Coachella, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CARDINAL DISTRIBUTING COMPANY, INC., PETER RABBIT FARMS, INC., CARDINAL PRODUCE SALES, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 91-CE-76-EC 19 ALRB No. 10 (June 25, 1993)

DECISION AND ORDER

On December 10, 1992, Administrative Law Judge (ALJ) Arie Schoorl issued the attached decision in which he found that Cardinal Distributing Company, Inc., Peter Rabbit Farms, Inc., and Cardinal Produce Sales, Inc. (Cardinal or Respondent), violated section 1153, subdivisions (e) and (a),[1] of the Agricultural Labor Relations Act (ALRA) by failing to notify the United Farm Workers of America, AFL-CIO (UFW) of the sale of its agricultural operations, thus denying the UFW the opportunity to bargain over the effects of the sale before it was implemented. The ALJ also found that the Transmarine[2] remedy for failure to bargain over the effects of the sale, which attempts to recreate a balance of bargaining power by providing for a limited backpay award, was appropriate in the circumstances present here.

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

[2] The name is derived from the case in which it first arose. Transmarine Navigation Corporation (1968) 170 NLRB 389 [67 LRRM 1419].

Cardinal timely filed exceptions to the ALJ' s decision, along with a supporting brief, and the General Counsel filed a brief in response. The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the attached decision of the ALJ in light of the exceptions and briefs filed by the parties and affirms the ALJ's findings of fact and conclusions of law, and adopts his recommended remedy, as modified herein.

DISCUSSION

Though Cardinal admits that it did not give the UFW notice, actual or constructive, prior to the closure of its agricultural operations, it asserted numerous affirmative defenses. Those defenses were properly rejected by the ALJ and, with the exception of Cardinal's arguments concerning its attempt to withdraw recognition from the UFW, are fully addressed in the ALJ's decision. Cardinal also claims that the Transmarine remedy is inappropriate here because, it contends, the sale of its agricultural operations had no adverse effects upon its employees.

Withdrawal of Recognition/Loss of Majority Support

Cardinal attempted to withdraw recognition from the UFW in January of 1989 for the stated reason that it had received threats from employees that they would rather quit than have a contract signed and be forced to join the UFW. As the ALJ pointed out, it is well-settled under the ALRA that an exclusive bargaining representative is "certified until

decertified" and an employer may not defend a refusal to bargain charge by alleging a loss of majority support. (Nish Noroian Farms (1982) 8 ALRB No. 25; F & P Growers v. ALRB (1985) 168 Cal.App.3d 667 [214 Cal.Rptr. 355.) Cardinal acknowledges existing precedent but, in its exceptions brief, simply urges that it be overruled. However, as Cardinal has presented no developed legal basis for its position, and the Board finds no self-evident merit in overruling Nish Noroian Farms, supra, the "certified until decertified" rule will not be disturbed. Cardinal further argues that, even if the above precedent is sound, the result should be different here because the UFW did not timely file an unfair labor practice charge in response to the withdrawal of recognition.[3] Therefore, Cardinal argues, the UFW is barred from challenging, or has waived the right to challenge, the withdrawal of recognition. In essence, Cardinal proposes that the failure to challenge the withdrawal of recognition should either make the withdrawal effective or, at least, serve to estop the UFW from challenging it through the present refusal to bargain charge, on the theory

[3] The UFW's charge was dismissed not because it was filed more than six months after the purported withdrawal of recognition, but because Cardinal had ceased to be an agricultural employer more than six months before the filing of the charge. Having also concluded that Crown Hill, the purchaser of Cardinal's agricultural operations, was not a successor or alter ego of Cardinal, the Regional Director concluded that the charge must be dismissed because no duty to bargain existed at any time during the six months prior to the filing of the charge. There is no such problem with the charge at issue here, because a duty to bargain still existed at the time that Cardinal failed to give notice of the intended closure of its agricultural operations.

that any refusal to bargain was inextricably linked to its withdrawal of recognition.

Cardinal's arguments are based on the faulty premise that under the ALRA a failure to file a charge against a purported withdrawal of recognition can extinguish the overall duty to bargain. As explained by the ALJ, the only recognized exception to the "certified until decertified" rule is abandonment of the bargaining unit, which did not occur here. (See Ventura County Fruit Growers Association (1984) 10 ALRB No. 45.) In short, a failure to file a timely charge against an attempted withdrawal of recognition cannot make the withdrawal effective where the statutory scheme does not permit such actions by an employer.[4] Under the ALRA such conduct is viewed no differently than any refusal to bargain, such that the particular act may not be actionable if a charge is not filed within six months, but the duty to bargain continues and may be invoked by the union at a later date. (Ron Nunn Farms (1980) 6 ALRB No. 41.) Here, the duty to bargain had not been extinguished when Cardinal decided to sell its agricultural operations. Therefore, it was obligated to provide timely notice so that the UFW could invoke its right to effects bargaining.

[4] The NLRB would apparently allow a bargaining relationship to be severed by a failure to timely challenge even a legally deficient withdrawal of recognition. (A & L Underground (1991) 302 NLRB No. 76 [137 LRRM 1033].) However, this is because under the NLRA, unlike under the ALRA, an employer is permitted under limited circumstances to withdraw recognition from a certified or recognized union.

The Transmarine Remedy

The testimony of Crown Hill General Manager Jarrett established that the 400 employees on Cardinal's payroll preceding December 31, 1989, were immediately hired by Crown Hill. The known changes in employment terms were favorable to the former Cardinal employees. Those changes included a small wage increase, the recognition of their seniority at Cardinal and the integration of that seniority with the seniority of other employees coming into Crown Hill, largely from the former operations of Karahadian, which Crown Hill acquired at the same time. The changes also included the opportunity to work more hours doing work formerly done only by Karahadian employees.

The ALJ rejected Respondent's argument that no Transmarine remedy was warranted because it had shown that the sale of Cardinal's agricultural operations to Crown Hill would have no adverse effects. The ALJ cited Gourmet Harvesting and Packing, Inc., and Gourmet Farms (1988) 14 ALRB No. 9, for the proposition that a Transmarine remedy was appropriate even where there were no specific findings of adverse effects upon unit employees.[5]

The Board declined to award the Transmarine remedy in Gourmet because the decision to close occurred during a time

[5] The ALJ in Gourmet Harvesting had concluded that it was immaterial whether the predecessor failed to disclose to the union the fact that it was no longer in business because "there were hardly any effects to negotiate about." However, the Board noted that in so holding, the ALJ appeared to have intruded upon the collective bargaining process where such questions may best be resolved by the parties themselves through negotiation.

when few, if any, employees were working, and thus the delay in bargaining did not deprive the union of any significant bargaining strength. Circumstances more analogous to the present case are evident in Santa Cruz Convalescent Hospital (1990) 300 NLRB 1040 [136 LRRM 1029]. In that case, the NLRB overturned an ALJ decision declining to provide a Transmarine remedy. The ALJ had concluded that the unit employees suffered no palpable loss from the employer's failure timely to notify the union of its decision to transfer its convalescent hospital to another facility. On review, the NLRB found that it "need not decide whether the remedy providing for a minimum of two weeks' backpay in Transmarine is warranted for all effects bargaining violations regardless of loss."[6] The national board found that backpay was appropriate in Santa Cruz because the union might have secured additional benefits for employees if the employer had engaged in timely effects bargaining. The national board noted that it was not certain, for example, whether the employees' leave benefits remained the same, whether there was a procedure for resolving outstanding grievances, or

[6] The dissent fails to distinguish the issue left open by the NLRB, i.e., whether a minimum of two weeks backpay should be ordered regardless of any demonstrated loss, and the established precedent of ordering effects bargaining pursuant to Transmarine when such bargaining was wrongfully precluded prior to the transaction in question.

whether accumulated vacation and sick leave were cashed out or transferred.[7]

Similarly, in the instant case the evidence does not demonstrate that all terms and conditions of employment remained the same for the former Cardinal employees. While there was some indication that the employees' wages remained the same or perhaps increased slightly, there are many other possible issues which could have been discussed by the Union and the Employer in bargaining sessions over the effects of the Employer's decision to sell its agricultural operations. As we stated in Gourmet Harvesting, the assessment of all the effects of the sale is best undertaken in the bargaining process itself. We therefore direct that the parties engage in bargaining over the effects, if any, of the consolidation of Cardinal into Crown Hill.[8] Since the record indicates that the former Cardinal employees did retain jobs for approximately the same wages as before, with recognition of their seniority while at Cardinal, we will not

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[7] In Santa Cruz, the NLRB looked to the employer's contractual requirement to provide advance notice of any decision to transfer its facility, as well as to the demonstrated intention of the union promptly to seek effects bargaining over specific issues. In light of the inability of the UFW to secure information from the Employer for a substantial period preceding the decision at issue in this case, we do not find necessary any showing of a specific contractual requirement nor any demonstration of the Union's intention to promptly bargain over specific issues.

[8] Member Ramos Richardson believes that the dissent is inconsistent in agreeing to a bargaining order, while at the same time asserting that "the record reveals nothing over which to bargain." The dissent's assertion could tend to act as a disincentive for Cardinal to engage in good faith bargaining over the sale's effects.

order the minimum two-week backpay customary in Transmarine remedies.[9]

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Cardinal Distributing Company, Inc., Peter Rabbit Farms, Inc., Cardinal Produce Sales, Inc., (Respondent) its owners, officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW) by failing to give notice of its decision to terminate its agricultural operations and refusing to bargain with the UFW regarding the effects of its decision to terminate its agricultural operations.

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

2. Take the following affirmative actions designed to effectuate the policies of the Act:

[9] In failing to employ even a modified Transmarine remedy, the dissent would establish no potential backpay obligation to compensate for the loss of union bargaining strength occasioned by the failure of Respondent to provide notice of the sale of its agricultural operations. The potential for backpay acts as an incentive to move the bargaining process forward and is established in the precedent of the NLRB and this Board. It appears the dissent would order a Transmarine remedy only if the Union could establish at hearing specific effects of the transaction, although it is precisely the inability of the Union to secure such information through Respondent's failure to notify and bargain that is at issue.

(a) Upon request, bargain collectively with the UFW with respect to the effects upon its former employees of its termination of operations, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay to those employees on its payroll on or about December 31, 1989, prior to the date Respondent sold its agricultural operations, their average daily wage for a period commencing five days after the issuance of this Order and continuing until: (1) the date it reaches an agreement with the UFW about the impact and effects on its former employees of its decision to discontinue its agricultural operations; or (2) the date it and the UFW reach a bona fide impasse in such collective bargaining; or (3) the failure of the UFW either to request bargaining within five days of the date of this Order or to commence negotiations within five days after Respondent's notice to the UFW of its desire to bargain; or (4) the subsequent failure of the UFW to timely meet and bargain collectively in good faith with Respondent. Such amount shall include interest thereon, computed in accordance with our Decision and Order in E.W. Merritt Farms (1988) 14 ALRB No. 5.

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

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance

of this Order, to all employees employed by Respondent any time during the period from January 1, 1989 to December 31, 1989.[10]

(e) 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: June 25, 1993

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

[10] The customary posting and reading of the Notice to Agricultural Employees has not been ordered since Respondent has ceased its agricultural activities and therefore no longer has agricultural workers in its employ.

MEMBER FRICK, Concurring in part and dissenting in part:

I concur in the finding that Cardinal violated Labor Code section 1153, subdivisions (a) and (e) by failing to give notice to the UFW of its decision to terminate its agricultural operations. I also concur with all of the nonmonetary provisions of the Board's Order, including the provision of a bargaining order. However, on the facts appearing in this record I would find that the Transmarine remedy is not appropriate. Unrebutted testimony established that all of the former Cardinal employees were immediately hired by Crown Hill with the same terms and conditions of employment. The only changes were beneficial, a small wage increase and an opportunity to work more hours,

The ALJ, citing Gourmet Harvesting and Packing, Inc., and Gourmet Farms (1988) 14 ALRB No. 9, concludes that a Transmarine remedy is appropriate even where there were no

adverse effects upon unit employees proved on the record. In Gourmet Harvesting, the Board found that the question of whether there were any detrimental effects for the closure of a business were best resolved by the parties themselves through negotiations. However, the Board was specifically addressing not the appropriate remedy, but the conclusion of the ALJ that no violation had been committed, even for the failure to give notice to the union prior to the implementation of the closure of the business. As a separate matter, the Board went on to find that the Transmarine remedy would be inappropriate because the closure took place at a time when few, if any, employees were working. Therefore, Gourmet Harvesting is inapposite.

This case is one of first impression, as it is an open question whether the Transmarine remedy is appropriate even where there are no adverse effects from a non-negotiable decision. In a recent case, Santa Cruz Convalescent Hospital, Inc. (1990) 300 NLRB 1040, the NLRB General Counsel and the charging party contended that the Transmarine remedy was appropriate regardless of any loss to the employees. In response, NLRB stated that it did not have to decide the issue, because in that case there was evidence that the union might secure additional benefits if the employer engaged in effects bargaining. The NLRB specifically cited evidence on the record of the successor employer's refusal to guarantee that it would fully honor accrued leave benefits, as well as the union's expressed interest in bargaining over that issue.

The majority appears to read Santa Cruz to support the proposition that the Transmarine remedy is appropriate if it is "possible" that the parties could find something to bargain over even where the record reveals no adverse effects from the implementation of the non-negotiable decision. I do not believe that is an accurate reading of the case. The NLRB expressly declined to decide if the remedy was appropriate when there are no apparent effects and instead relied on record evidence which reflected a viable topic for negotiations. Here, Cardinal provided unrebutted testimony that there were no adverse effects from the sale to Crown Hill. Thus, the present case poses the very issue the NLRB declined to decide.

In my view, where the non-negotiable decision has already been implemented and the only issue is the propriety of the Transmarine remedy, more than speculation is required to conclude that there are effects amenable to bargaining.[1] As Cardinal points out, the Transmarine remedy arose in cases where there were tangible adverse effects, namely, job loss. The remedy represents an attempt to reconstruct relative bargaining power so that the union will have a reasonable opportunity to negotiate terms which might ameliorate the detrimental effects of the non-negotiable decision.

[1] ln addition, it is necessary to point out that at this point in time Cardinal has no control over any changes in terms and conditions of employment that Crown Hill may seek to make in the future. Though, for the purposes of this case, the Board has accepted the stipulation that Crown Hill is not a successor, that should not be read as an endorsement of all legal conclusions that might be inferred from the stipulation.

Where, as here, the record reveals no adverse effects resulting from the non-negotiable decision, there appears to be no purpose in affording a remedy that by its nature is designed to provide an opportunity to soften the ill effects of impending changes in terms and conditions of employment. Put most simply, it is difficult to justify extending a remedy that is specifically designed to facilitate meaningful bargaining when the record reveals nothing over which to bargain. In such circumstances, any backpay awarded under the Transmarine remedy may be subject to attack as punitive.

Therefore, I would conclude that while the facts of this case reflect a violation for failure to give notice to the UFW at a time when effects bargaining might have been meaningful, later events eliminated the propriety of affording the Transmarine remedy.[2]

DATED: June 25, 1993

LINDA A. FRICK, Member

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[2]Cardinal argues that the absence of adverse effects precludes not only the Transmarine remedy, but also the finding of any bargaining violation. The cases cited by Cardinal in support of this argument are distinguishable because in all of those cases, at the time that notice to the union would have been required, it was known that there were no adverse effects upon which to bargain. In this case, at the time that Cardinal was seriously considering the closure of its agricultural operations, it was not known what the effect on employees would be. Consequently, had timely notice been given, there were many possible subjects for effects bargaining. Thus, while Crown Hill's later independent decision to retain existing terms and conditions largely dictated the appropriate remedy, it did not obviate the fact that Cardinal failed to give the UFW the legally required notice upon deciding to close its operations.

CASE SUMMARY

Cardinal Distributing Co., Inc., et al. (United Farm Workers)

19 ALRB No. 10
Case No. 91-CB-76-EC

Background

Respondent had bargained with Charging Party Union toward a collective bargaining agreement (pursuant to a court order) until early 1989, when Respondent notified the Union that Respondent no longer recognized Union as collective bargaining representative of its agricultural employees. On December 31, 1989, Respondent sold all of its agricultural operations to a new company, Crown Hill, which on the same date also acquired the agricultural operations of Karahadian Ranch. Respondent gave the Union no notice of the sale. When the Union demanded bargaining in August, 1990, Respondent replied that it continued to withhold recognition from the Union, without indicating that it no longer operated as an agricultural employer.

The Union filed charges alleging that Respondent had engaged in various unfair labor practices, which were ultimately dismissed by the General Counsel on the ground that Respondent had not employed agricultural employees in the six months preceding the filing of the charges. The Union first got notice that Cardinal had sold its agricultural operations in the General Counsel's letter dismissing its refusal to bargain charge. The Union then filed this charge within 6 months of the first date it had notice of the sale.

Administrative Law Judge's Decision

The Administrative Law Judge (ALJ) rejected Respondent's contention that the complaint, alleging failure to give the Union notice of and opportunity to bargain over the effects of the sale of Respondent's agricultural operations, was barred by the statute of limitations and that Respondent had effectively withdrawn recognition of the Union before the statute of limitations period. The ALJ credited the Union's testimony that it had not been advised of the sale, in particular because Respondent's witness' memorandum of the conversation did not reflect that the sale had been mentioned in the conversation.

The ALJ found that Respondent had failed to give notice of the decision to sell, and that the Union did not have constructive notice of the sale from the employees it contacted. The ALJ found that while Respondent contended that the sale had no adverse impact on the Cardinal employees, the absence of effects was irrelevant to the Transmarine remedy's applicability. The ALJ granted the remedy, which provided a minimum of two week's

backpay for all employees working for Cardinal at the time of the sale to compensate the Union for its lost bargaining power.

Board Decision

The Board adopted the decision of the ALJ, rejecting Respondent's contentions that it had effectively withdrawn recognition from the Union, that the charge was untimely filed, and that the Union had abandoned the bargaining unit. However, the Board found that Respondent's unrebutted testimony showed that Cardinal's agricultural employees had been hired without any loss of work at the same or better rates of pay, and with recognition of seniority while at Cardinal. The Board found that in these circumstances, the two week minimum backpay provision of the Transmarine remedy was not appropriate, but directed that Respondent bargain with the Union concerning the effects of the sale, in accordance with the Transmarine order's terms, less any minimum backpay provision.

Dissent

Member Frick finds the evidence failed to show any effects arising from the sale of Cardinal's assets to Crown Hill, and therefore would not provide the Transmarine remedy.

* * *

CARDINAL DISTRIBUTING COMPANY, INC.; PETER RABBIT FARMS, INC.; CARDINAL PRODUCE SALES, INC.

19 ALRB No. 10
Case No. 91-CE-76-EC

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we have violated the law. The Board found that we did violate the law by closing our agricultural operations without notice to the United Farm Workers and we refused to bargain with the United Farm Workers regarding the effects of our decision to close our agricultural operations. The Board has found that we violated the law in each of these respects. The Board has told us to mail this notice to all employees employed by us anytime during the period from January 1, 1989 until December 31, 1989.

The Board has directed us to post and publish this Notice.

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

1. To organize themselves;

2. To form, join or help a labor organization or bargaining representative;

3. To vote in a secret ballot election to decide whether you want a union to represent you or to end such representation;

4. To bargain with your employer about your wages and working conditions through a bargaining representative chosen by a majority of the employees and certified by the Board;

5. To act together with other workers to help and protect one another; and,

6. To decide not to do any of these things.

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

WE WILL give notice and an opportunity to bargain to the certified bargaining representative prior to implementing decisions having possible adverse effects upon the terms and conditions of employment of agricultural employees.

WE WILL, on request, meet and bargain in good faith with the UFW about the effects on our employees of our decision to sell our business.

WE WILL pay to pay agricultural employees who were employed by us limited backpay, plus interest, as required by the Agricultural Labor Relations Board.

If you have a question about your rights as farm workers or about the Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at:

319 South Waterman Avenue El
Centro, California 92243 Telephone
No.: (619) 353-2130

DATED:

CARDINAL DISTRIBUTING COMPANY, INC. PETER RABBIT FARMS, INC.; CARDINAL PRODUCE SALES, INC.

By: _____
Representative

_____
Title

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

D O N O T R E M O V E O R M U T I L A T E

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: CARDINAL DISTRIBUTING COMPANY, INC., PETER RABBIT FARMS, INC., CARDINAL PRODUCE SALES, INC., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 91-CE-76-EC

Appearances:

Eugene Cardenas
El Centro Regional Office
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James A. Bowles
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Gustavo Romero Marcos
Camacho A Law
Corporation Labor
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Before: Arie Schoorl
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ARIE SCHOORL, Administrative Law Judge: This case was heard by me on July 7, 1992, in El Centre, California. The complaint issued on February 11, 1992, based on a charge (91-CE-76-EC) filed by the United Farm Workers of America AFL-CIO (hereinafter called the UFW) and duly served on Cardinal Distributing Company, Inc. (hereinafter called the Respondent) on November 27, 1991, alleging that Respondent had committed a violation of the Agricultural Labor Relations Act (hereinafter called the Act). Respondent filed an answer on February 18, 1992, denying any such violation.

The General Counsel, the Respondent and the Charging Party were represented at the hearing. General Counsel and Respondent filed timely briefs after the close of the hearing. Upon the entire record including my observation of the witnesses, and after considering the post-hearing briefs submitted by General Counsel and Respondent, I make the following findings of fact.

I. Jurisdiction

Respondent has admitted in its answer and I find that Respondent was an agricultural employer within the meaning of section 1140.4(c) of the Act at all times material herein, and ,that the UFW is a labor organization within the meaning of section 1140(f) of the Act.

II. The Alleged Unfair Labor Practice

General Counsel has alleged in the complaint that Respondent closed its agricultural operations by ceasing to

employ agricultural workers, and violated the Act by failing to give notice to the UFW of such closure and failed to provide the Union an opportunity to bargain with respect to the effects thereof on the bargaining unit employees. Respondent admits it failed to give the UFW notice of its closure but claims it did not violate the Act because it no longer recognized the UFW as the bargaining agent of its agricultural employees since a majority of its employees repudiated the Union in January 1989.

Respondent further contends the Complaint herein is barred by the six-month statute of limitations, because the Union knew or should have known of the transfer of Respondent's operations on January 1, 1990, and failed to file an appropriate charge until December 1991.

III. Summary and Background

Cardinal Distributing Company, Inc.[1] was an agricultural employer, located near Coachella, California, until January 1, 1990, when it closed down. It was primarily a grower, harvester and packer of vegetable crops. In 1977, the UFW won an ALRB election and was certified as the collective bargaining representative of Respondent's agricultural employees. In January 1989, Respondent withdrew its recognition of the UFW as

[1]Cardinal Distributing Company is owned primarily by John Powell, Sr., the president of the corporation and his sister. Respondent consists of Cardinal Distributing Company, Cardinal Produce Sales and Peter Rabbit Farms. References to Respondent, Cardinal or Cardinal Distributing Company will refer to the combined operations of the three entities mentioned above unless otherwise indicated. In Cardinal Produce Co., Inc. et al (1983), 9 ALRB No. 36, CDC, PRF and CPS were found to constitute one employing entity for purposes of the Act

the representative of its workers contending that its employees had repudiated such representation and thereafter it refused to bargain. In December 1989, Crown Hill[2] purchased Respondent and the nearby Karahadian Company, hired the employees of both entities en masse and commenced its agricultural activities on January 1, 1990.[3] Neither Crown Hill nor Respondent notified the UFW of the changeover.

Throughout 1990 a UFW representative periodically took access to what had been Respondent's property and communicated with Respondent's former employees. In August 1990, the UFW requested Respondent to renew collective bargaining negotiations but Respondent refused to do so. That same month the UFW filed a refusal to bargain charge against Respondent. On June 13, 1991, the Regional Director dismissed the unfair labor practice charge noting that during the six-month period preceding the filing of the charge that Respondent was not an agricultural employer under the meaning of the Act since it had no agricultural workers in its employ. It was on receipt of the Regional Director's letter to that effect, that the UFW allegedly first learned of the cessation of Respondent's agricultural operations. The UFW filed

[2]Crown Hill was owned by John Powell, Jr., his brother and sister. General Manager Nick Jarrett also owned an interest in Crown Hill.

[3]General Counsel and Respondent stipulated that Crown Hill was neither the successor to or the alter ego of Respondent.

the charge in the instant case on December 4, 1991.[4]

IV. Facts

In January 1989, a meeting was held in which Respondent informed the UFW representative David Serena that Respondent would no longer recognize it as the collective bargaining representative of its employees. According to Respondent, the reason for so doing was that its employees had informed it that they would rather quit work than be forced to join the UFW and pay dues. The UFW representative protested and claimed that the employees could only terminate the UFW representation by an ALRB decertification election.[5]

In September 1989, a new UFW representative, Gustavo Romero, arrived in the Coachella Valley. He organized the UFW office and reviewed all the files including that of the Cardinal Distributing Company. In late November or early December, Romero met with Respondent's supervisor Nick Jarrett at Respondent's office in Coachella. Jarrett informed Romero that Respondent no longer recognized the UFW as the representative of its employees. Jarrett said the reason was that its employees had threatened to quit if Respondent signed a contract with the UFW. Romero responded that the question of representation should be left to the workers. At this meeting, Jarrett made no mention of the

[4]The circumstances surrounding the Crown Hill takeover of Respondent will be set forth in detail in the "Facts" section of the decision.

[5]Present at the meeting were John Powell, Sr., John Powell, Jr., Nick Jarrett, Al Caplan, Respondent's negotiator, the UFW representative David Serena and three or four employees.

imminent takeover of Respondent by Crown Hill Ranches.[6]

Jarrett testified that the decision to form Crown Hill took place sometime in December 1989. On January 1, 1990, Crown Hill took over Respondent and merged its agricultural operations with most of what had been the agricultural operations of the Karahadian Company. Crown Hill purchased 600 acres of Karahadian' s land which was cultivated with grapes in addition to 100 acres of citrus. In addition, Crown Hill also provided agricultural services to other farming entities.

On December 31, 1989, Respondent ceased employing agricultural employees. The next day, January 1, 1990, Crown Hill hired the former Respondent employees en masse. According to Jarrett's testimony, Crown Hill supervisors, at his request, called together the former Cardinal employees, delivered their pay checks and informed them that Crown Hill had taken over Cardinal and in the future Crown Hill would be their employer and Crown Hill would pay them with Crown Hill checks.[7] Jarrett

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[6]When questioned about this meeting in late 1989 Jarrett testified that to his recollection no such meeting took place and that the first time he met with Romero was in February 1990. There is no evidence in the record that the decision to form Crown Hill and purchase Respondent and the Karahadian Ranch was made before this meeting. I make a finding that the meeting took place based on Romero's credible testimony.

[7]The meetings took place a week or ten days after the first of the year as Crown Hill continued Respondent's practice of a weekly payroll. According to Jarrett's testimony, the checks delivered were already in Crown Hill's name and drawn on Crown Hill's checking account. However, further on in his direct testimony, Jarrett in answer to a question of when Crown Hill began to pay with checks with the Crown Hill insignia answered "during 1990." Incidentally, Respondent introduced into evidence

(continued...)

testified that the supervisors transmitted this information to approximately 1,000 employees at approximately 38 separate meetings. Jarrett attended only one of those meetings. At the same time, Crown Hill raised the former Cardinal employees' wages so their pay would be equivalent to the former Karahadian employees. Jarrett further testified that Crown Hill retained the seniority system that had been in effect at Respondent's and would provide the former Cardinal employees with more weeks of employment yearly.

Romero learned about the wage increase from talking to former Cardinal workers. Romero testified that the workers did not present him with any proof of the increase in wages. When he was asked whether any of the workers had shown him a pay check, reflecting the raise, he answered, "I don't think so". (RT: I:42) In answer to another question on cross-examination, whether the employees told him that they were receiving checks from Crown Hill, he replied, "I don't recall." (RT: I:43)

Subsequently, the UFW through Romero filed charges[8] against Respondent for unilaterally raising the wages of the

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[7] (...continued)
a Crown Hill check to support Jarrett's testimony that Crown Hill had paid Cardinal's former employees with checks bearing the Crown hill insignia beginning in January 1990. However, the particular check admitted into evidence is dated July 2, 1990.

[8] ln naming the employer in the two charges, Romero put after Cardinal Distributing Company in parenthesis "aka Crown Hill Ranches Inc.". He credibly testified that when he filed the charge against Cardinal he stuck in Crown Hill because he did not know what part Crown Hill played but he knew they were part of the company, the grape part.

former Cardinal employees (90-CE-10-EC) and for changing the seniority system without consulting the UFW (90-CE-11-EC).

On February 15, 1991, Romero served copies of these two charges on Jarrett at the company office in Coachella. On this occasion Romero asked permission to take access to what he considered to be Cardinal's properties. Jarrett refused saying that the company no longer recognized the UFW as the employees' representative. Jarrett testified that he had told Romero that another reason he had refused access was that the former Cardinal employees were now working for Crown Hill.

Romero was not sure whether he had served the papers on Jarrett. He credibly testified that at no time during his conversations with Jarrett in February and March did the latter ever inform him of the changeover at Respondent's. In a memorandum of the same date, Jarrett noted the access request and the service of charges but made no reference to his informing Romero about Crown Hill. Upon being cross-examined about the memorandum, Jarrett testified that after years (since 1983) of dealing with the UFW he had the custom "to document things I do or say" and the reason he did so was "for reasons like this, exactly like this." (TR: 1:77)

At 10 a.m. February 19, Romero telephoned Jarrett and requested permission to take access and the latter refused, asserting that Respondent no longer recognized the Union. At 11 a.m. the same day, David Arizmendi of the UFW telephoned Jarrett and asked him why access was not granted. Jarrett denied

the request once again and according to Jarrett's memo of the same date "informed him why". The UFW took access at noon without obtaining permission.

Gustavo Romero took access to Respondent's property seven times from February 15 to March 5, without permission.[9] On each occasion, he contacted Jarrett by telephone and made his request for access. Each time Jarrett would refuse the request and give as a reason that "We didn't recognize the union as a bargaining agent for the employees". (TR: 1: 70) Romero talked to approximately 200-300 vegetable workers in February and March. He took access without requesting it in April, May and June and talked to approximately 65 workers during that period.

On May 23, Gustavo Romero sent a mailgram addressed to Crown Hill to advise that its personnel manager, Nick Jarrett, had been served with a Notice of Intent to take access to "your company". The Notice of Intent designated the property upon which access was to be taken, "where the employees of Crown Hill/ Cardinal 85-810 GRAPEFRUIT BLVD COACHELLA engage in agricultural employment for said employer, located at ALL AGRICULTURAL OPERATIONS STATE-WIDE". The Notice of Intent named Gustavo Romero as being authorized to reach an agreement on behalf of the UFW concerning access to the employees of Crown Hill, Cardinal.

When questioned about the inconsistency between his

[9]It can be inferred that the Union requested post-certification access since it did not file a "Notice of Intent to Take Access" which is required for organizational access.

belief that the UFW represented all of Respondent's employees, both vegetable and grape, and his attempt to gain organizational access to the grape workers, Romero replied that the Union was engaged in a statewide campaign to organize the table grape workers. Romero further testified that he was told by Cardinal workers that Cardinal had purchased the Karahadian table grape property and was operating it under the Crown Hill name and label.

On August 9, 1990, Romero sent a letter to Jarrett setting forth dates that the UFW was available for negotiations. On August 20, 1990, A. H. Kaplan, Respondent's negotiator, replied by letter:

> Please be advised that at a meeting held January 20, 1989 at the company offices between your union and the company, your union was advised that the company no longer recognizes your union as sole and exclusive bargaining agent for our agricultural employees. We informed you that our employees no longer desired your union to represent them and threaten to quit if we continued to recognize your union. It was suggested at the January 20,1989 meeting how to resolve the representation issue. We reiterate at this time the position we took on January 20, 1989.

It was noted at the bottom of the letter that copies had been Sent to Cardinal Dist. Co. Inc., and Jim Bowles, Respondent's attorney. No mention of the Crown Hill takeover was made nor the fact that Respondent no longer employed agricultural workers.

On August 31, 1990, the UFW through its representative, Gustavo Romero, filed a charge (90-CE-87-EC) against Cardinal Distributing Company, Inc. alleging that since January 20, 1989,

Respondent had refused to recognize the Union as sole and exclusive bargaining agent for their agricultural employees and had refused to bargain in good faith.

On June 13, 1991, the Regional Director Timothy C. Foote dismissed the unfair labor practice charge noting that during the six-month period preceding the filing of the (90-CE-87-EC) charge Respondent was not an agricultural employer under the meaning of the Act since it had no agricultural employees in its employ. The Regional Director concluded that therefore the charge was barred by the Act' s statute of limitations. The Regional Director added that the dismissal of the charge did not affect any possible allegations regarding Respondent's failure to bargain over the effects of its closure of those operations relating to agricultural employees as said issue would be dealt with in the pending charge 90-CE-10-EC.[10]

Gustavo Romero credibly testified that this was the first time that the Union learned that Cardinal had gone out of business and that Crown Hill had taken it over.

On July 16, 1991, the Regional Director issued a complaint based on charge 90-CE-10-EC alleging that Respondent had failed to bargain with the UFW with respect to the effects of Respondent's closure of its agricultural operations and its ceasing to employ agricultural employees.

On November 15, 1991, the Regional Director withdrew

[10]The UFW, in this particular charge, accused Respondent of unilaterally raising wage rates.

the aforementioned complaint and dismissed the under lying charge. The Regional Director explained such action by noting that a review of National Labor Relations Board case law on this subject revealed that alleging a failure to effects bargain in a complaint based upon an allegation in a charge of a unilateral increase in wages would be an impermissible variance with the original allegation of the charge.

On December 4, 1991, the UFW filed the instant charge 91-CE-76-EC alleging that Respondent had refused to bargain the effects of its closure on January 1, 1990.

V. Analysis and Conclusions

Respondent admitted it failed to notify the UFW of its decision to cease agricultural operations on January 1, 1990. Respondent claims that it had no duty to notify the UFW of such a decision because it no longer represented a majority of Respondent's agricultural employees.

It is well settled ALRA law that once a union is certified it continues to be the exclusive bargaining representative of the employees in the unit until it is decertified or a rival union is certified. Nish Norian Farms (1982) 8 ALRB No. 25. Furthermore, under the ALRA, the loss of majority status by the union cannot be utilized by the employer as a defense to a refusal to bargain charge. Consequently, this argument lacks merit.

Respondent next argues that the UFW had abandoned the bargaining unit from the date of the meeting with Respondent in

January 1989 until the date the UFW representative Gustavo Romero served two unfair labor practice charges on Respondent's general manager Nick Jarrett on February 15, 1990. Respondent contends because of this abandonment the UFW no longer was the collective bargaining agent of the unit's employees and it had no duty to notify the Union of its decision to terminate its agricultural operations.

In Bruce Church Inc. (1991) 17 ALRB No. 1, the Board stated that it has defined abandonment as a showing that the union was either unwilling or unable to represent the bargaining unit. The Board found that the ALRA requires formal decertification or, in essence, a showing that the union had effectively left the scene altogether. Moreover 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)

In the instant case the UFW did not have contact with the bargaining unit members until September, eight months after the meeting in which Respondent withdrew recognition and in effect refused to bargain with the UFW. It is understandable why the UFW would suspend such contact since the Respondent in effect had pointed out it would be useless for the Union to continue to represent its agricultural employees as the Respondent had informed the Union that it refused to continue to deal with it

and the majority of the employees had repudiated the Union.[11] However, in September of the same year the UFW representative, Gustavo Romero, arrived in the Coachella Valley reorganized the office and reviewed the Cardinal files. He then met with Respondent's general manager, Nick Jarrett, in late November or early December.

In February 1990, the UFW filed two unfair labor practice charges against Respondent and with knowledge of the latter took access to Respondent's property for several months thereafter.

Under the circumstances, the UFW had not effectively left the scene altogether or can it be said that it had become defunct or disclaimed interest in continuing to represent the unit employees. Therefore Respondent's argument about union abandonment lacks merit.

Respondent further contends that the Complaint is barred by the six-month statute of limitations because the UFW knew or should have known of the transfer of operations to Crown Hill.[12] Respondent specifically points out that Gustavo Romero, Respondent's representative, knew that Respondent had

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[12]Romero credibly testified that upon arriving in the Coachella Valley his duty was to first contact the workers and find out what their feelings were in respect to the union and if positive continue with negotiations. He added that he knew that an election as demanded by Respondent was not a prerequisite for such negotiations.

[12]The limitations period starts to run "when the union discovered, or in the exercise of reasonable diligence should have discovered, the alleged violation". Montebello Rose Co. v. ALRB 119 cal. App. 1 (1981), affirming, 5 ALRB No. 64 (1979)

closed down its agricultural operations on January 1, 1990.

Respondent asserts that Jarrett testified that he had informed Romero in February 1990, when Romero served the two ALRB charges, that Respondent no longer had agricultural employees. However, Jarrett noted in a memorandum that Romero served him with the copies of the charges but made no mention of having disclosed to Romero the true status of the Cardinal Distributing Company. It is true that Romero did not remember serving the papers on Jarrett, but he credibly testified that at no time during his conversations with Jarrett in February and March did the later inform him of the closure.[13] Jarrett testified that he had the custom of jotting down ("things I do and say . . . for reasons exactly like this") in his dealings with the UFW based on his experience with the UFW since 1983. In my opinion, informing the Union that Respondent had closed down falls into the category of things Jarrett would customarily write down. Therefore, it can be inferred from the fact that Jarrett did not note in the memorandum his informing Romero of Respondent's closure that he failed to do so.

[13]Romero did not remember to whom he had delivered the charges, but he did remember that he had delivered them to someone at the company office. Although Romero's memory failed him at times, I found him to be a reliable witness as his demeanor clearly indicated that he made a sincere effort to answer the questions accurately to the best of his recollection. Moreover he could have given absolute answers that would have favored his case but did not do so answering important questions with "I don't remember" etc. Furthermore his actions throughout 1990 i.e. filing unfair labor practice charges against Respondent, taking access to talk to the vegetable workers, and requesting bargaining with Respondent reflect his belief that Respondent continued to be an agricultural employer.

Moreover, in response to seven successive requests for access by Romero, in February and March 1990, Jarrett, in rejecting such requests, invariably gave the reason that the employees had repudiated the Union and on none of the seven occasions did he state that Respondent no longer had agricultural employees in its employ.[14]

Furthermore, in August 1990, the UFW requested Respondent to set a date for collective bargaining negotiations. Respondent's negotiator, A. H. Caplan, replied by letter and explained the reason to refuse such request was that the Respondent no longer recognized the Union as the representative of its employees because they no longer desired the UFW to represent them. Caplan made no mention that Respondent had ceased agricultural operations eight months previous.

The letter constitutes unrebutted proof that in this key instance when the Union requested bargaining, Respondent, in rejecting the request, avoided informing the Union of Respondent's status. Respondent's conduct on this occasion supports Romero's testimony that neither Caplan nor Jarrett in their contacts with him, ever informed him of Respondent's closure. Such conduct also coincides with Jarrett's testimony that in rejecting Romero's subsequent requests to take access in February and March 1990, he invariably mentioned the employees' discontent with the Union and not Respondent's employer status.

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[14]Jarrett, in his own testimony, only mentioned giving as a reason for the refusal, the employees' rejection of the UFW as its bargaining agent.

In view of the foregoing facts, I find that Respondent failed to inform Romero that Respondent terminated its agricultural in January 1990.

Respondent lists a number of arguments from which it contends inferences should be made that the UFW had or should have had knowledge that Respondent had ceased its agricultural operations.

Respondent contends that Romero learned or should have learned about Respondent's closure from Cardinal's employees since Crown Hill, through its supervisors, advised approximately 1,000 of them of the changeover at January meetings and the employees commenced to receive checks from Crown Hill immediately after the closure. Romero credibly testified that the employees told him about Crown Hill in general but not specifically that Crown Hill had taken over Respondent's agricultural operations. Furthermore, it is well established that notice to the employees does not constitute notice to the union.[15] It is interesting to note that Respondent in order to prove the date Crown Hill checks began to be issued to the workers submitted a copy of a July 2nd check rather than a January dated one.

Respondent further argues that the UFW knew or should have known that Crown Hill had become the employer of the former Cardinal employees since in its charges filed in February 1990 it stated "Crown Hill Ranches, Inc." as the employer. Actually the

[15]Martori Brothers (1982) 8 ALRB No. 23

unfair labor practice charges read "Cardinal Dist. Co. with "AKA Crown Hill Ranches, Inc." following. Romero credibly testified that he stuck in "Crown Hill" because he knew they were part of the company, the grape part. It is true that Romero knew about the existence of Crown Hill, but it is evident that he did not know what the relationship was between Crown Hill and Cardinal Distributing Co. Romero creditably testified that he understood that Respondent had purchased the Karahadian vineyard and was operating it under the brand name of Crown Hill. Consequently, in filing the charges against Respondent in February 1990, he named Cardinal Distributing Co. a.k.a. Crown Hill Ranches Inc. as the employer.[16]

Respondent asserts that the UFW's attempt to take organizational access to Crown Hill's property demonstrates that it was aware that a change in operations had taken place, and that it no longer represented the former Cardinal employees because they were now employed by Crown Hill. Admittedly, such attempt by the UFW shows that it was aware a change had been made, but it does not follow it was aware that the former Cardinal employees were now employed by Crown Hill and

[16] In its brief, Respondent asserts that Romero admitted in his testimony that the reason he had added "aka Crown Hill Ranches, Inc." was because there were two entities. (T: I:41) Later on in his testimony Romero expressed his doubt about the relationship between Cardinal and Crown Hill and stated twice that the reason he added "aka Crown Hill" was because even though he did not know which part Crown Hill played, he knew that Crown Hill was part of Cardinal, the grape part. (T: I: 46,47)

consequently it no longer represented them.[17]

Moreover, Roraero's actions in 1990 are consistent with his asserted belief that the UFW continued to represent Cardinal employees and that he was unaware of the Crown Hill takeover. In the middle of February he filed unfair labor practice charges alleging unilateral changes by Respondent in the conditions of employment. In late February and early March, Romero requested access and despite Jarrett's refusal, took what amounted to be post-certification access so as to talk to the vegetable workers. Throughout the rest of 1990, he continued to talk to those he considered to be Respondent's employees without requesting organizational access. In August, Romero contacted Respondent and made a request to resume collective bargaining. Upon receiving notice of Respondent's rejection of such request, the UFW filed unfair labor practice charges ten days later.

Consequently, Respondent's argument that the UFW in general and Romero in particular knew or should have known of the Crown Hill takeover because of the above described circumstances, i.e. mentioning Crown Hill in the UFW charges and in the Notice

[17]Romero explained that the UFW was engaged in a statewide campaign to organize all the table grape workers in California and that was why Respondent's grape workers were included in the Union's intent to take access. There is no explanation in the record why the UFW intended to take organizational access to the grape workers when Romero testified that he was of the opinion that the UFW represented these same workers as part of the Cardinal bargaining unit. However this one inconsistency is outweighed by various consistencies between Romero's actions throughout 1990 and his belief that Respondent continued to be an agricultural employer. Such a belief was bolstered by Respondent's misrepresenting, in effect, its agricultural employer status in every contact with him.

to Take Access, plus Respondent's notice to the employees of the changeover, lacks merit. Moreover Respondent's argument that the UFW should have known of the takeover is considerably weakened by the fact that Respondent misled Romero on this point by informing him of only one of its reasons for rejecting his requests for access-and bargaining and not the other reason namely that Respondent no longer represented agricultural employees as it had ceased operations on January 1, 1990. The fact Respondent continued to act as an agricultural employer in response to its contacts with Romero lulled the latter into not inquiring further about the Respondent's current status as an agricultural employer.

Respondent asserts that the complaint is barred because the General Counsel withdrew the previous complaint in Case No. 91-CE-10-EC which alleged the same facts and legal theories as in the instant complaint. Respondent argues that the prior complaint estops the General Counsel under equitable principles and due process, similar to the concept of res judicata, from relitigating issues which were previously dismissed and withdrawn.

However, the Regional Director withdrew the complaint because after reevaluation he determined that the underlying charge failed to allege facts similar to those alleged in the complaint and therefore was an impermissible variance. Thus, the withdrawal of the complaint had nothing to do with the merits or the facts alleged either in the charge or complaint. They were

simply incompatible. Such a withdrawal does not preclude the UFW from filing another charge alleging the same set of facts as set forth in the dismissed complaint so long as that charge is filed within the six-month statute of limitations. Nickels Bakery of Indiana, Inc. (1989) 296 NLRB No. 118.

In view of the foregoing, I find that the UFW was not aware of the cessation of Respondents operations until Regional Director's dismissal letter of June 13, 1991, and thus the charge filed on December 4, 1991, complied with the six-month statute of limitations.

I hereby find that Respondent violated Section 1153(a) and (e) of the Act by failing to notify the UFW of the closure of its agricultural operations and refusing to bargain over the effects of such closure.

VI. Remedy

Respondent argues that the back pay award as proposed by General Counsel is not called for in the instant case because Respondent's employees lost no wages or benefits upon being transferred to Crown Hill.

Respondent cites the language of the NLRB case, Transmarine Navigational Corporation (9th Cir. 1967) 380 F.2d 933, 939:

> Once such a decision is made the employer is still under the obligation to notify the union of its decision so that the union may be given the opportunity to bargain over the rights of the employees whose employment status will be altered by the managerial decision. Such bargaining over the 'effects' of the decision on the displaced employees may cover such subjects as severance pay, vacation pay, seniority,

> pension, among others, which are necessarily of particular importance and relevance to the employees.

Respondent points out that the employees in the instant case did not have their employment status altered nor were they displaced since they continued to perform the same work, earned higher wages, and the other conditions of employment remained the same. Therefore, according to Respondent the Transmarine remedy is not warranted.

However, the Board in Gourmet Harvesting and Packing, Inc., and Gourmet Farms (1988) 14 ALRB No. 9 determined that a Transmarine remedy would be appropriate in those cases where an employer has refused to bargain over the effects of a closure even though the employees have been rehired by a successor firm to perform essentially the same work at the same rates of pay, fringe benefits and other terms and conditions of employment.

So it would appear that the Board does not require the finding of altered status and displacement as a condition to order such a remedy.

Incidently, in Gourmet Harvesting and Packing, Inc. and Gourmet Farms, supra, the Board refrained from ordering such a remedy. The Board pointed out that in the Transmarine case the reasoning behind the award of backpay is to recreate the union's bargaining strength at the time of the closure so that the parties' bargaining position is not entirely devoid of economic consequences for the employer. In the Gourmet case, supra, there were very few workers employed and therefore no strong bargaining

position to be recreated through a limited backpay award and thus none was awarded.[18]

Here, on the contrary, Cardinal had hundreds of workers employed at the time of its decision to cease agricultural operations, and so a Transmarine remedy is warranted in the instant case.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Cardinal Distributing Company, Inc., Peter Rabbit Farms, Inc., Cardinal Produce Sales, Inc., its owners, officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with the United Farm Workers of American, AFL-CIO (UFW) by delaying negotiations or refusing, upon demand, to bargain with the UFW regarding the effects of its decision to terminate its agricultural operations.

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

2. Take the following affirmative action designed to

[18]In Gourmet Harvesting, supra, the Board disagreed with the Administrative Law Judge's finding that it was immaterial whether the employer failed to disclose to the union that it was no longer in business because "there were hardly any effects to negotiate about".

effectuate the policies of the Act:

(a) Upon request, bargain collectively with the UFW with respect to the effects upon its former employees of the termination of its agricultural employees, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay to those employees on its payroll on or about December 31, 1989, prior to the date Respondent closed its agricultural operations, their average daily wage for a period commencing ten days after the issuance of this Order and continuing until: (1) the date it reaches an agreement with the UFW about the impact and effects of its former employees of its decision to discontinue its agricultural operations; or (2) the date it and the UFW reach a bona fide impasse in such collective bargaining; or (3) the failure of the UFW either to request bargaining within ten days after the date of issuance of this Order or to commence negotiations within five days after Respondent's notice to the UFW of its desire to bargain; or (4) the subsequent failure of the UFW to meet and bargain collectively in good faith with Respondent. In no event shall the backpay period for any employee be less than he or she would have earned for a two-week period at the rate of his or her usual wages when last in Respondent's employ. Such amount shall include interest thereon, computed in accordance with our Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5.

(c) Preserve and, upon request, make available to this Board or its agents, for examination, photocopying, and

otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the makewhole and backpay amounts, and interest, due under the terms of this Order.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent any time during the period from July 1, 1989, until December 31, 1989.[19]

(f) 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: December 10, 1993

ARIE SCHOORL
Administrative Law Judge

[19]I have not ordered the customary posting and reading of the Notice to Agricultural Employees since Respondent has ceased its agricultural activities and therefore not longer has agricultural workers in its employ.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we have violated the law. The Board found that we did violate the law by closing our agricultural operations without notice to the United Farm Workers and we refused to bargain with the United Farm Workers regarding the effects of our decision to close our agricultural operations. The Board has found that we violated the law in each of these respects. The Board has told us to mail this notice to all employees employed by us anytime during the period from July 1, 1989 until December 31, 1989. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is the law that gives you and all other farm workers in California these rights:

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

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

Upon demand by the United Farm Workers (UFW) , we will bargain in good faith with the UFW regarding the effects of our decision to close our agricultural operations, as well as, with regard to wages, hours and other conditions of employment.

DATED:

CARDINAL DISTRIBUTING COMPANY, INC.,
PETER RABBIT FARMS, INC.,
CARDINAL PRODUCE SALES, INC.

By: _____
Representative Title

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