Gilroy, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

OLSON FARMS/CERTIFIED EGG FARMS, INC., Respondent, and GENERAL TEAMSTERS, WAREHOUSEMEN & HELPERS UNION, LOCAL 890, Charging Party.	)	Case No. 92-CE-52-SAL 19 ALRB No. 20 (December 23, 1993)

DECISION AND ORDER

On October 1, 1993, Administrative Law Judge (ALJ) James Wolpman issued the attached decision in which -he found that Olson Farms/Certified Egg Farms, Inc. (Olson Farms or Respondent) violated section 1153, subdivision (e), of the Agricultural Labor Relations Act (ALRA or Act) by failing and refusing to bargain in good faith. Specifically, the ALJ found that Respondent engaged in surface bargaining and insisted to impasse on a nonmandatory subject of bargaining.

Olson Farms timely filed exceptions to the ALJ's decision. Those exceptions address only the Agricultural Labor Relations Board's (ALRB or Board) jurisdiction over Olson Farms and do not address the ALJ's findings and conclusions with regard to the bargaining violations. The General Counsel filed a response to the exceptions, as well as a motion to strike the exceptions for failure to comply with the Board's regulations. Olson Farms then filed a response to the motion to strike. The

motion to strike is denied.[1] The Board has considered the record and the 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 order.[2]

DISCUSSION

Olson Farms' articulated its exceptions as follows:

1. That the Agricultural Labor Relations Board has any (sic) jurisdiction over the employees of the Respondents.

2. That the Administrative Law Judge did not allow any evidence on the subject of

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[1]The General Counsel argues that the exceptions should be stricken because they fail to cite the specific portions of the ALJ's decision excepted to or the portions of the record purported to support the exceptions, and because the exceptions were not accompanied by a proof of service.

While the exceptions and supporting argument are exceedingly brief, they are minimally sufficient to allow the Board to address them fully on their merits. The exceptions do cite to the pages of the ALJ's decision where he mentions jurisdiction, and the absence of citations to the record is due to the lack of evidence in the record on the issue of jurisdiction. Thus, the lack of supporting citations for the exceptions goes more to the merits of the exceptions than to their technical sufficiency. Nor do we consider the lack of a proof of service to be fatal where, as here, the General Counsel was in fact served and no prejudice has been shown.

[2]The findings and conclusions which were not excepted to are adopted pro forma.

Member Ramos Richardson believes that the ALJ should have included a fuller discussion of the equities involved in the award of makewhole in this case. Since the ALJ found that Respondent engaged in surface bargaining throughout the bargaining period, Member Ramos Richardson does not fully understand why the ALJ began the makewhole period only with Respondent's April 3, 1992 rejection of the Union's March 1992 proposal. However, because neither the General Counsel nor the Union excepted to the limitation of the makewhole period, the ALJ should be upheld on this issue.

"jurisdiction" in the Post Hearing Brief.
[Page 2 and 3, of the Decision].

The accompanying argument consists essentially of two statements followed by case citations. First, Olson Farms asserts that its negotiator and representative Norman E. Jones testified to facts in the hearing in this case that constitute undisputed evidence that it is subject to the jurisdiction of the National Labor Relations Board (NLRB), not the ALRB. Second, Respondent states that jurisdiction can be raised at any time.

While the exceptions cite the testimony of Norman Jones as evidence on jurisdiction, Mr. Jones did not testify with regard to jurisdiction, but only as to the bargaining history between the parties. Nor is there any other evidence in the record that indicates that Respondent is no longer under the Board's jurisdiction.[3] Also unsupported is the claim that the ALJ did not allow any argument on jurisdiction in post-hearing briefs. Pursuant to regulation 20278(e),[4] and without any expressed disagreement by Respondent, the ALJ found that the case was of the nature that post-hearing briefs would not be necessary and the transcript reflects that the parties agreed to dispense with oral argument. The ALJ did, however, allow briefs to be filed on the issue of insisting on a mediator in negotiations.[5] Thus,

[3]As the ALJ noted in his decision, Respondent denied in its answer to the complaint that the Board had jurisdiction but offered no evidence on the issue at hearing.

[4]The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

[5]Respondent did not file a post-hearing brief.

the briefing took place in accordance with the Board's regulations and the parties' agreement.

Since Respondent failed to provide evidence in support of its claim that the ALRB is preempted by the jurisdiction of the NLRB, the only question that remains is whether that failure is sufficient to dismiss the claim. Respondent asserts that the General Counsel had the burden of proving ALRB jurisdiction and failed to do so. Respondent is correct as a general matter that the General Counsel has the burden, as part of the prima facie case, to establish jurisdictional facts.

However, in this case the General Counsel alleged without dispute that the issue had previously been determined by the Board. The ALJ in essence took official notice of the Board's prior determinations, and found Respondent to be an agricultural employer based on a prior certification[6] and a previous Board decision involving Respondent.[7] In light of these prior determinations, the ALJ viewed it as Respondent's burden to show changed circumstances. We believe this is the correct approach.

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[6]On November 19, 1975, the General Teamsters, Warehousemen & Helpers Union, Local 890 was certified as the exclusive bargaining representative of Respondent's agricultural employees.

[7]In Certified Egg Farms and Olson Farms, Inc. (1990) 16 ALRB No. 7, it was found that Respondent committed various bargaining violations and Respondent's argument that it was no longer under the Board's jurisdiction was analyzed and rejected. In a subsequent compliance case, 19 ALRB No. 9, the Board determined the amounts owing to Respondent's agricultural employees due to the unfair labor practices.

In other words, when it is shown that Board jurisdiction has been determined in a previous adjudication, the burden shifts to the respondent to provide evidence that intervening changes in facts or law have stripped the Board of jurisdiction.[8] Support for this approach may be found in the United States Supreme Court, which has held that a party asserting NLRB preemption in a state forum has the burden of putting forth evidence to show that the NLRB would assert jurisdiction were the matter before it. (International Longshoremen's Association. AFL-CIO v. Davis (1986) 476 U.S. 380 [106 S.Ct. 1904].) Since Respondent has failed to demonstrate any intervening changes in facts or law that would place this

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[8]In 16 ALRB No. 7, the facts were for the most part taken from an extensive stipulation entered into by Respondent and the General Counsel. That stipulation, which was accepted and relied on by the ALJ and the Board, states that during the previous five years no more than five to ten percent of the eggs were purchased from outside (non-Olson/Certified) entities. More importantly, the stipulation states that such purchases were not typical, were undertaken only because of insufficient supply from Respondent's own operations, and were avoided whenever possible. Thus, even under the standard announced by the NLRB after the issuance the ALJ's decision leading to 16 ALRB No. 7 (Camsco Produce Co., Inc. (1990) 297 NLRB 905), Respondent's operations would be agricultural because the "outside mix" was not regular. Since Respondent provided no evidence of changes in operations since that time, there is no basis on which to disturb the prior determinations of jurisdiction.

In addition, the facts presented in 16 ALRB No. 7 established that the employees who work in Respondent's packing plant also work in the tanch operations raising chickens and gathering eggs, work which indisputably constitutes primary agriculture. Consequently, in the absence of a showing that this is no longer true, there is at minimum a mixed work situation. This means that the Board would have jurisdiction over some of the work of the existing bargaining unit, even if the packing plant work were found to be nonagricultural.

matter outside the Board's jurisdiction, its exceptions are without merit.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent, Olson Farms/Certified Egg Farms, Inc., its officers, agents, labor contractors, successors and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to meet and bargain collectively in good faith, as defined in section 1155.2(a) of the Agricultural Labor Relations Act (Act), with General Teamsters, Warehousemen and Helpers, Local 890, as the certified exclusive collective bargaining representative of its agricultural employees.

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

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

(a) Upon request, meet and bargain collectively in good faith with General Teamsters, Warehousemen and Helpers, Local 890, as the exclusive bargaining representative of its agricultural employees and, if an agreement is reached, embody the terms thereof in a signed contract.

(b) Make whole its present and former agricultural employees for all losses of pay and other economic losses they

have suffered as a result of Respondent's failure and refusal to bargain in good faith with General Teamsters, Warehousemen and Helpers, Local 890, such makewhole amounts to be computed in accordance with established Board precedents, plus interest computed in accordance with the Board's decision in E. W. Merritt Farms (1988) 14 ALRB No. 5, the period of said obligation to extend from April 3, 1992 until August 25, 1993, and continuing thereafter until such time as Respondent commences good faith bargaining with General Teamsters, Warehousemen and Helpers, Local 890.

(c) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying and otherwise copying, all payroll and 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 period and the amounts of makewhole and interest due under the terms of this Order.

(d) Sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, make sufficient copies in each language for the purpose set forth in this Order.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this Order to all agricultural employees in its employ from April 1, 1992 until the date of this Order and thereafter until Respondent

commences good faith bargaining with General Teamsters, Warehousemen and Helpers, Local 890.

(f) Post copies of the attached Notice in all appropriate languages, for 60 days, in conspicuous places on its property, the exact 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 .

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

(h) Notify the Regional Director in writing, within 30 days of the issuance of this Order, of the steps it has

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taken to comply with its terms, and make further reports at the request of the Regional Director, until full compliance is achieved.

DATED: December 23, 1993

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

Olson Farms/Certifled Egg Farms, Inc. 19 ALRB No. 20
Case No. 92-CE-52-SAL

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB) by General Teamsters, Warehousemen and Helpers, Local 890, the General Counsel of the ALRB issued a complaint which alleged that we, Olson Farms/Certified Egg Farms, Inc., 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 engaging in surface bargaining and by insisting to impasse on a non-mandatory subject of bargaining.

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

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

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining represantative;
3. To vote in a secret ballot election to decide whether you want a union to represent you and 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 NOT refuse to meet and bargain in good faith with Teamsters, Local 890, over the wages, hours and other conditions of employment of our agricultural employees.

WE WILL make whole all of our agricultural employees for all losses of pay and other economic losses they have suffered since April 3, 1992, as a result of our failure and refusal to bargain in good faith with Teamsters, Local 890.

DATED: OLSON FARMS/CERTIFIED EGG FARMS, INC.

By: _____
(Representative) (Title)

mixed work situation in which the Board, absent a showing of changed circumstances, would have jurisdiction over some of the work of the existing bargaining unit even if Respondent's packing plant were found to be nonagricultural.

* * *

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

CASE SUMMARY

OLSON FARMS /CERTIFIED EGG FARMS, INC.
(General Teamsters, Warehousemen & Helpers Union, Local 890)

19 ALRB No. 20
Case No. 92-CE-52-SAL

ALJ Decision

On October 1, l993, Administrative Law Judge (ALJ) James Wolpman issued a decision in which he found that Olson Farms/Certified Egg Farms, Inc. (Olson Farms or Respondent) violated section 1153 of the Agricultural Labor Relations Act (ALRA or Act) by engaging in surface bargaining and by insisting to impasse on a nonmandatory subject of bargaining.

Olson Farms timely filed exceptions to the ALJ's decision. The exceptions address only the Agricultural Labor Relations Board's (ALRB or Board) jurisdiction over Olson Farms and do not address the ALJ's findings and conclusions with regard to the bargaining violations. The General Counsel filed a response to the exceptions, as well as a motion to strike the exceptions for failure to comply with the Board's regulations.

Board Decision

The Board denied motion to strike, finding that though the exceptions were exceedingly brief, they were minimally sufficient to allow the Board to fully address them on their merits. In addition, the Board found the lack of a proof of service not to be fatal where, as here, the General Counsel was in fact served and no prejudice has been shown.

The Board observed that the record contained no evidence pertaining to the issue of jurisdiction and that Respondent was not denied an opportunity to present evidence or argument on the issue. Next, the Board noted that the General Counsel as a general matter has the burden, as part of the prima facie case, to establish jurisdictional facts. However, in the present circumstances, where the Board previously found Respondent to be an agricultural employer, the Board found that the burden shifted to Respondent to provide evidence that intervening changes in facts or law have stripped the Board of jurisdiction. Since Respondent provided no such evidence or argument, there was no basis on which the Board could conclude that it no longer had jurisdiction.

The Board noted that the National Labor Relations Board's decision in Camsco Produce Co., Inc. (1990) 297 NLRB 905 did not affect the previous finding of jurisdiction because the stipulated facts in the previous case established that Respondent's "outside mix" was not regular. Further, the Board noted that the facts of the previous case reflected at minimum a

If you have 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 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3161.

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

DO NOT REMOVE OR MUTILATE.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: OLSON FARMS/CERTIFIED EGG FARMS, INC., *Respondent*, and GENERAL TEAMSTERS, WAREHOUSEMEN & HELPERS UNION, LOCAL 890, Charging Party.	Case No. 92-CB-52-SAL

Appearances:

Norman E. Jones Jones,
Jones & Jones
Costa Mesa, California
for the Respondent

Marvin J. Brenner
Salinas Regional Office
Salinas, California
for the General Counsel

Tony F. Gonzalez
Local 890, International
Brotherhood of Teamsters
Gilroy, California for the
Charging Party

October 1, 1993

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JAMES WOLPMAN: This case was heard by me in Salinas, California, on August 25, 1993.

It is based on a charge, filed June 9, 1992, and a complaint, issued February 24, 1993 and amended August 19, 1993, which alleged that the Respondent violated §§ 1153 (e) and (a) the Act by failing and refusing to bargain with Local 890, International Brotherhood of Teamsters, as the certified collective bargaining representative of its agricultural employees. According to the General Counsel, the Respondent violated its duty to bargain by delaying negotiations, by submitting regressive and predictably unacceptable proposals, making false declarations of impasse, by implementing its offers without first achieving impasse, and by insisting on the presence of a mediator as a condition to further bargaining.

The Respondent answered denying that violated its duty to bargain. According to Respondent, its proposals were fair and reasonable, the Union was primarily responsible for the delays which occurred, implementation was justified by true impasse, and circumstances warranted its insistence on the presence of a mediator.[1]

The Charging Party appeared and intervened. Because the case met the requirements of §20278 (e) of the Regulations, the parties agreed to submit it for decision without oral argument and were

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[1]In its Answer and at the Prehearing Conference, Respondent also challenged the jurisdiction of the ALRB, but at hearing it offered no evidence to support its jurisdictional challenge.

given the right to file short letter briefs confined to the issue of whether Respondent had the right to insist on the presence of an mediator as a condition to further bargaining. The General Counsel did so, but none was filed by either the Respondent or the Charging Party.

Upon the entire record, including my observation of the witnesses, and after careful consideration of the arguments and briefs submitted, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

Olson Farms/Certified Egg Farms, Inc. ("Olson Farms") is an agricultural employer as defined in §1140.4 (c) of the Act.[2] General Teamsters, Warehousemen and Helpers, Local 890, ("Local 890) is a labor organization within the meaning of §1140.4 (f) of the Act and is the certified collective bargaining representative of Respondent's agricultural employees. Peter Olson is the Chairman of the Board of Respondent and a supervisor as defined in the Act, and Norman Jones was the agent and labor negotiator for the Respondent during the period in question.

[2]At hearing, there was testimony that Olson Farms has taken over the entire operation and that Certified Egg Farms, Inc., while still in existence, is basically defunct. Therefore, although the two entities still constitute a single integrated employer under our Act, for convenience I shall refer to the Respondent as "Olson Farms".

II. SUBSTANTIVE FINDINGS

A. Background.

Olson Farms produces and processes eggs, in 1975, Local 890 was certified as the exclusive collective bargaining representative for all agricultural einployees in the employer's processing and field operations. In February 1985, the parties entered into a collective bargaining agreement, effective from February 15, 1984 to February 14, 1987.[3]

In 1985 and 1986 members of the Olson family engaged in various stock transfers among themselves, as a result of which the Respondent claimed that it was no longer bound by the collective bargaining agreement. Unfair labor practice charges were filed; a complaint issued; and, on June 15, 1990, the Agricultural Labor Relations Board issued its decision, affirming the determination of its Administrative Law Judge that Certified Egg and Olson comprised an integrated agricultural enterprise with a continuing duty to bargain with Local 890 and that the collective bargaining agreement between the Union and the Employer remained viable. (16 ALRB NO. 7)[4]

On August 1, 1990, shortly after the Board's Decision became final, Tony Gonzalez of Local 890 wrote to the Respondent to

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[3]It is not clear from the record whether there were previous collective bargaining agreements.

[4]When the Respondent refused to comply with the Board's decision, compliance proceedings were initiated, resulting in a Supplemental Decision by the Board in 19 ALRB No. 9 (June 16, 1993).

arrange for negotiations for a new agreement to replace the expired 1984-87 agreement.[5] But negotiations did not actually begin until March 1991. This seven month delay was due primarily to the difficulty which the Union had in contacting and scheduling a meeting with Norman Jones, the labor consultant the Company had retained to handle the negotiations,[6] Negotiations were also hampered by the initial refusal of the employer and Mr. Jones to allow union representative to meet with employees on the premises to find out what proposals they wanted the Union to make during negotiations.[7]

B. The Character of the Negotiations.

The parties meet only three times between March 1991 and September 1992 - March 4, 1991, March 22, 1991, and March 23, 1992.[8] All of the meetings were short. Jones estimated that the

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[5]By its terms, the previous collective bargaining agreement automatically renewed itself after February 14, 1987, on a yearly basis, until either party gave written notice of its desire to terminate it. (Joint Ex. A, Art. XXI.) Local 890 did not give notice of its desire to terminate the agreement until the following year, and so the agreement actually expired on February 14, 1988. (Tr. 17.)

[6]I accept Union Representative Raul Hernandez' testimony — never rebutted by the Respondent — that the initial delays were due to the Company and its negotiator. (Tr. 164.)

[7]Eventually Mr. Jones arranged for the Union to meet with employees, but only after the first negotiation session. As a result, the union's initial proposal was formulated without the benefit of employee input. (See Jt. Ex. B, Covering Letter.)

sjones' testimony that there were eight or nine meetings (Tr. 45) is only explicable if one also includes the meetings held to resolve the issues which arose from the prior Board Decision and the arbitrations which resulted from it. Hernandez testified to a

longest meeting lasted 2 to 3 hours; while Hernandez testified that, "None of those meetings were more than an hour and a half. And most of them, they were about an hour." (Tr. 159.) He went on to describe the character of the negotiations as follows:

> "[T]hey were not hostile meetings. However, the[re was] not a lot of communication between the two parties. It was more one-sided. We were trying to ask questions and trying to get directions as to what we could do with the proposal[s] on the table, because they were difficult proposals. (Tr. 181, and see more detailed description at Tr. 182.)

Jones' approach, according to Hernandez, was:

> "Boom, boom, boom, that's it, that's my position, and not that much -- most of the communication was trying to force him to say yes or no or give explanations. And he was not too cooperative in communicating the issues." (Tr. 159.)

I accept Hernandez' description; it explains why the sessions were few and short, and it comports with my observation of Jones as a witness.

Another troublesome aspect of the negotiations was Jones' insistence that the parties were "starting from scratch", rather than re-negotiating the agreement which expired in 1988:

> " [w]e didn't have a contract ever with the union. This was the first contract with us. We're starting from scratch. We don't care what the original contract said. We weren't bound by it." (Tr. 75.)

This position, which was used to justify the employer's position on such critical issues such as Union Security and Union Representatives (Tr. 75 & 110), was directly contrary to the

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meeting held after the March 22nd meeting, but his recollection was uncertain, and there is no corroborating evidence that such a meeting was held. (Tr. 214-5.)

Board's holding in 16 ALRB No. 7.[9]

C. The Issues in Negotiations.

Except for the ten items for which specific proposals were submitted, the parties accepted the language in the previous contract.[10] Three of those items — name of the employer, grievance procedure, and fringe benefits — were easily resolved in 1991 without either side having to make substantial concessions. Two more items — scope of recognition and management rights — were agreed to in 1992. Those, too, were settled without the need for substantial concessions on either side. That left five items unresolved when the last proposals were exchanged on March 30 and April 3, 1992: union security, union access, picket line, term of agreement, and wages. (Jt. Ex. H & I.)

1. Union Security and Union Representatives. Although they began as two distinct proposals, union security and union access to the premises came to be linked. The previous agreement (Article II) had provided that every employee would join the union within thirty days ("Union Shop") and that, upon receipt of

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[9]Two other features of the employer's negotiation style, while not as significant as those described above, are nonetheless revealing: one was the repeated use by the employer of the word "final", in connection with almost every offer it made and several made by the Union (Tr. 70-1; Jt. Exs. E, F, Q & I); the other was the excessive reliance which the employer placed at hearing on the "boilerplate" language at the end of each Union proposal, in which it reserved the right to make changes or modifications. (Tr 71, 73-4, 104, 190-1; Jt. Exs. B, D, G & H.)

[10]The ten changes were: (1) the correct name of the company; (1) scope of recognition; (3) union security; (4) union access; (5) picket line; (6) management rights; (7) grievance procedure; (8) term of agreement; (9) fringe benefits; and (10) wages.

authorization, the employer would deduct union dues from wages. ("Checkoff"). The Company, arguing that it "didn't want to force anybody to join the union" (Tr. 30-1), proposed that both be eliminated and that it be left to each employee to determine whether or not s/he wished to join the union ("Open Shop"). (Jt. Ex. C.) The Union, arguing its need for dues in order to provide its services, insisted throughout 1991 on both union shop and checkoff.

with respect to Union Representatives, the Company began by proposing that the previous contract (Article IV) be modified to prevent union representatives from coming onto the premises for the purpose of collecting dues. It also proposed that the previous agreement be modified to require that union representatives obtain management permission, as distinguished from simple notification, before entering the premises. Furthermore, they were not to interrupt "work". After discussing the matter, the parties compromised the last two issues in 1991 by agreeing that the "Employer would not withhold unnecessary permission (sic)" and that there would be no "unnecessary" interruption in work. (Tr. 53 & 138.)[11] That left the parties deadlocked on issue of whether a union representative could come onto the premises to collect dues. In March 1992, the Union made a substantial concession by

[11]The language in the Union proposals of March 23 and March 24, 1992 (Jt. Exs. G & H) on Article IV are confusing. The only way to make them consistent with the testimony of Jones (Tr. 53) and Gonzalez (Tr. 138), is to read them as not being directed to the issues of permission and interruption, which had already been settled, but to the right collect dues, which had not.

linking Union Security to Union Representatives and offering to give up the checkoff [but not the union shop] if the Company would agree that union representatives could come onto the premises to collect dues. (Jt. Ex. H.) On April 3rd, the Company rejected the proposal, saying that it would not force its employees to join the union nor assist in the collection of dues. (Jt. Ex. I.)

2. Picket Line. The no-strike provision in the previous agreement (Article XV) contained an exception (Article XVI) allowing an employee to refuse to cross a lawful primary picket line established at the Company's premises or at the premises of another employer. The Company proposed the elimination of that exception, arguing that it would defeat the purpose of the no strike clause by allowing employees to stop work anytime they wanted to if a picket line showed up. (Tr. 29-30.) The Union refused, pointing out that the exception was limited to lawful primary activity officially sanctioned by the Teamster Joint Counsel and had never been invoked during the previous contract. (Tr. 154.) There were no concessions on either side, and the matter remained deadlocked throughout negotiations.

3. Term of Agreement. The Union proposed that the new agreement, like the preceding one, run for three years — from January 7, 1991 to February 14, 1994. The Company, citing the vulnerability of egg prices, proposed a one year contract, running from April 1, 1991 to March 31, 1992. The Union argued that so short a term would provide little stability and would involve the parties in something tantamount to continuing negotiations.

The parties remained deadlocked on the issue until the meeting of March 23, 1992, when, according to Hernandez, the Company offered a one year contract, but with a new beginning and ending date - April l, 1992 to March 31, 1993. (Tr. 174.) But ten days later on April 3rd, the Company notified the Union that it was proposing a one year agreement which would run only from January l, 1992 to December 31, 1992. (Joint Ex. I.)

4. Wages. The Union began by proposing a increase of fifty cents per hour for all employees each year of the three year agreement. (Jt. Ex. D.) On March 14, 1991, the Company countered with an offer of fifteen cents for each employee, effective June l, 1991; two weeks later, it increased its offer by adding an additional ten cents, effective December 1, 1991.

After the meeting of March 23, 1992, the Union substantially modified its wage offer, accepting the fifteen cents which employees had already received when the Company implemented its original offer (Jt. Ex. R; see infra, p. 11), and proposed an additional fifteen cents on September 1, 1992 and on February 15, 1993. On April 3, 1992, The Company countered, making no mention of the additional ten cents it had offered in 1991 and, instead, offered no wage increase whatsoever during its proposed one year agreement. (Jt. Ex. I.)

D. Delays in Negotiations, Implementation of the Wage Offer, and Insistence by the Company on Mediation.

At the negotiating session held on March 22, 1991, the Union promised to send Jones a counter offer; but, in spite of two

further requests (Jt. Exs. F & Q), no offer was forthcoming. As a result, on September 3, 1991, Jones wrote that he could wait no longer and had instructed the Company to implement the 15¢ increase it had offered in March. At some point thereafter, the employees were given the increase.[12]

The Union wrote protesting the increase and asking for a meeting (Jt. Ex. S). The Company replied, "If no [new] proposals are forthcoming, then it is the Company's position that an impass[e] has been reached, and no...further meetings are necessary." (Jt. Ex. T.) Around this time, the Union negotiator was injured (Tr. 147-8, 164-5); as a result, nothing further was done until February 1992 when the Union wrote to Jones asking for another meeting.[13] (Jt. Ex. U.) After several letters back and forth, a date was agreed upon, and the meeting of March 23, 1992 was held at which the Union submitted its proposal (Jt. Ex. G); a few days later, the Union submitted a further proposal. (Jt.Ex. H.) By letter dated April 3rd, the Company rejected that proposal and indicated that "it appears that no new agreement can be reached" (Jt. Ex. I.) The Union replied two months later,[14] saying there was no impasse, demanding that negotiations continue, and

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[12]The exact date of implementation is uncertain; it appears to have occurred sometime after September 1, 1991, but prior to March 23, 1992 (See Tr. 81 & Jt. Ex. H, ¶l9.)

[13]There may have been an exchange of telephone calls in August, but nothing came of it. (Tr. 209, 223.)

[14]No explanation was provided for this delay.

suggesting possible meeting dates. (Jt. Ex. z.)

At that point, the Company insisted that it would not meet with the union unless a Mediator was called in.[15] (Jt. Ex. AA.) The Union responded that it did not feel that mediation was necessary and asked to meet as soon as possible. (Jt. Ex. AB.) On September 18, 1992, the Jones again wrote, saying:

> "[I]it is still the position of the Company that we will not meet with the Union again until a Mediator is present at such meeting." (Jt. Ex. AC.)

The Union negotiator thereupon chose to rely on the unfair labor practice charges which had been filed with the Board and made no further effort to contact Jones because, "I thought we were just spinning our wheels trying to deal with Mr. Jones." (Tr. 206.)

At hearing; Jones testified that he wanted a mediator because the Union had failed to provide the proposals it had promised in March 1991 and because it had refused to abide by its agreement to submit its proposals in writing prior to negotiation sessions. (Tr. 88-9 & 91.)

[15]There is some question whether the Company first insisted on mediation at the March 23, 1992 meeting. (Compare Jt. Ex. AA with Tr. 179-80.)

ANALYSIS, FURTHER FINDINGS, AND CQNCLUSIONS Of LAW

This case involves two distinct, but related legal issues: (1) Whether the Respondent's refusal to proceed with negotiations without a. mediator present is a per se violation of §1153 (e) because it involves a non-mandatory subject of bargaining which cannot be insisted upon to impasse (see NLRB v. Wooster Divison of Bora-Warner Corp. (1958) 356 U.S. 342); and (2) whether Respondent's overall conduct during negotiations — including its demand for mediation — amounted to "surface bargaining" in violation of §1153(e).

I. THE ALLEGED PER SE VIOLATION

In Midas International Corp. (1964) 150 NLRB 486, 487, the National Labor Relations Board held that a refusal by one party to accept mediation does not constitute a violation of its duty to bargain. Here the issue is slightly different: Local 890 is not being accused of a violation for refusing mediation, rather Olson Farms is being accused because it insisted that the Union accept mediation. However,"if a union is entitled under Midas to refuse mediation without violating the Act, it naturally follows that the employer should not be allowed to ignore that legitimate refusal and insist, as the Respondent did here, upon mediation as a precondition to further bargaining.

A recent NLRB decision lends support to this interpretation. In Riverside Cement Company (1991) 305 NLRB 815, the employer insisted on mediation as a condition of further bargaining even though the Federal Mediation And Conciliation Service ("FMCS")

decided that it was no longer willing to participate in the negotiations. The Board upheld its ALJ's determination that the employer committed an a violation by insisting on the "very unlikely occurrence" that further meetings be arranged under the auspices of FMCS. (Id. at 819.) In reaching that conclusion, the ALJ recited the definition of good faith bargaining in §8 (d) of the NLRA — which is substantially the same as that found in §1155.2 of our Act — and concluded:

> In general, a employer's obligation under Section 8(d) of the Act to meet at reasonable times with the employee representative is wholly independent of the willingness of any mediator to participate. (Id. at 818.)

That, too, would suggest that mediation is not within the scope of bargaining as defined in either §8(d) of the NLRA or §1155.2 of the ALRA and, therefore, is not a mandatory subject of bargaining which can be insisted upon to impasse, even where a mediator is willing to participate.

Mediation is an important and valuable mechanism in collective bargaining. It mitigates the antagonisms which can arise during negotiations, and it helps the participants to find common ground and. explore new approaches to hitherto intractable problems. But it will not work unless both sides truly want it to work; there must be a mutual commitment. That is why FMCS will not participate in negotiations unless both parties are agreeable. That being so, there is no policy justification for allowing one party to impose it on an unwilling counterpart by refusing to continue negotiations unless a mediator is present.

Based upon my reading of Midas and Riverside Cement and based upon the mutual commitment which is essential if mediation is to work, I conclude that it is a permissive subject of bargaining which cannot be insisted upon as a condition for further negotiations.

Here, there is no question that Jones refused to meet unless a mediator was present. (Supra, p. 12; Jt. Exs. AA & AC.) Because that is a permissive and not a mandatory subject of bargaining, the Respondent, by making it a condition for further bargaining, ignored its obligation "to meet at reasonable times and to confer in good faith" with the certified representative of his employees, thereby committing a per se violation § 1153 (e) of the Act.

Respondent seeks to justify its insistence on mediation by relying on the Union's earlier failure to provide proposals as promised and its refusal to submit all of its proposals in writing ahead of time. (Tr. 88-9 & 91.)

where the violation is of per se nature, the Board will ordinarily not consider mitigating evidence. However, even if that evidence were considered, it would not excuse Respondent's refusal to meet. While the Union did fail on one occasion to provide counter proposals as promised, that happened in March 1991, a full year before the Respondent's insistence on mediation; and, in the interim, the Union had presented new proposals and counter proposals to which the Company had responded. Jones therefore had no reason to believe the conduct to which he objected would continue.

Respondent's claim that the Union had failed to present its proposals in writing ahead of time is premised on its assertion that, contrary to usual collective bargaining practice, the Union had entered into an agreement to do so. But there is no clear evidence of such an agreement. Jones himself submitted his March 22, 1991 proposal during negotiations, not before (Tr. 70; Jt. Ex. E.), and he fully responded to the proposal which the Union submitted during negotiations on March 23, 1992. It would appear that Jones simply wanted to get the Union to provide its proposals ahead of time. (See Tr. 162-3 and the language used by him in Jt. Exs. F & T.) That being so, there was no agreement, and therefore no breach.[16]

II. SURFACE BARGAINING

A. The Legal Standard

Good faith bargaining is defined .in Labor Code section 1155.2 as:

> ...the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages hours, and other terms and conditions of employment....

In P.P. Murphy Produce Co.,Inc. (1979) 5 ALRB No. 63, pp. 3-4, the Board explained:

> The duty to bargain in good faith requires the parties "...to participate actively in the deliberations so as to indicate a present intention to find a basis for

[16]Even if the Union had agreed to provide its proposals ahead of time, it would have been entitled to discontinue the process at any point without forfeiting its right to meet without a mediator being present.

> agreement, and a sincere effort must be made to reach a common ground." NLRB v Montgomery Ward & Co., 133 F.2d 676 (9th Cir. 1943). Mere talk is not enough. Although the Act does not require the parties to actually reach agreement, or to agree to any specific provisions, it does require a sincere effort to resolve differences, and "...presupposes a desire to reach ultimate agreement to enter into a collective bargaining contract." NLRB v Insurance Agents' Int'l Onion. AFL-CIO. 361 U.S. 477, 485 (1960).

See also: Montebello Rose Co., Inc. (1979) 5 ALRB No. 64; McFarland Rose Production (1980) 6 ALRB No. 18.

The proper role of the Board "is to watch over the process, not guarantee the results." (NLRB v. Tomco Communications, Inc. (9th Cir. 1978) 567 F.2d 871, 877.) Hard bargaining and the use of a company's relative economic strength to exert pressure on the union "is of itself not at all inconsistent with the duty of bargaining in good faith." (NLRB v. insurance Agents' Int'l Union, supra at 490-1; H.K. Porter Co. v. NLRB (1970) 397 U.S. 99, 109; South Shore Hospital v. NLRB (1st Cir. 1980) 630 F.2d 40, 44; Chevron Oil Co. v. NLRB (5th Cir. 1971 442 F.2d 1067, 1073.) So long as a company is engaged in an honest effort to reach agreement, it may stand fast on an issue. (McCourt v. California Snorts, Inc. (6th Cir. 1979) 600 F.2d 1193, 1201; Times Herald Printing Co. (1975) 221 NLRB 225, 229.) If its bargaining position improves, it may even strengthen and tighten its position. (Soule Glass and Glazing Co. v. NLRB (1st Cir. 1981) 652 F.2d 1055; NLRB v. Alva Alien Industries, Inc. (8th Cir. 1966) 369 F.2d 310.)

Bargaining is a careful, sophisticated process; rarely is

there an admission of a "bad faith" intention, violations can only be inferred from circumstantial evidence. (Continental Insurance Co. v. NLRB (2nd Cir. 1974) 495 F.2d 44, 86; NLRB v. Reed & Prince Mfg. Co. (1st Cir. 1953} 205 F.2d 131, 139-40, cert. denied, 346 U.S. 887 (1953).) [T]he previous relations of the parties, antecedent events explaining behavior at the bargaining table, and the course of negotiations constitute the raw facts for reaching such a determination." (Local 833, United Auto Workers v. NLRB (Kohler Conmany) (D.C. Cir. 1962) 300 F.2d 699, 706.) As the Board said in Masaji Eto (1980) 6 ALRB No. 20, p. 5:

> The presence or absence of the intent to bargain in good faith must be discerned from the totality of the circumstances, including a review of the parties' conduct both at the bargaining table and away from it.

See P.P. Murphv Product Co., Inc., supra; Montebello Rose Co., Inc., supra; Akron Novelty Mfg. Co. (1976) 224 NLRB 998, 1001. That being so, no two case are alike and no one can be fully determinative of another. The concept of good faith bargaining has "meaning only in its application to the particular facts of a particular case." (NLRB v. American National Insurance Co. (1952) 343 U.S. 395, 410; and see Bora-Warner Controls (1972) 198 NLRB 726.)

B. Application of the Legal Standard to the Facts of this Case

A number of circumstances are present in this case which, when considered together, point the existence of surface bargaining by the Respondent.

1. There is, first of all, the unlawful and unexcused

refusal, described above (supra pp. 13-16), of the Respondent to continue negotiations unless the Union capitulated on a non-mandatory subject of bargaining.

2 . Next, there is the declaration of impasse by the Respondent on April 3, 1992, immediately after receiving the Union's March 24th proposal but before any meeting could be held to discuss it. (Jt. Ex. I.)[17]

At that point, there had been only three brief collective bargaining sessions. (Supra, p. 5.) The Union had just made substantial movement on the issues of wages, as well as in the area of Union Security [abandonment of checkoff in return for access to collect dues] (Compare Jt. Exs. G & H.) The movement occurred in a submission that did not indicate that it was the Union's final offer (Jt. Ex. H); and, even more significant, it occurred after the previous collective bargaining session and before any meeting could be scheduled or held to discuss it.

None of this comports with the requirement that, before declaring impasse, an employer should pursue reasoned discussion about issues not yet discussed and explore avenues for possible movement because "the purpose of collective bargaining is to promote the 'rational exchange of facts and arguments' that will measurably increase the chance for amicable agreement...." (NLRB

[17]While Jt. Ex. I does not use the term "impasse", the language of the letter-makes it clear that that was its meaning. Moreover, in its response (see Jt. Ex. Z), the Union indicated that it so understood the letter, and the Respondent did nothing to disabuse it of that understanding.

v. General Electric Co. (2nd Cir. 1969) 418 F.2d 736, 750, cert, denied, (1970) 397 US. 965; see also: Sam Andrews' Sons (1983) 9 ALRB NO. 24.)

Furthermore, as the General Counsel points out, Respondent's insistence that a mediator was needed, as described above, is at odds with its contention that further bargaining would have been useless because neither side would be willing to make further concessions.

3. There are several circumstances which indicate that the Respondent was not so much bargaining to reach agreement, as it was bargaining to reach a point where it could declare that negotiations were futile. In other words, it was bargaining, not toward agreement, but toward impasse. This explains the Respondent's continual characterization of its offers as "final" (Jt. Exs. E, F & Q) and, even more significant, its characterization of Union offers as final even though the Union had not so characterized them. (Jt. Ex. I [describing Union's "revised offer" in Jt. Ex H as its "final offer"]; see also Jt. Ex. F.) In this context, a more sinister explanation emerges for Respondent's attempt to get the Union to deliver its proposals beforehand, rather than allowing them to be presented during negotiations. Obtaining them ahead of time would make it easier to declare a preemptive impasse because it foreclosed the possibility of further union concessions should the employer take a firm stand when union proposals were presented during face to face negotiations. While such a "sinister" explanation would not

be not justified in the normal context of collective bargaining, in situations like this, where there are other circumstances indicating a resolve not to reach agreement, it is justified.

4. Further indications of bad faith can be gleaned from the positions taken and the justifications offered by the Respondent on the various substantive proposals.

To begin with, adherence to an untenable legal position during negotiations is inconsistent with the duty to bargain in good faith. (Fraser & Johnson Company v. NLRB (9th Cir. 1972 469 F.2d 1259, 1263; Queen Mary Restaurants Corp. v. NLRB (9th Cir. 1977) 560 F.2d 403, 409; Carl Joseph Ma agio. Inc. v. NLRB (1984) 154 Cal.App.3d 40, 74-75 (dis. opn.) Yet that is exactly what the Respondent did when it insisted — contrary to the Board's holding in 16 ALRB No. 7 - that negotiations "start from scratch" because, "We don't care what the original contract said. We weren't bound by it." (Tr. 75; supra, pp. 6-7.)

Following the negotiation session on March 23, 1992, the Union offered to give up the checkoff in return for union access to collect dues. This opened up the possibility for compromise in the area of union security/union access. Yet, rather than explore the possibility of trade offs — for example, permitting access to collect dues while adhering to the open shop — Respondent immediately claimed impasse. In AS-H-NE Farms, Inc. (1980) 6 ALRB No. 9, the Board held that the outright rejection of proposals without any real attempt to explain or minimize differences is inconsistent with a bona fide desire to reach agreement. And it

is a further indication that Respondent was entirely unwilling to consider anything short of absolute capitulation by the Union in the area of union security and union dues. Such a stance, in the context of other questionable behavior, serves to support the inference that an employer's mind is closed to reasoned discussion and compromise. (See H.K. Porter Co. (1965) 153 NLRB. 1370, enforced, 363 F.2d 272, cert, denied, 385 U.S. 851 (1966).) In bargaining over wages, the Respondent took several positions which cast doubt on its good faith. First of all, it refused to acknowledge the substantial movement which the Union made in that area in March 1992 when it reduced its demand from 50$ an hour to 15C an hour, claiming instead that the Union's concession meant nothing because of the language at the end of its proposal reserving the right to make changes or modifications.

(Tr.. 73-4, 104; supra, fn. 9.) Such excessive and unreasonable reliance on typical boilerplate language is at odds with the requirement that "claims made by either bargainer should be honest Claims." (NLRB v. Truitt Mfa. Co. (1951) 351 U.S. 149, 153.) And that is especially true here, where the Respondent's supposed concern over the boilerplate language was not disclosed to the Union at the time, but raised for the first time at the hearing.

(Tr. 190-1.)

In much the same vein is the Respondent's claim that the Union wage proposals were incomprehensible. (Tr. 104-6.) If Jones was as confused by them as he claims - which I doubt — he could have easily asked for and received a clarification, but he did

not.[18]

Even more serious is the Respondent's withdrawal, without explanation, on April 3, 1992 of the additional 10¢ per hour which it had offered in 1991. (Supra, p. 10.) It has long been the law that the withdrawal of an earlier proposal, without explanation, and the presentation of a new, less favorable proposal evidences an intent to frustrate negotiations. (Pittsburgh-Dee Moines Steel Co (1980) 253 NLRB 706.)

The Respondent appears to have engaged in similar regressive bargaining on the term of the agreement. I credit Hernandez' testimony that on March 23, 1992, the Respondent offered a one year contract, running from April 1, 1992 to March 31, 1993, while on April 3rd – again without explanation – it proposed an agreement which would run only from January 1, 1992 to December 31, 1992. (Supra, pp. 9-10.)

Finally, there is the failure of the Respondent to make any significant movement beyond its initial proposals except the 10$ per hour increase which was subsequently withdrawn and a few minor compromises such as that on union visitation[19] In Meyer Tomatoes (1991) 17 ALRB No. 17, the Board found that an employer's lack of

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[18]I do not credit his assertion that, wherever he brought up wages, the Union "always referred to the last paragraph of their proposal ... the one [saying] ...they can withdraw it at any time." (Tr. 106.) Such an answer would make no sense in the context of negotiations and is contradicted by Hernandez' more credible testimony (Tr. 190-1.)

[19]I.e., that it would not "unnecessarily withhold permission" for union visits and there would be no "unnecessary" interruption of work. (Supra, p. 8.)

movement from its initial position, while not in itself a refusal to bargain, may, in the context of other conduct, be "viewed in a different light".

5 . All of the conduct described above was set against a background of a prior bargaining violation, a long and unexplained initial delay by the Respondent in beginning negotiations, and an unjustified refusal to allow Union representatives to meet with employees to formulate and discuss the proposals to be made.[20] (Supra, pp. 4-5.) While these matters all took place more than six months prior to the filing of the charge in this case, they may be considered in evaluating the conduct which occurred later on in bargaining.[21] (Local 833. United Auto Workers v. NLRB (Kohler Company). supra, 300 F.2d at 706.)

6. More revealing still is the Respondent's approach to collective bargaining. (Supra, p 5-6.) The meetings were few and short. The Union spent most of its time "...trying to ask questions and trying to get directions as to what we could

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[20]The fact that Jones did eventually permit Union representatives to meet with employees and the fact that the Union enjoyed broad access rights under the previous agreement both serve to undercut the importance of Respondent's claimed concern over the possible spread of disease among its poultry.

[21]For the purposes of the limitations period contained in §1160.2 of the Act, surface bargaining is considered a "continuing violation" such that a charge is timely even though it involves conduct occurring more than six months prior to its filing, so long as the improper conduct extends, in substantial part, into the six month period. AS-H-NE Farms, Inc, supra; NLRB v. MacMillan Ring-Free Oil Co. (9th Cir. 1968) 394 F.2d 26, cert, denied, 464 U.S. 829 (1968). Here, the charge was filed on June 9, 1992, and the there is substantial evidence of surface bargaining in March and April 1992.

do...with the proposals on the table." (Tr. 181.) In response, the Respondent's negotiator was abrupt and noneommunicative, doing little or nothing "...to promote the 'rational exchange of facts and arguments' that will measurably increase the chance for amicable agreement...." (NLRB v. General Electric Co., supra, 418 F.2d at 750.)

C. Conclusion

Having examined the totality of the Respondent's conduct, and recognizing that much of it, standing alone or in other contexts, would not in itself establish a refusal to bargain, I conclude that here it does. Respondent's insistence to impasse on a non-mandatory subject of bargaining, its false declaration of impasse, its attempt to bargain toward impasse rather than agreement, its untenable justifications and regressive proposals, its abrupt, uncommunicative and close minded approach to negotiations, all set against a background of a prior bargaining violation, undue delay in beginning negotiations, and uncooperativeness in allowing the formulation of proposals, compel me to conclude that the Respondent has violated of §1153 (e) of the Act by engaging in surface bargaining. [22]

[22] In reaching this conclusion, I have relied neither on the delays which occurred after negotiations had begun nor on the implementation of the 15$ per hour wage increase after September 1, 1991. The Union was in large part responsible for those delays and by its inaction waived its right to object to the increase.

REMEDY

Having foxond that Respondent violated §1153 (e) of the Act by engaging in surface bargaining and by insisting to impasse on agreement to a non-mandatory subject of bargaining, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

Furthermore, the Respondent failed to offer any evidence that, had it satisfied its bargaining obligation, the parties would nonetheless been have been unable to successfully consummate negotiations for a collective bargaining agreement. That being so, Respondent has failed to rebut the presumption established in William Dal Porto & Sons. Inc. v, ALRB(1987) 191 Cal.App.3d 1195, and elaborated by the Board in Mario Saikhon. Inc. (1989) 15 ALRB No. 3.[23] It is therefore appropriate that it be ordered to make its employees whole for the wages and benefits which they have lost because of its failure to bargain in good faith. However, because the Union must bear some responsibility for the delays which occurred in 1991 and early 1992, I conclude that the make whole period should begin with the Respondent's improper declaration of impasse on April 3, 1992.

In. fashioning the affirmative relief delineated in the

[23]Where, as here, a significant basis for the violation is the untenable justifications and regressive proposals which the Respondent advanced with respect to the critical issues in these negotiations — wages, union security/union representative, and term of agreement — it is almost impossible to determine what the outcome would have been if proper bargaining had taken place on those subjects.

following order, I have taken into account the entire record of these proceedings, the character of the violations found, the nature of Respondent's operations, and the conditions among farm workers and in the agricultural industry at large, as set forth in Tex-Cal Land Management. Inc. (1977) 3 ALRB No. 14.

Upon the basis of the entire record, the findings of fact and the conclusions of law, and pursuant to section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

Respondent Olson Farms/Certified Egg Farms, Inc., its officers, agents, labor contractors, successors and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to meet and bargain collectively in good faith, as defined in § 1155.2 (a) of the Agricultural Labor Relations Act, with General Teamsters, Warehousemen and Helpers, Local 890, as the certified exclusive collective bargaining representative of its agricultural employees.

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

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

(a) Upon request, meet and bargain collectively in good faith with General Teamsters, warehousemen and Helpers, Local

890, as the exclusive bargaining representative of its agricultural employees and, if an agreement is reached, embody the terms thereof in a signed contact

(b) Make whole its present and former agricultural employees for all losses of pay and other economic losses they have suffered as a result Respondent's failure and refusal to bargain in good faith with General Teamsters, Warehousemen and Helpers, Local 890, such make whole amounts to be computed in accordance with established Board precedents, plus interest computed in accordance with the Board's decision in E. w. Merritt Farms, (1988) 14 ALRB No. 5, the period of said obligation to extend from April 3, 1992 until August 25, 1993, and continuing thereafter until such time as Respondent commences good faith bargaining with General Teamsters, Warehousemen and Helpers, Local 890.

(c) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying and otherwise copying, all payroll and 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 backpay period and the amounts of back pay and interest due under the terms of this Order.

(d) Sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, make sufficient copies in each language for the purpose set forth in this Order.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this order to all agricultural employees in its employ from April 1, 1992 until the date of this Order and thereafter until Respondent commences good faith bargaining with General Teamsters, Warehousemen and Helpers, Local 890.

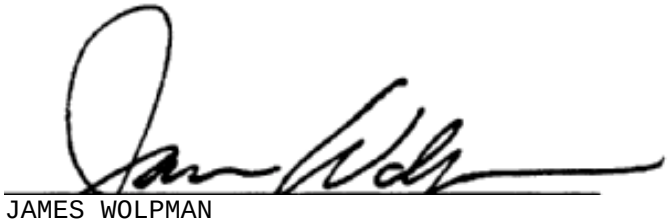
(f) Post copies of the attached Notice in all appropriate languages, for 60 days, in conspicuous places on its property, the exact period (s) and places (s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

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

(h) Notify the Regional Director in writing, with 30 days of the issuance of this Order, of the steps it has taken to comply with its terms, and make further reports at the request

of the Regional Director, until full compliance is achieved.

DATED: October 1, 1993



JAMES WOLPMAN
Chief Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board by General Teamsters, warehousemen and Helpers, Local 890, the General Counsel of the ALRB issued a complaint which alleged that we, Olson Farms/Certified Egg Farms, Inc., 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 engaging in surface bargaining and by insisting to impasse on agreement to a non-mandatory subject of bargaining. The Board has told us to post and publish this notice. we will do what the Board has ordered us to do.

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

1. To organize yourselves;
2. To form, join, and 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 you have these rights, we promise that:

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

WE WILL NOT refuse to meet and bargain in good faith with Teamsters, Local 890, over the wages, hours and other conditions of employment of our agricultural employees.

WE WILL make whole all of our agricultural employees for all losses of pay and other economic losses they have suffered since April 3, 1992, as a result of our failure and refusal to bargain in good faith with Teamsters, Local 890.

DATED:

OLSON FARMS/CERTIFIED EGG FARMS,INC.

By: _____
Representative Title

If you have 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 112 Boronda Road, Salinas CA 93907. The telephone number is (408) 443-3616.

DO NOT REMOVE OR MULTILATE