evasiveness" defense.

Respondent's final defense is that the Union abandoned the unit. Before considering the parties' factual contentions, let me briefly describe the nature of this defense.

> After the certification year has run, an Employer may lawfully withdraw recognition from an incumbent union because of an asserted doubt of the union's continued majority if its assertion of doubt is raised in a context free of unfair labor practices and is supported by a showing of objective considerations providing reasonable grounds for a belief that a majority of the employees no longer desire union representation. The issue to be resolved is whether or not those "objective considerations" existed justifying Respondent's doubt concerning the Union's majority status.
>
> Here the Respondent and Union engaged in a number of bargaining sessions between December of 1968 and August 1969. However, between late September when it sent the Union a letter indicating its willingness to bargain and approximately April 15, 1970, when Respondent received a letter from the Union asking for bargaining, Respondent heard nothing from the Union concerning formal negotiations. In fact it appears that during the period the Union was wholly inactive in the plant and several employees indicated to management that they were glad the Union had left. At the same time Respondent was undergoing a heavy turnover of 398 people in a work force of approximately 100 employees, including the departure of all but 3 of the members of the Union's negotiating committee.
>
> The foregoing factors relied on by the Respondent may not by themselves show that the Union had in fact lost its majority as of April 15, 1970. However, here in a context free of unfair labor practices those factors do provide, in our opinion, an objective basis which would

properly furnish reasonable grounds for the Respondent to believe that the Union had lost its majority status.

Southern Wipers, Inc. (1971) 192 NLRB 816

See also, W.A.D. Rentals Limited d/b/a Kelley's Private Car Service (1988) 289 NLRB No. 9, slip opinion. While, because of peculiarities in our statute, our Board does not utilize the doctrine of good faith doubt,[25] it has nevertheless retained the doctrine of abandonment as an exception to its usual "certified until decertified" rule. In Lu-Ette Farms (1982) 8 ALRB No. 91 the Board writes:

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[25]The Agricultural Labor Relations Act (ALRA) differs from the NLRA in its requirements and procedures for recognition. The essential requirement for initial recognition is certification.

* * *

Majority support and or a good faith belief of majority support do not control. Under out Act, the only means by which a union can be recognized is through winning a secret-ballot election and being certified by the Board.

An employer under the ALRA does not have the same statutory rights regarding employee representation and election as employers have under the NLRA. By these important differences the California legislature has indicated that agricultural employers are to exercise no discretion regarding whether to recognize a union; that is left exclusively to the election procedures of this Board. Likewise, whether or not recognition should be withdrawn or terminated must be left to the election process.

Accordingly, once a union has been certified it remains the exclusive collective-bargaining representative of the employees in the until it is decertified or a rival union is certified.

Nish Noroian Farms (1982) 8 ALRB No. 25

> Once a union has been certified, it remains the exclusive collective bargaining representative of the employees in the unit until it is decertified or a rival union is certified, or until the union becomes defunct or disclaims interest in continuing to represent the unit employees....
>
> 8 ALRB No. 91, p. 8

Under the NLRA, an employer's withdrawal of recognition resting upon reasonable good faith doubt raises a question concerning representation and the employer may (1) withhold further bargaining without violating the Act or (2) insist that the union re-establish its statutory representative status. Laystrom Manufacturing Co. (1965) 151 NLRB 1482, enf. den. on other grounds NLRB v. Laystrom Mfg. Co. (7th Cir. 1966) 359 F.2d 799. Since, under our Act, employer petitions are not permitted, the claim of abandonment appears to be primarily a defensive weapon[26] in the refusal to bargain context, rather than one which permits an employer to require the Union to prove it still represents a majority. However, whatever the ultimate scope of the defense under our Act may prove to be, the Board has clearly recognized its existence.

Respondent vigorously argues that the Union's changing negotiators, cancellation of meetings, refusal to respond to requests for meetings, and refusal to make proposals, implies that

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[26]However, I take notice that our Board has previously revoked certifications because upon a finding of "defunctness." See, e.g., Case Nos. 79-RC-14-SM; 79-RC-10-SAM; 79-RC-9-OX. Thus, a claim of "defunctness" is not entirely defensive.

it abandoned[27] the unit. Although there is no question that the pace of events starts out slowly, it is not at all clear that it was the Union which set it. Thus, in the three months from July 10, 1985 until October 14, 1985, the only communication between the parties was Payne's letter to Cohen advising him that Myers would be representing the company in negotiations. This letter is followed by two meetings in two months, both apparently initiated by Myers, one in October and one in November. No proposals were presented at either meeting and all we know is that Myers professed confusion about the Union's position on certain articles. After the November meeting, there is no further

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[27]A word here is necessary about the proliferation of terms. Respondent is claiming "abandonment" and I will discuss the case in those terms. In Lu-Ette Farms, supra, the Board speaks of "defunctness" and of a union's "disclaiming interest", and it is not entirely obvious that these three concepts all denote the same thing.

"Defunctness" implies physical impediment, specifically, moribundity; "abandonment" has less a sense of finality and more a sense of passivity to it; while "disclaimer" has a stronger, more active tone of renunciation than "abandonment." Despite these differences, as originally used by the NLRB, the concept of "defunctness" clearly had both the sense of "disabled," implied by the primary meaning of "defunct", and of passivity or unwillingness to perform, implied by the terms "abandonment" or "disclaimer of interest." See, Hershey Chocolate Corp. (1958) 121 NLRB 901, 911. And when our board considered the question of "abandonment" in Ventura County Fruit Growers, Inc. (1984) 10 ALRB No. 45, it used the word interchangeably with the word "defunct"; as did the NLRB in Road Materials, Inc. (1971) 193 NLRB 990, 991. See also, Pioneer Inn Association v. NLRB (1978) 578 F.2d 835, 839 where the Court characterizes the NLRB's use of "defunctnesss" and "inactivity" as interchangeable. Accordingly, I am treating the concepts as essentially the same.

activity by either party except for Respondent's January 1986 letter advising the Union, as a courtesy, that the company intended to close down its Abbott Street labor camp.[28]

The parties were not to meet again until May, 1986. In the meantime, on March 11, 1986, the Court of Appeal reversed the Board's Decision and vacated its Order in 9 ALRB No. 74. In the wake of this decision, it is the Union, now represented by Arturo Mendoza, which is more active in seeking negotiations. On April 30, Mendoza requests a meeting, and when the parties finally meet on May 22, 1986, he presents the first proposal in over 8 months of negotiations.

Up to this point, then, it is hard to find any evidence of abandonment. The Union changed negotiators no more frequently than Respondent did and, at least through the beginning of May, it was as active as Respondent and, after May, it was even more active since it made the first proposal.

About a week after the May meeting, Mendoza sent Myers a copy of what he called a complete text of the Union's proposal.

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[28]When Cohen requested bargaining, Myers cautiously refused on the grounds that there was no duty to bargain about the subject and he placed the burden on the Union to persuade him to the contrary. Myers' "instincts" failed him: the general rule is that there is an obligation to bargain over the closing of company-supplied housing. See/ generally, Morris, Developing Labor Law 2nd Ed. pp. 792-93 and cases cited. Indeed, less than a year before Myers offered his opinion, our Board issued a decision involving Respondent in which the general rule is clearly stated. Bruce Church (1985) 11 ALRB No. 9, ALJD, p. 19. Nevertheless, the Union did not press the issue and General Counsel makes no issue of the matter in this case.

After a number of false starts about meeting dates—the union cancelled two dates—the parties met on June 24 and Respondent presented a number of proposals, without any economic package.

It is in the wake of this meeting that Myers begins to make the allegations of union inactivity which will comprise its defense. On October 15, 1986 he writes to Gomez (who was now representing the Union) seeking a meeting and asserting that the Union had promised a counterproposal at the parties' June meeting. Gomez does not respond. By December 1986 Myers was to write two more letters asking Gomez to suggest dates for meeting and to again assert in his final letter that the Union had owed the company a response. Gomez was silent.

During this 6 month period from June to December, it is clear that the Union did nothing and it is on this basis that Myers was to justify the wage and benefit changes a month later. However, not only have longer periods of inactivity not been found to constitute an abandonment, see, e.g., Road Materials (1971) 193 NLRB 990, Cowles Publishing Company (1986) 280 NLRB 903; W.A.D. Rentals, United d/b/a Limited d/b/a Felly's Private Car Service (1988) 289 NLRB No. 9, Slip Opinion, but also, and more important, (1) despite Myers[1] attempt to place the burden for this period of inactivity on the Union, it is not at all clear that it belongs there and (2) it is Respondent who has the burden of proving that it does.

Thus, in W.A.D. Rentals, Limited d/b/a Kelly's Private Car Service (1988) 289 NLRB No. 9, the ALJ wrote:

> The Respondent has sought to characterize the passage of time in this case as a waiver by the Union of its right to bargain thereby allowing [it] to withdraw its recognition of the Union. However, such a waiver may only be proven by a clear and unequivocal evidencing of such intent by a labor organization.
>
> ALJD, p. 40

In this case, the only evidence that the Union had promised a proposal is Myers' assertion that this was so. While it would also be possible to treat Gomez's failure to deny Myers[1] assertion as an admission, under the circumstances of this case I decline to do so. First of all, "silence...is [not] the equivalent of consent; such a doctrine would place the whole world at the mercy of letter writers." Security First Nat. Bank v. Spring Street Properties (1937) 20 C.A.2d 618, 626. Secondly, whatever implication might be drawn from Gomez's silence is contradicted by Gomez's telling Myers' assistant prior to the implementation of the wage increase, and therefore before Gomez could possibly have known to make such a statement for strategic reasons, that the Union was expecting a proposal on wages from Respondent.

Although there is no testimonial evidence which would permit me to judge the credibility of Myers[1] and Gomez's contradictory claims, I am inclined to accept Gomez's characterization of the parties' positions as more reasonably supported by the record as a whole than that of Myers[1]. The Union had already presented a complete proposal, including a wage package and Respondent had declined to present its wage proposal only in order to undertake a study. In this context/ it is more

reasonable to believe that the Union was waiting for Respondent's wage proposal than that Respondent was waiting for the Union's response on mostly non-economic articles.

But even if that conclusion be unfounded, because it is Respondent who has the burden of proving that Myers' version of events is correct, to the extent the evidence is merely conflicting, the matter must be resolved against the claim of Respondent.[29] The January 30, 1987 change is, therefore, unlawful

Moreover, once the Union protested the change and filed unfair labor practice charges, it engaged in activity which, at least for the immediate future, negated any inference that might be drawn from the period of its alleged inactivity. Wells Fargo Armored Service Corporation of Puerto Rico (1988) 288 NLRB No. 110, ALJD, p. 8, Ventura County Fruit Growers (1984) 10 ALRB No. 45. On February 2, 1987 the Union protested the company's action; on February 11, 1987 Myers agreed to meet if the Union were to request it; on February 16, 1987 Gomez requested a meeting. The parties finally met on March 19, 1987 at which time the company presented a complete proposal. Despite the fact that Respondent was then treating with the Union, and the Union was acting as the representative of Respondent's employees, less than a month later

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[29]In this connection, it should be pointed out that despite Myers[1] contention that negotiating notes would confirm his version of events, no notes or testimonial evidence was presented on this issue.

Respondent laid off the crew in Yuma and introduced machinery in Santa Maria and Huron. These change, too, are unlawful.

After these changes, there is almost a year's delay before the next meeting in which, except for requesting information, the Union made no response to the company's proposal. Although the Union was obviously less than diligent during this period, in the context of this case, it seems to me that Respondent cannot at this point rely on the abandonment defense which only lies in a context of free of unfair labor practices. "Where an employer's asserted doubt of a union's [continued representative status] is tainted by unremedied unfair labor practices, which affect the union's status...or improperly affect the bargaining relationship, the legality of cessation of bargaining and/or withdrawal of recognition based upon the same is negated." Rocky Mountain Hospital (1988) 289 NLRB No. 138, n. 3 Slip Opinion ALJD p. 43 (Emphasis added). Accordingly, having gone as far as it did in making the Spring 1987 unilateral changes, Respondent cannot now rely on the Union's lack of activity as a defense.[30]

REMEDY

(1) Having found that Respondent unilaterally implemented the wage and benefit changes in January, 1987, I will

[30]While the Union cannot be held to have "abandoned" the unit when Respondent undermined its representative status, I have still found that the Union "waived" bargaining over the introduction of the last machine in Salinas.

order it to make its employees whole for all economic losses they have suffered as a result of Respondent's refusal to bargain over the decision;

(2) Having found that Respondent unilaterally changed its practices permitting transfer to other geographic areas I will order it to make its Ground Crew No. 2 employees whole for all economic losses suffered as a result of its refusal to permit such transfers to take place;

(3) Having found that Respondent refused to bargain over the introduction of machinery, I will order Respondent to bargain over the effects of its decision. Frudden Enterprises Inc. v. Agricultural Labor Relations Bd. (1984) 156 Cal. App.3d 410. (Board cannot order return to status' quo ante.) Since it is the introduction of machinery which entailed all the other changes, it is impossible to re-establish a situation which would have prevailed had Respondent more timely fulfilled its statutory obligation. Under the circumstances, I believe that more than a bargaining order is needed to remedy this unfair practice. In order to assure meaningful bargaining, I will order a Transmarine remedy (Transmarine Navigation Corp. (1968) 170 NLRB 389) designed to make whole the employees for losses suffered as a result of their displacement by the machines in an amount of not less than the amount they would have earned during a two week period of employment;

(4) Having found that Respondent unilaterally employed labor contractors instead of seniority crews to supplement the

machines, Respondent will be ordered to make whole all members of the seniority ground crews who were displaced by the use of labor contractors.

Pursuant to Labor Code section 1160.3, I hereby issue the following recommended:

ORDER

Respondent, Bruce Church, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to give the UFW notice and an opportunity to bargain about the decision to implement wage and fringe benefit schedules;

(b) Failing or refusing to give the UFW notice and an opportunity to bargain about changes in transfer policy;

(c) Failing or refusing to give the UFW notice and an opportunity to bargain about the effects of introducing machinery;

(d) Failing or refusing to give the UFW notice and an opportunity to bargain about the decision to use labor contractors to displace seniority ground crew employees;

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

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

(a) Upon request, rescind any and all unilateral changes made by Respondent with respect (1) to the wage and fringe benefit schedules implemented on January 30, 1987; (2) the change in transfer policy implemented in April 1987; and (3) the use of labor contractors from May 1987;

(b) Upon request of the UFW, as the certified collective bargaining representative of its agricultural employees, meet and bargain collectively in good faith over changes in wage and fringe benefits, in transfer policy, in the use of labor contractors, and the effects of its decision to introduce machinery;

(c) Offer to the seniority employees of former Ground Crew No. 2 immediate and full reinstatement to their former or substantially equivalent positions without loss of seniority in accordance with the seniority system in effect prior to April 1987;

(d) Offer the seniority employees in its seniority ground crews immediate and full reinstatement to their former or substantially equivalent positions in accordance with the hiring system that was in effect at the time of their unlawful displacement by labor contractors without prejudice to their seniority or other employment privileges and make them whole for all losses of pay and other economic losses they have suffered as a result of Respondent's contracting out work historically performed by them, such losses to be computed in accordance with

established Board precedent, plus interest thereon, computed in accordance with the Decision and Order in E.W. Merritt Farms (1988) 14 ALRB No. 5;

(e) Make whole its agricultural employees for all losses of pay and other economic losses they have suffered as a result of Respondent's unilateral implementation of wage and benefit charges on January 30, 1987, such losses to be computed in accordance with established Board precedent, plus interest thereon, computed in accordance with the Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5;

(f) Make whole all of its present and former agricultural employees who lost work as a result of the introduction of machines, such amounts to be computed in accordance with Board precedent plus interest thereon, computed in accordance with E. W. Merritt Farms (1988) 14 ALRB No. 5, for the period from ten days after issuance of this ORDER and continuing until the occurrence of the earlier of the following conditions: (1) the date Respondent reaches an agreement with the UFW about the impact and effects on its employees of its decision to introduce naked palletized machines or (2) the date that Respondent and the UFW reach a bona fide impasse in such bargaining, or (3) the failure of the UFW to request bargaining over the effects of the decision within ten days after the date of issuance of this ORDER or to commence negotiations within ten days after Respondent's notice to the UFW of its desire to so bargain;

or (4) the subsequent failure of the UFW to meet and bargain in good faith with Respondent about the matter; such make whole amount shall in no event be less than two weeks' pay, for any worker less any amount received by any worker who transferred to a machine;

(g) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the make-whole or backpay period and the amount of make-whole or backpay due under the Board's order;

(h) Sign a Notice to agricultural employees and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth in the Board's order;

(i) Mail copies of the Notice, in all appropriate languages, within 30 days after the date of issuance of the Board's order to all agricultural employees employed by Respondent at any time from January 29, 1987 until the date of the mailing of this Notice;

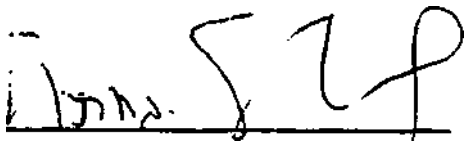
(j) Post copies of the Notice in all appropriate languages in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed;

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

(l) Provide a copy of the Notice to each agricultural employee hired to work for the company for one year following the issuance of a final order in this matter;

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

DATED: May 7, 1990



THOMAS SOBEL
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged we had violated the law. After a hearing at which all parties had an opportunity to conduct in making unilateral changes without notice to or bargaining with the UFW, the certified representative of our employees.

The Agricultural Labor Relations Act is law that gives you and all other farm workers in California these rights:

1. To organize themselves;
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 another; and
6. To decide not to do any of these things.

WE WILL NOT refuse to bargain over proposed changes in wages and fringe benefits;

WE WILL NOT refuse to bargain over changes in transfer policy;

WE WILL NOT refuse to bargain over the introduction of machinery;

WE WILL NOT refuse to bargain over the use of labor contractors;

WE WILL make whole all agricultural employees for all losses sustained as a result of our refusal to bargain.

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

DATED: UNITED FARM WORKERS OF AMERICA, AFL-CIO

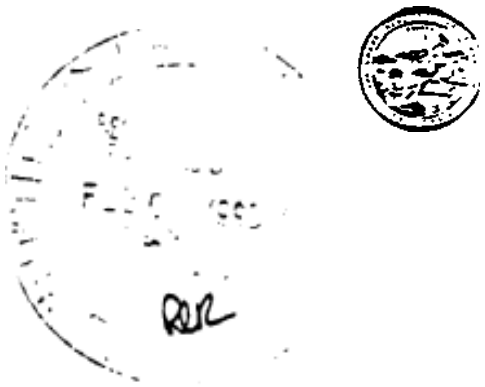
By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN.Governer

AGRICULTURAL LABOR RELATIONS BOARD
711 NORTH COURT
STREET. SUITE A
VISAUA. CALIFORNIA
93291 (206)627-0995



January 30, 1990

Thomas M. Sobel
Acjninistrtive Law Judge
Agricultural Labor Realtions Board
915 Capito Mall, 3rd Floor
Sacramento, California 95814

Dear Judge Sobel:

RE: Bruch Church, Inc., Case Nos. 87-CE-8-SAL, et al.

During the preparation of Post-Hearing Briefs in the above-captioned matter, numerpus clerical errors were noted in the Reporter's Transcript of the hearing.

The undersigned, on behalf of the General Counsel, and counsel for the Respondent have executed a stipulation agreeing to the correction of those clerical errors. (Inasmuch as Charging P=rty, the United Farm Workers of America, AFL-CIO, did not intervene and appear at the hearing, they were not requested to join in the stipulation.)

The executed stipulation is enclosed herewith. General Counsel and Respondent request that it be made a part of the record of this proceeding.

Sincerely,

Stephanie Bullock Assistant
General Counsel

Enclosure(s)

cc: Paul D. Gullion, Esq., Abramson, Church & Stave, 17 East Gablian St., Salinas, CA 93901 Carl Seagrave, UFW, Rep., P.O. Box 62, Keene, CA 93531

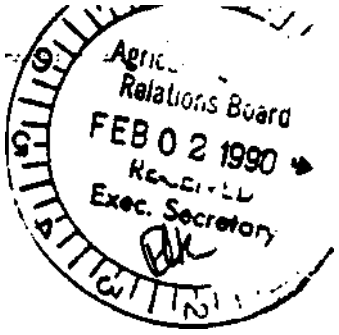
crd

STIPULATED CORRECTIONS

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

EL CENTRO REGIONAL OFFICE



In the Matter of: BRUCH CHURCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 87-CE-8-SAL 87-CE-72-VI 87-CE-41-SAL 87-CE-59-SAL 88-CE-66-SAL STIPULATION TO CORRECT CLERICAL ERRORS IN REPORTER'S TRANSCRIPT

General Counsel and Respondent hereby stipulate that the corrections set forth on the list attached hereto as Exhibit A and incorporated herein by this reference, being corrections of clerical errors, may be made in the-Reporter's Transcript of the herein.

Date: 1-24-90

Stephanie Bullock Assistant
General Counsel For THE
GENERAL COUNSEL

ABRAMSON, CHURCH & JBSTAVE

Date: Jan 26, 1990

By

Paul D. Gull ion Attorneys
for RESPONDENT

CORRECTION OF CLERICAL ERRORS IN
TRANSCRIPT

Case No. 87-CE-66-SAL, listed on the cover page of both volumes of the transcript should be No. 88-CE-66-SAL.

All references to worker witness Jose Veas should be Jose Beas.

P. 11, line 23 "the both" should be "both the"

P. 11, line 24 "haven't" should be "have been"

P. 13, line 23 "it" should be "that"

P. 16, line 6 "form" should be "from"

P. 16, line 27 "include" should be "conclude"

P. 16, line 28 "includes" should be "concludes"

P. 17, line 4 "switch" should be "switched"

P. 18, line 2 "affect" should be "effect"

P. 18, line 4 "implement" should be "implemented"

P. 36, line 23 "employee's" should be "employees'"

P. 24, line 27 "our" should be "all"

P. 26, line 20 "member" should be "members"

P. 28, line 4 "a company" should be "the company"

P. 28, line 14 "bee" should be "been"

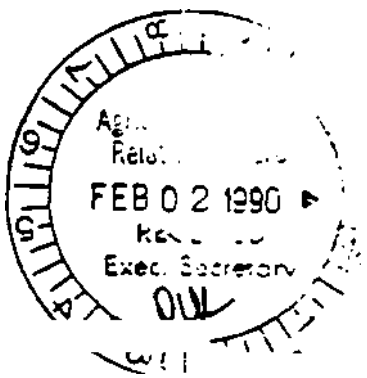
Page 32, line 20 "with" should be "without"

Page 35, line 6-7 "a box as in stacking on" should be "the boxes and stacking them on"

Page 35, line 11 "be" should be "then"

Page 35, line 9 "stacker" should be "stacking"

Page 36, line 24 "printed cut number" should be "printed out a number"



Page 37, line 22 "just" should be "that"

Page 41, line 12 "no" should be "a" •

Page 46, line 22 "member" should be "members"

Page 47, line 1 "opened" should be "open"

Page 50, line 1 should read "...have been looking at for the naked palletized machine..."

Page 51, line 2 "eight-cent" should be '"eighty-cent"

Page 57, line 9 "crew" should be "crews"

Page 60, line 17 "have" should be "ask"

Page 61, line 19, the word "to" should be omitted

Page 65, line 17, the word "a" should be omitted

Page 82, line 15 "should" should be "would"

Page 72, line 1 "fussy" should be "fuzzy"

Page 83, line 8 "not on the list" should be "not on the other lists" r

Page 88, line 18 "legal" should be "field" Page 90,

Page 90, line 17 "—" should be "The others"

Page 91, line 17 should read "...refers to Naked lettuce..."

Page 92, line 11 "haven't" should be "have"

Page 95, line 4 "—" should be "machines"

Page 98, line 12 " —" should be "any of"

Page 99, line 19 "the reply" should be "there are five"

Page 124, line 4 "fussy" should be "fuzzy"

Page 127, line 16 "contract" should be "contractor"

Page 132, line 19 "M. Body (phonetic) in" should be "Abatti and"

Page 134, line 8 "and" should be "that"

Page 132, line 20 "St. Andrews" should be "Sam Andrews"

AGRICULTURAL LABOR RELATIION BOARD

PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P)

I am citizen of the United States and a resident of the Country of Tulare . I am over the age of eighteen years and not a parzy with to the within en... action. My business address is: 711 North court, Suite "A", Visalia, California. On January 30, 1990 I served the within Stipulation to Correct Clerical Error in Reporter's Transcript, Bruce Church, Inc., Nos. 87-CE-8-SAL, et al.

on the parties in said action, by placing a true copy thereof in the United States mail at Visalia ,California addressed as follows :

CERTIFIED MAIL

Paul D. Gullion, Esq.
Abramson, Church & Stave 17
East Gabilan Street Salinas,
CA 93901
CERTIFIED No. 108540

Carl Seagrave, Esq.
United Farm Workers
of America, AFL-CIO P.O.
Box 62 Keene, CA 93531
CERTIFIED No. 108541

Dianna Lyons, Attorney united
Farm Workers
of America, AFL-CIO P.O.
Box 340476 Sacramento, CA
95834-0476
CERTIFIED No. 108542

REGULAR MAIL

Bruce Church, Inc.
P.O. Box 80599
Salinas, CA 93901

United Farm Workers
of America, AFL-CIO 14
South Wood Street
Salinas, CA 93905

Darra Lepkowsky-Sillas,
Attorney . Agricultural Labor
Relations
Board
319 Waterman Avenue El
Centre, CA 92243

Executive Secretary/ General
Counsel Agricultural Labor
Relations
Board
915 Capitol Mall, 3rd Fir.
Sacramento, CA 95814

Executed on January 30, 1990 at Visalia California,
I certify (or declare), under penalty of perjury that the foregoing is true and correct.

Caterina Reyes

ALRB 64a (Rev 5/80)

STATE OF CALIFORNIA GEORGE DEUKMEJIAN. *Governor*

AGRICULTURAL LABOR RELATIONS BOARD
711 NORTH COURT STREET. SUITE A
VISAUA. CALIFORNIA 93291
(209) 627-0995

December 28, 1989

Thomas M. Sobel Administrative Law Judge
Agricultural Labor Relations Board 915
Capitol Mall, 3rd Fir. Sacramento,
California 95814

Dear Judge Sobel:

RE: Bruce Church, Inc., Case No-s. 87-CE-8-SAL, et al

Enclosed herewith please find two copies -of a document entitled "Summary - Lettuce Ground Harvest Services Provided to Bruce Church, Inc. By Labor Contractors/Hours Worked By Bruce Church, Inc. Crews." This is the summary of labor contractor billings and regular crew hours which was discussed at the hearing of the above-captioned case.

Counsel for Respondent and General Counsel sumbit this Summary as a joint exhibit, next in order, Joint Exhibit No. 5.

Sincerely,

Stephanie Bullock

Stephanie bullock Assistant
General Counsel

cc: Paul D. Gullion, Esq., Abramson, Church & Stave, 17 E. Gabilan Street, Salinas, CA 93901
UFW, AFL-CIO - Legal Office, P.O. Box 250, Keene, CA 93531 Dianna Lyons, UFW, P.O. Box 340476, Sacramento, CA 95834-0476 ALRB, El Centre Regional Office, 319 Waterman Avenue, El Centro, CA 92243

am Enclosure

ATTACHMENT I

87CE8

SUMMARY - LETTUCE GROUND HARVEST SERVICES PROVIDED TO BRUCE CHURCH, INC. BY

LABOUR CONTRACTOR CREWS				BRUCE CHURCH CREWS		
NAME	AREA	DATE	NO.OF CTNS	GO2	GO7	AREA
Serna	Huron	4-20-87	1989	8.0	8.0	Huron
		4-21-87	1620	8.0	8.0	
		4-22-87	920	6.5	6.5	
Castro	Huron	4-22-87	1380	0	0	
		4-23-87	2158	5.0	5.0	
Sarna	Huron	4-23-87	1480	0	0	
		4-24-87	3157	7.5	8.0	
Castro		4-24-87	4217	0	0	
		4-27-87	2879	9.0	9.0	
Sarna		4-27-87	2096	0	0	
		4-28-87	1584	5.0	4.5	
Castro		4-28-87	1985	0	0	
	Salinas	5-13-87	3216	8.8	8.5	Salinas
		5-14-87	4539	9.0	8.0	
		5-15-87	7992	9.5	9.0	
		5-22-87	4628	10.0	9.5	
		5-23-87	1587	4.0	4.0	
		5-26-87	1617	5.5	5.5	
		5-28-87	1429	8.0	8.0	
		5-29-87	2578	6.5	6.0	
Castro		6-4-87	8845		10.0	Salinas
		6-5-87	8348		10.0	
		6-8-87	4845		8.5	
		6-9-87	3335		7.8	
		6-11-87	3195		5.5	
	Salinas	6-26-87	2578		7.0	
	Salinas	6-29-87	3209		6.5	
		7-1-87	2805		4.5	
	Salinas	7-6-87	3576		0	
	Salinas	7-7-87	1447		8.5	
	Salinas	7-8-87	4501		10.0	
	Salinas	7-9-87	4260		10.0	Salinas
	S. Maria	7-9-87	3344		0	
		7-10-87	3864		7.5	
	Salinas	7-10-87	3786		0	
	S. Maria	7-11-87	1606		0	
	Salinas	7-13-87	3389		6.0	
		7-14-87	3253		4.0	
		7-15-87	2260		6.5	
		7-16-87	2239		7.5	
	S. Maria	7-17-87	1428		8.0	
		7-17-87	3232		0	
		7-20-87	4081		0	
Yuma Pro	Salinas	7-20-87	1200		9.0	Salinas

Castro	S. Maria	7-21-87	2990	0	
	Salinas	7-22-87	1948	9.0	
Yuma Pro	Salinas	7-22-87	1201	0	
Castro	Salinas	7-23-87	2262	8.5	
Yuma Pro	Salinas	7-23-87	1605	0	
Castro	Salinas	7-24-87	4018	9.0	
	Salinas	7-24-87	2001	0	
Yuma Pro	Salinas	7-24-87	1400	0	
		7-25-87	802	4.0	Salinas
Castro		7-25-87	1755	0	
	S. Maria	7-25-87	1297	0	
	Salinas	7-27-87	1650	8.5	
Yuma Pro	Salinas	7-27-87	963	0	
Castro	Salinas	7-28-87	998	4.5	
		7-30-87	2232	9.0	
		7-31-87	966	7.5	
	S. Maria	7-31-87	3546	0	
	Salinas	8-3-87	2640	9.0	Salinas
		8-5-87	4853	5.0	
		8-6-87	4057	6.5	
		8-7-87	4847	6.5	
	S. Maria	8-7-87	3021	0	
	Salinas	8-8-87	2082	0	
	S. Maria	8-8-87	2583	0	
	Salinas	8-10-87	3029	7.5	Salinas
		8-11-87	2592	5.0	
		8-12-87	2803	5.5	
	S. Maria	8-14-87	2140	0	
	Salinas	8-18-87	1972	9.0	Salinas
		8-20-87	4019	10.0	
		8-21-87	2968	10.0	
		8-22-87	4028	6.5	
		8-24-87	3536	10.0	
		8-26-87	7116	10.0	
		8-27-87	9880	10.0	
	S. Maria	8-27-87	3122	0	
	Salinas	8-28-87	7562	9.5	Salinas
	S. Maria	8-28-87	2912	0	
	S. Maria	8-31-87	3218	10.5	Salinas
		9-3-87	4206	0	
		9-4-87	3226	0	
		9-5-87	3382	0	
	S. Maria	9-24-87	2911	6.0	Salinas
		10-2-87	2588	0	
		10-3-87	2910	0	
	Salinas	10-5-87	454	10.0	
		10-6-87	1929	8.5	
		10-7-87	2639	0	
Del Campo	Huron	10-8-87	1168	10.0	Salinas
	Huron	10-9-87	538	4.0	Huron
Castro	Salinas	10-9-87	2265	0	
		10-12-87	1897	4.0	
		10-13-87	2197	4.0	
		10-14-87	3924	0	

Del Campo	Huron	10-14-87	592	4.0	Huron
Castro	Salinas	10-15-87	5497	4.0	
Del Campo	Huron	10-16-87	2823	10.0	Huron
Castro	Salinas	10-16-87	4183	0	
	S.Maria	10-16-87	3226	0	
Castro	Salinas	10-17-87	3495	4.0	Huron
		10-19-87	4879	8.5	Huron
	S.Maria	10-19-87	2262	0	
	Salinas	10-20-87	4754	8.0	
	Salinas	10-21-87	5182	6.0	
		10-22-87	1118	4.0	
		10-23-87	1516	9.0	
		10-27-87	3730	4.5	
1988					
Del Campo	Huron	4-7-88	3530	10.0	
		4-8-88	4962	8.0	
		4-11-88	3553	0	
Castro	Huron	4-11-88	3532	6.5	Huron
		4-12-88	1964	5.0	
Del Campo	Huron	4-12-88	1366	0	
		4-13-88	2986	5.0	
	Huron	4-14-88	1549	0	
	Huron	4-14-88	1612	0	
		4-15-88	2258	10.0	Salina
Del Campo	Huron	4-15-88	2838	0	
	Huron	4-18-88	4184	10.0	Salina
Castro	Huron	4-18-88	4206	0	
		4-19-88	1937	4.5	
Del Campo	Huron	4-19-88	3016	0	
		4-20-88	2157	9.0	
Castro	Huron	4-20-88	2143	0	
Del Campo		4-21-88	3958	0	
Castro	Huron	4-21-88	4064	9.0	Salina
		4-22-88	1931	9.0	Salina
Del Campo		4-22-88	2424	0	
		4-26-88	1779	0	
		4-28-88	2041	0	
Castro	S.Maria	4-29-88	2630	6.5	Salina
		4-30-88	3559	0	
		5-2-88	5909	0	
Del Campo	Salinas	5-2-88	3883	9.5	Salina
		5-3-88	1592	7.0	
Castro	S.Maria	5-3-88	2656	0	
		5-5-88	2558	0	
Del Campo	Salinas	5-5-88	3660	8.0	Salina
Castro	S.Maria	5-7-88	2025	0	
		5-9-88	2402	8.5	
		5-10-88	2013	7.5	
		5-13-88	3230	8.0	
		5-14-88	2556	0	
	S.Maria	5-20-88	3818	8.5	

DATES WORKED BY LABOR

NAME	DATE	AREA	CTNS
Castro	7-2-88	Salinas	1945
Del Campo	7-6-88		2916
	7-7-88		3555
	7-8-88		794
	7-12-88		2282
	7-13-88		1804
	7-15-88		3570
Castro	7-15-88	S.Maria	3022
	7-18-88		1604
Del Campo	7-18-88	Salinas	2938
	7-19-88		868
Castro	7-19-88	S.Maria	1621
Del Campo	7-21-88	Salinas	2920
	7-22-88		1612
	7-25-88		1603
	7-26-88		1080
	7-27-88		2168
	7-28-88		1304
Castro	7-28-88		2906
	7-29-88		2902
Del Campo	8-1-88		1336
	8-9-88		1984
	8-10-88		4513
	8-11-88		3281
	8-12-88		2948
	8-19-88		3789
Castro	8-22-88		3556
Del Campo	8-22-88		4094
Castro	8-23-88		1181
Del Campo	8-23-88		1363
	8-25-88		2805
Castro	8-26-88		4266
	8-26-88		2754
	8-27-88		2544
Del Campo	8-27-88		3861
	8-29-88		3121
	8-29-88		2583
	8-31-88		1978
	9-1-88		1955
	9-2-88		2134
	9-6-88		1937
	9-8-88		2592
	9-9-88		2577
	9-13-88		2252
Castro	9-15-88	S. Maria	1616
	9-16-88		2584
Del Campo	9-16-88	Salinas	3935
	9-21-88		3224
	9-22-88		2258

	9-23-88	Salinas	1272
Castro	9-23-88	S.Maria	2889
	9-24-88		2909
	9-26-88		2916
Del	9-26-88	Salinas	3235
	9-27-88		2255
Castro	9-27-88	S.Maria	2061
	9-28-88		1296
Del	9-28-88	Salinas	3264
	9-29-88		3927
	9-30-88		4434
Castro	9-30-88		2977
	10-1-88		3848
Del	10-1-88		3253
	10-3-88		3237
	10-4-88		3244
	10-5-88		4207
	10-6-88		4401
	10-7-88		5688
Castro	10-7-88	S. Maria	3274
	10-8-88		3296
	10-10-		2554
Del	10-10-	Salinas	4212
	10-11-		3580
Castro	10-11-		2162
	10-11-	S. Maria	2248
Del	10-12-	Salinas	4164
Castro	10-12-		2685
Del	10-12-	Huron	1959
	10-13-	Salinas	2648
	10-13-	Huron	1430
	10-13-	Salinas	2586
Castro	10-14-		1930
	10-14-	S. Maria	959
Del	10-14-	Salinas	1321
	10-14-	Huron	1561
	10-17-	Huron	2105
	10-17-	Salinas	3412
Castro	10-17-	Salinas	2657
	10-17-	S. Maria	3281
	10-18-		2319
	10-18-	Salinas	1955
Del	10-18-		2000
	10-19-		2769
Castro	10-19-		2940
Del	10-20-		4230
Castro	10-20-		3847
	10-21-	S. Maria	2613
	10-21-	Salinas	2998
Del	10-21-		4351
Castro	10-22-	S.Maria	2984
	10-24-	Salinas	1926
	10-24-	S.Maria	1939
Del	10-25-	Huron	2000

	10-26-88		2263
Castro	10-27-88	S.Maria	2600
Del	10-27-88	Huron	2917
Castro	10-28-88	S.Maria	3592
Del	10-28-88	Huron	2269
	10-31-88		4217
Castro	10-31-88	S.Maria	3559
	11-1-88		3066
Del	11-1-88	Huron	4433
	11-2-88		3976
	11-3-88		4849
	11-4-88		5170
Castro	11-4-88	S.Maria	2195
Del	11-5-88	Huron	4236
	11-7-88		5741
	11-8-88		5961
	11-9-88		5012
	11-10-88		4105
Serna Pkg.	11-10-88	Huron	353
1989			
Del	4-17-89	Huron	2267
	4-18-89		1587
	4-19-89	S.Maria	2589
	4-20-89		3543
	4-21-89		2490
	4-22-89		2270
Bravo Pkg.	4-22-89	Salinas	2918
	4-24-89		2533
Del	4-24-89	s.Maria	2580
	4-25-89		2569
	4-26-89		3252
	4-27-89		2261
	4-27-89	Salinas	2907
	4-28-89		2584
	4-28-89	S.Maria	2645
	5-1-89	Salinas	3250
	5-1-89	S.Maria	2273
	5-2-89		1946
	5-3-89		3947
	5-4-89		3564
	5-5-89		4541
	5-8-89		1966
	5-8-89	Salinas	3993
	5-9-89		3617
	5-9-89	S.Maria	2589
	5-10-89		2600
	5-10-89	Salinas	4621
	5-11-89		2263
	5-11-89	S.Maria	4528
	5-12-89		2595
	5-18-89	Salinas	5188
	5-19-89		5756

Bravo Pkg.	5-19-89	Salinas	4214
	5-20-89		1629
Del Campo	5-20-89	Salinas	3561
	5-22-89		4874
	5-23-89		4850
	5-24-89		2598
	5-25-89		2926
	5-26-89		12898
	5-27-89		3650
	5-30-89	S.Maria	1297
	6-5-89	Salinas	3209
Bravo Pkg.	6-9-89		2375
	6-12-89		2907
	7-13-89		3568
	7-14-89		1294
Del Campo	7-17-89		1619
	7-20-89		3236
	7-21-89		5122
	7-22-89		4302
	7-27-89		3885
	7-28-89		6539
	8-3-89		2586
	8-4-89		4351
	8-8-89		3235
	8-11-89		1939
	8-12-89		2890
	8-14-89		2929
	8-16-89		3206
	8-17-89		3874
	8-18-89		4851
	8-19-89		2006
	8-21-89		3918
	8-22-89		1297
	8-25-89		2726
	8-26-89		2578