Winton, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

P.H. RANCH, INC., a California Corporation; RAY GENE VELDHUIS, Individually and Doing Business as R-V DAIRY, a Sole Proprietorship; and VELDHUIS DAIRY, Respondents, and JOINT COUNCIL OF TEAMSTERS NO. 38, TEAMSTERS LOCAL 386, and TEAMSTERS LOCAL 517, Charging Parties.	Case No. 94-CE-99-VI 21 ALRB NO. 13 (December 7, 1995)

DECISION AND ORDER

On July 11, 1995, Administrative Law Judge (ALJ) Barbara D. Moore issued a decision in which she found that P.H. Ranch, Inc., Ray Gene Veldhuis, individually and doing business as R-V Dairy, a sole proprietorship, and Veldhuis Dairy (Employer or Respondent) violated section 1153, subdivisions (e) and (a), of the Agricultural Labor Relations Act (ALRA)[1] by refusing to provide relevant information upon the request of the certified bargaining representative[2] and by refusing to meet and negotiate since on or about June 3, 1994.

[1]The ALRA is codified at Labor Code section 1140, et seq.

[2]Though Teamsters Local 517 is the certified representative, representatives from Local 386 and Joint Council of Teamsters No. 38 conducted the negotiations on behalf of the bargaining unit, in consultation with Local 517. Hereafter, the three organizations will be collectively referred to as the "Union."

Respondent filed exceptions to the ALJ's finding of the two violations and the General Counsel filed a brief in response. The Agricultural Labor Relations Board (Board) has considered the record and the attached decision of the ALJ in light of the exceptions and briefs submitted by the parties and affirms the ALJ's findings of fact and conclusions of law, and adopts her recommended remedy, as modified. As explained below, we will also address the effect of the unfair labor practices found herein on the decertification election in Case No. 94-RD-2- VI.

THE BARGAINING VIOLATION

The record reflects that the parties held numerous bargaining sessions over a period of about nine months and then engaged the services of a mediator to assist them in resolving their remaining differences. To that point, it appeared that the bargaining process was proceeding in good faith. However, as explained below, Respondent's subsequent failure to respond to the Union and to continue to meet and negotiate constituted a violation of the statutory duty to bargain.

After two sessions with the mediator, the parties agreed on May 27, 1994 to engage in direct contact by having the Union send a letter directly to Ray Veldhuis explaining the economic proposals on which the Union thought it had tentative agreement. This was confirmed in early June when Veldhuis spoke with the Union's chief negotiator, Ralph Miranda, at one of the dairies and told him that he would soon respond to the letter. No response was ever received by the Union. Miranda also made

several attempts to contact the Employer's chief negotiator to arrange further negotiations. This was consistent with the situation after the first mediation session, when the Union initiated further contacts after not hearing back from the Employer as promised. Moreover, the Union filed a ULP charge on July 26, 1994 and a request to extend certification on July 28, 1994, both based on allegations that the Employer was refusing to bargain in good faith. These filings, at minimum, would, have further indicated that the Union believed that the Employer was in some fashion holding up the bargaining process. In addition, the Employer offered no evidence that the parties had agreed that the mediator, once chosen, would be the exclusive conduit for the exchange of information until he was formally discharged. Given all of these circumstances, it was not reasonable for the Employer to avoid direct contact with the Union on the theory that all contacts were to go through the mediator, a rationale that the record fails to show was ever communicated to the Union.

In affirming the conclusion that the Employer unlawfully refused to bargain after about June 3, 1994, the Board in no way intends to discourage the use of mediators. On the contrary, the Board strongly supports the use of mediation as a tool to facilitate bargaining. However, except where there is an unrepudiated agreement that all contact must be through the mediator, whether such agreement is express or reasonably may be inferred from the conduct of the parties, a party may not use the existence of a mediator as an excuse to ignore efforts by the

other party to resume direct contacts or negotiations.[3] While the Employer contends here that it failed to respond to the Union because it believed that all contacts were to be relayed through the mediator, it has failed to persuasively establish that the parties had in fact agreed to such an arrangement which had not been repudiated or that the Employer justifiably relied on conduct by the Union in believing that all communications must continue to be through the mediator. Absent such a showing, the parties' mutual duty to meet at reasonable times and confer in good faith, as defined in Labor Code section 1155.2, subdivision (a), cannot be conditioned on the presence of the mediator. *(Riverside Cement Company* (1991) 305 NLRB 815 [139 LRRM 1408]; *Embossing Printers, Inc.* (1984) 268 NLRB 710, enforced (6th Cir. 1984) 742 F.2d 1456 [118 LRRM 2967].)[4]

BARGAINING MAKEWHOLE

We affirm the ALJ's determination that the bargaining makewhole remedy is appropriate in this case and that the

[3]In other words, since the use of a mediator is dependent upon the continued mutual assent of the parties, a party may withdraw from mediation unilaterally and insist on resumption of direct negotiations.

[4]Member Ramos Richardson disagrees with her colleagues' apparent assumption that such an agreement, if unrepudiated, would relieve the parties of their statutory obligation to meet and confer with each other. Riverside expresses the broad, general rule that an employer's obligation to meet at reasonable times with its employees' representative is wholly independent of the willingness of any mediator to participate in the bargaining process. (305 NLRB at 818). That case does not support the Employer's contention herein that if there were a mutual agreement to communicate only through the mediator, the Employer would be entitled to ignore the Union's request to engage in direct negotiations.

Employer failed to carry its burden under *Dal Porto & Sons, Inc.* v. *ALRB* (1987) 191 Cal.App.3d 1195 to show that no contract would have been reached even in the absence of its unlawful refusal to continue bargaining. In its exceptions, the Employer argues that makewhole is not appropriate because there were several outstanding issues in negotiations, and that the Union's push for a maintenance of benefits clause was a source of serious dispute.

While it is true that the Employer had made its unbending objection to a maintenance of benefits clause known and the Union had not dropped its request for such a clause, there is no evidence to show that the Union would not have moved from its position.[5] In fact, the Union had shown a willingness to compromise in mediation. There is little dispute that the parties were making significant progress in negotiations by the end of the April 21, 1994 mediation session. The Employer's avoidance of negotiations for several months thereafter interrupted the momentum that had been generated from numerous bargaining sessions, including two with the mediator, significantly disrupting the bargaining process and effectively preventing the possibility of reaching a contract. While it is not possible to determine with certainty whether the parties would have reached agreement, rather than indicating that the parties' differences were intractable, the record ,reflects that

[5]Indeed, there was testimony that Union negotiator Ken Bruner told the Employer's negotiators that all other issues would go away if the tentative agreement on economics reached on April 21, 1994 were accepted by Ray Veldhuis.

continued progress toward a contract was a real possibility. In such, circumstances, the ALJ was correct in concluding that the makewhole remedy was appropriate and that the Employer failed to meet its burden under *Dal Porto* to show that no contract would have been reached even in the absence of its unlawful conduct.

We do, however, find it necessary to modify the manner in which the ALJ tailored the makewhole remedy. We agree that it was appropriate not to award makewhole for the period from November 23, 1994 until the Union provided its version of the written "agreement," as it agreed to do. On the other hand, we do not find a sufficient basis for also offsetting the period between June and November of 1994. In other words, the Employer should certainly-not be penalized for a period of Union-caused delay in the resumption of bargaining, but that should not excuse its own earlier period of avoiding negotiations. Therefore, bargaining makewhole shall be awarded from June 15, 1994 (representing a two week period for the Employer to respond to the Union's May 31, 1994 letter) to November 23, 1994, when the parties briefly resumed negotiations. The Employer, at the time of hearing, had not responded to the proposed agreement it received on April 17, 1995. The hearing opened on May 2, 1995, approximately two weeks after receipt of the proposal. This was a sufficient amount of time for the Employer to review the proposal and respond to the Union. Therefore, the makewhole period shall begin again on May 2, 1995 and end when the Employer resumed or resumes good faith negotiations .

DECERTIFICATION ELECTION

A decertification election took place on September 12, 1994 among Respondent's agricultural employees. The ballots were impounded by the regional director pending resolution of this unfair labor practice case. Having found that Respondent engaged in conduct which violated the ALRA, we must now determine whether such conduct warrants invalidating the election and dismissing the decertification petition.

We believe that applicable precedent of the National Labor Relations Board (NLRB) dictates the answer to this question. The NLRB has historically taken the position that bad faith bargaining during the period prior to the filing of the decertification-petition precludes the finding of a bona fide question concerning representation. (See, e.g., *Brannan Sand & Gravel* (1992) 308 NLRB 922; *Big Three Industries, Inc.* (1973) 201 NLRB 197.) While this principle might not logically apply where the violation was relatively minor, it certainly applies where, as here, there are more serious violations. Here, the Employer's failure to respond to the Union and to meet at reasonable times to continue negotiations violated the duty to' bargain and derailed promising negotiations for a period that included the three and half months preceding the decertification election. Such conduct would tend to interfere with employee free choice and preclude the holding of a fair election[1].. Therefore, we hereby direct the Regional Director to dismiss the decertification petition in Case No. 94-RD-2-VI and to preserve

all ballots until such time as all avenues of appeal of this Decision have been exhausted.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that P.H. RANCH, INC., a California Corporation; RAY GENE VELDHUIS, Individually and Doing Business as R-V DAIRY, a Sole Proprietorship; and VELDHUIS DAIRY (Respondent), its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to bargain collectively in good faith, as defined in Labor Code section 1155.2, subdivision (a), with the International Brotherhood of Teamsters, Local 517, Creamery Employees and Drivers Union (Union) as the certified exclusive collective bargaining representative of Respondent's agricultural employees in the State of California, and,' in particular, from:

(i) Failing or refusing to respond to bargaining proposals from the Union and failing to continue to meet and negotiate; and

(ii) Failing or refusing to provide the Union requested information relevant to and necessary for the Union's performance as the exclusive collective bargaining representative of Respondent's agricultural employees.

(b) In any like or related manner interfering with, restraining or coercing agricultural employees in the exercise of their 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 of the Union, meet and bargain collectively in good faith with the Union as the certified exclusive collective bargaining representative of Respondent's agricultural employees;

(b) Upon request, provide to the Union all information previously requested, and not yet provided or now outdated, with regard to (1) employees' daily, hourly and monthly wage rates listed by job classification; (2) employees' daily, hourly and monthly wage rates listed by employee name; (3) the total number of hours worked by each employee; and (4) the total monies available to each employee in the Respondent's Profit Sharing Plan at (i) age 62, and (ii) upon termination of the Plan;

(c) Make whole all agricultural employees employed by Respondent in the bargaining unit at any time during the period from June 15, 1994, to the date Respondent commences good faith bargaining which results in a contract or a bona fide impasse, excluding the period from November 23, 1994 to May 2, 1995, for all losses of pay or other economic losses said employees have incurred as a result of Respondent's refusal to bargain in good faith, such amounts to be calculated in

accordance with Board precedent, plus interest thereon to be determined in the manner set forth in E.W. Merritt Farms (1988) 14 ALRB No. 5.

(d) Preserve and, upon request, make available to the 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 for a determination by the Regional Director of the economic losses due under the Board's order;

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

(f) Upon request of the Regional Director or his designated Board agent, provide the Regional Director with the date of Respondent's next peak season. Should Respondent's peak season have begun at the time the Regional Director requests a peak season dates, Respondent will inform the Regional Director of the anticipated dates of the next peak season;

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

(h) Upon request of the Regional Director, mail copies of the Notice in all appropriate languages to all agricultural employees employed by Respondent at any time from June 15, 1994 to June 14, 1995;

(i) Provide a copy of the Notice to each agricultural employee hired to work for Respondent during the twelve (12) month period following the issuance of this Order;

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

(k) Notify the Regional Director in writing, within thirty (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 has been achieved.

IT IS FURTHER ORDERED that the certification of the Union as the exclusive collective bargaining representative of Respondent's agricultural employees in the State of California be extended for one year from the date on which Respondent resumes or resumed bargaining in good faith, thereby barring an election for said period *(Adamek & Dessert, Inc.* v. *ALRB* (1986) 178 Cal.App.3d 970, 983; Labor Code § 1156.6).

DATED: December 7, 1995

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

P.H. RANCH, INC., at *a.1.* (Jt. Council of Teamsters No. 38, et al.)

21 ALR3 No. 13
Case No. 94-CE-99-VI

Background

On July 11, 1995, Administrative Law Judge (ALJ) Barbara D. Moore issued a decision in which she found that P.H. Ranch, Inc., Ray Gene Veldhuis, individually and doing business as R-V Dairy, a sole proprietorship, and Veldhuis Dairy (Employer or Respondent) violated section 1153, subdivisions (e) and (a), of the Agricultural Labor Relations Act (ALRA) by refusing to provide requested information and by refusing to meet and negotiate since on or about June 3, 1994. Respondent filed exceptions to the ALJ's finding of the two violations and the General Counsel filed a brief in response.

Board Decision

The Board affirmed the ALJ's findings and conclusions with regard to the failure to provide information and the refusal to bargain after June 3, 1.994. In affirming the refusal to bargain violation, the Board noted that, after numerous bargaining sessions, including two with the assistance of a mediator, it appeared that the bargaining process was on track and proceeding in good faith. However, Respondent's subsequent failure to respond to the Union's written proposals and to continue to meet and negotiate derailed the bargaining process, constituting a violation of the statutory duty to bargain. The Board emphasized that it in no way intends to discourage the use of mediators. On the contrary, the Board strongly supports the use of mediation as a tool to facilitate bargaining. However, the Board cautioned that, except where there is an unrepudiated agreement that all contact must be through the mediator, whether such agreement is express or reasonably may be inferred from the conduct of the parties, a party may not use the existence of a mediator as an excuse to ignore efforts by the other party to resume direct contacts or negotiations. Here, Respondent failed to persuasively establish that the parties had in fact agreed to such an arrangement or that the Employer justifiably relied on conduct by the Union in believing that all communications must be through the mediator. The Board found that, absent such a showing, the parties' mutual duty to meet at reasonable times and confer in good faith, as defined in Labor Code section 1155.2, subdivision (a), cannot be conditioned on the presence of the mediator.

The Board also upheld the ALJ's conclusion that the bargaining makewhole remedy was appropriate, finding that the Employer's conduct significantly disrupted the bargaining process so as to effectively prevent the possibility of reaching a contract. In addition, since the parties' differences were not shown to be

intractable, the Employer failed to demonstrate that no agreement would have been reached even in the absence of bad faith bargaining. *(Dal Porto & Sons, Inc.* v. *ALRB* (1987) 191 Cal.App.3d 1195.) However, the Board modified the beginning of the makewhole period, finding that, while it was appropriate not to award makewhole during a period of union-caused delay, it was not appropriate to also offset an earlier period of comparable length in which the Employer avoided negotiations.

Based on the bargaining violations found, the Board also ordered the Regional Director to dismiss the decertification petition in Case No. 94-RD-2-VI, wherein an election had been held but the ballots impounded pending the outcome of this related unfair labor practice case. In ordering the dismissal of the petition, the Board relied on NLRB precedent holding that bad faith bargaining during the period prior to the filing of the decertification election precludes the finding of a bona fide question concerning representation. (See, e.g., *Brannan Sand & Gravel* (1992) 308 NLRB 922; *Big Three Industries, Inc.* (1973) 201 NLRB 197.) The Board observed that in this case the Employer's unlawful conduct derailed promising negotiations for a period that included the three and half months preceding the decertification election and that such conduct would tend to interfere with employee free choice preclude the holding of a
fair election.

* * *

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Visalia Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that alleged we, P.H. RANCH, INC., a California Corporation; RAY GENE VELDHUTS, Individually and Doing Business as R-V DAIRY, a Sole Proprietorship; and VELDHUIS DAIRY, (Respondent) violated the Agricultural Labor Relations Act. After a hearing at which all parties had an opportunity to participate, the Administrative Law Judge found that we refused to bargain with the Teamsters, Local 517 (Union), the certified representative of our employees, by refusing to meet and negotiate and by refusing to provide information relevant to bargaining.

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

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

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative (union);
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 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.

UPON REQUEST BY THE UNION, WE WILL bargain in good faith with regard to the terms and conditions of employment of our employees and provide relevant information requested by the Union.

WE WILL makewhole all of our employees who suffered economic loss as a result of our refusal to bargain in good faith.

DATED:

P.H. RANCH, INC., a California Corporation/ RAY GENE VELDHUIS, Individually and Doing Business as R-V DAIRY, a Sole Proprietorship/ and VELDHUIS DAIRY

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 711 North Court Street, Suite H, Visalia, CA 93291. The telephone number is (209) 627-0995.

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: P.H. RANCH, INC., *a* California Corporation/ RAY GENE VELDHUIS, Individually and Doing Business as R-V-DAIRY, a Sole Proprietorship; and VELDHUIS DAIRY, Respondents , and JOINT COUNCIL OF TEAMSTERS NO. 38, TEAMSTERS LOCAL 386 and TEAMSTERS LOCAL 517, Charging Parties.	Case **No.** 94 -CE- 99 -VI

Appearances :

Stephanie Bullock,
Assistant General Counsel
Visalia, CA 93291
for General Counsel

Andre P. Gaston
Bourdette and Partners
Visalia, CA 93291
for Respondent

Ralph A. Miranda
Joint Council of Teamsters No. 38
Teamsters Local 336
& Teamsters Local 517
for Charging Parties

DECISION OF THE ADMINISTRATIVE LAW JUDGE

BARBARA. D.MCOR2, Administrative Law Judge:

This case was heard by me on May *2* through 5, 1995, in Modesto and Visalia, California. It arises from a charge filed by the Joint Council of Teamsters No. 38, Teamsters Local 386 and Teamsters Local 517 (hereafter referred to collectively as "Union" or individually as "JC38," "Local 386," or "Local 517") with the Visalia Regional Office of the Agricultural Labor Relations Board ("ALRB" or "Board").

Based on the charge, which was timely filed[1] and duly served, the Regional Director of the Visalia Office issued a Complaint on February 2, 1995, alleging that P. H. Ranch, Inc., Ray Gene Veldhuis, individually and doing business as R-y-Dairy, a sole proprietorship and Veldhuis Dairy ("Respondent" or "Company") violated sections 1153 (e) and (a) of the Agricultural Labor Relations Act[2] ("ALRA" or "Act"). Subsequently, First and Second Amended Complaints issued on February 15, 1995, and April 20, 1995, respectively. Respondent filed answers to the Original and First Amended Complaints and is deemed to deny the allegations in the Second Amended Complaint[3] ("Complaint").

The Complaint alleges that Respondent committed several per se bargaining violations, to wit, it: (1) refused to provide requested information, (2) refused to execute a written contract

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[1] Administrative notice is taken that the charge was filed on July 26, 1994.

[2]A11 section references hereafter are to the California Labor Code unless otherwise specified.

[3]Title 8, California Code of Regulations, section 20230.

after reaching agreement on April 21, 1994,[4] and, (3) since on of about June 3, has refused to meet and negotiate. The Complaint also alleged that Respondent did not provide properly authorized negotiators. I granted Respondent's motion at the close of General Counsel's case in chief to dismiss this allegation for failure to establish a prima facie case.[5]

Following the hearing, both General Counsel and Respondent filed briefs. Upon the entire record,[6] including my observations of the witnesses, and after careful consideration of the parties' briefs, I make the following findings of fact and conclusions of law.

THE BARGAINING HISTORY

The chief negotiator for the Union was Ralph Miranda of JC33 Ken Bruner of Local 386 was the other Union spokesperson. A

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[4]All dates hereafter are 1994 unless otherwise indicated.

[5]At the end of the hearing, General Counsel moved to amend the complaint to allege that Respondent violated section 1153(f) of the Act by bargaining with a labor organization not certified as the exclusive representative in that it deleted Local 5l7 in its recapitulations and insisted on substituting Local 386. Respondent acknowledges that Local 517 is .the certified representative of its employees and contends it wanted substitution only because the Union insisted. I do not credit this assertion since the Union clearly abandoned its position on this issue and Respondent continued to exclude Local 517. (See General Counsel's Exhibit number 2.) Nonetheless, I denied General Counsel's motion on the grounds General Counsel should have determined earlier that it wanted to allege this violation.

[6]Citations to the official hearing 'transcript will be denominated by page number(s) in parentheses. General Counsel's and Respondent's exhibits will be identified as GCX number and RX number. respectively. General Counsel's motion to correct the transcript is granted. I also correct the transcript by substituting "PEER" wherever "PEHR" appears.

negotiations committee of unit employees also attended meetings. Big John Davis of Local 517 did not attend but was consulted frequently by Miranda and Bruner.[7]

Respondent engaged David Miller of Pacific Employers to represent it. Miller in turn hired Steve Martin who became Respondent's chief negotiator. Miller kept in close contact with Martin about the negotiations but attended only a couple of sessions. Frank Cousineau of Pacific Employers assisted Martin.

Martin told the Union he had full authority to reach a contract. He informed Miranda he reserved the right to review matters with the Employer, but said he had the authority to bind the Employer to whatever agreements he (Martin) made. (71-79). The Union negotiators told Martin they could agree to a contract except that it had to be ratified by the membership.

The parties conducted seven negotiation sessions between July 14, 1993, and December 14, 1993. They committed to reaching tentative agreements on proposals as they went along. Nothing was final until a 'full contract was reached, but the "TAs" would not be changed except for clerical or housekeeping reasons, e.g., one section referred to another and the latter changed, thereby necessitating a change in the former.

The Union submitted its initial proposal to Respondent prior

[7]There was an internal union jurisdictional dispute that Local 517 had intruded into Local 386's'geographical area. One of JC33's functions was to assist locals in bargaining. So, Miranda assumed lead position in bargaining. He and Bruner originally sought to substitute Local 386 for Local 517 but were advised this was illegal. Consequently, they abandoned this position in late 1993 although they continued to bargain on Local 517's behalf.

to the July 14, 1993, meeting. A second complete proposal (GCX. was presented on November 4, 1993. Respondent did not submit a complete proposal, but Martin prepared "recapitulations" of the parties' positions which sometimes included Respondent's suggested language.

Although both sides believed progress was being made, Bruner and Veldhuis met privately at the December 14 meeting to try to move matters along.[8] Veldhuis agreed to look at the economic issues and come up with some numbers.

The Union agreed to a break in negotiations because Mr. Veldhuis was preoccupied with matters in southern California related to the earthquake, which occurred on January 17, but after some time had passed the Union sought to resume meeting. The parties met next on March 29, 1994.

At that meeting, Martin proposed a $200 per month per employee increase which the Union could allocate as it saw fit. This was in addition to the profit-sharing plan provided by the company but apparently encompassed wages as well as health and welfare.[9] (274) At this point, the Union's health and welfare proposal alone cost substantially more than this amount.

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[8]There was some thought that Bruner and Veldhuis were kindred spirits in that they shared similar religious views and might therefore be able to communicate well and reach agreement. Martin and Miranda sometimes clashed.

[9]See below where Miller indicates the $200 was for wages only.

Also at this session,[10] Martin gave the Union a recap of the outstanding proposals indicating the status of each.[11] (GCX2) Ac the end of this session, both sides believed they were close to agreement and felt if a mediator could help them resolve the economic issues, they could get a contract. To that end, they met with a federal mediator on April 21.

MEDIATION

Bruner, Miranda, Martin and Cousineau met with the mediator, Clarence Washington, in the morning. The parties focused on the economic issues: wages, pension, health and welfare and the duration of the contract which both sides agree depended on the economics--especially wages.

In the "afternoon, Washington met separately with the Union and Respondent, taking proposals and counterproposals back and forth. Miranda testified without contradiction that at times the

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[10]I have credited Bruner's and Miranda's testimony that they received GCX2, which is undated, on 3/29. Both testified credibly they were sure about the date, and Martin twice declared under penalty of perjury in Respondent's opposition to the Union's request to extend its certification, filed with the ALRB in August, this was the date. (GCX12) Although at the hearing he testified he was mistaken both times, I credit his earlier statement as more likely to be accurate since it was made much closer in time to the event. I was not persuaded by his claim that he was mistaken because he was in a hurry to file the documents. I do not believe he would not have checked the dace, which Respondent considered significant, before filing his statement.

[11]No comment next to a proposal meant there was agreement. The notation "Proposal Not Agreed" meant only that formal agreement on the proposal had not been achieved. The parties might be far apart or very close. In fact, there might be no actual disagreement, but signing off was dependent on agreement on another proposal or some other factor.

atmosphere became tense with, each side rejecting the other's proposal. At one point, Miranda threatened economic action (not necessarily a strike) against the Company.

The Union made substantial concessions and determined that if Respondent eliminated its profit-sharing plan and moved to the Union's pension plan it could save over $36.00 per month per employee which, added to the $200 figure discussed in March, would, according to Bruner, come close to the approximately $245 the Union needed for a new health and welfare plan it proposed during mediation. (62-67) The Union also dropped its wage demand significantly. (119, 125)

The parties differ as to how the session ended. According to Miranda and Bruner, Washington told them they had a settlement. Everyone met in the hall. The tension that was present earlier the day had disappeared. Martin had a big smile, and the mood was one of satisfaction with the progress made.

Martin and Bruner met off to the side, and Bruner told Martin that "based upon the settlement that we had reached economically that the articles that was (sic) outstanding would all go away and we would have an agreement." (25) After this, they all shook hands and left.

Martin was to prepare a written agreement based on the terms agreed to at mediation and on the parties' notes from prior sessions. Bruner would cross check it with his notes, they would resolve any discrepancies and sign a full contract.

Martin and Cousineau insist they agreed only to take the

Union's proposal to Veldhuis. Martin testified he told Washington he would push hard for Veldhuis to change to the Union pension plan and apply the savings to a health and welfare plan costing an agreed upon sum which he recalled was in the $237 to $240 per month range.[12] (462-463)

Both Cousineau and Martin testified they agreed to present the Union's request for a maintenance of benefits clause although Martin would recommend against it because with the debate about national health care going on it was too uncertain to make such, a commitment. Additionally, Martin had previously had experience with such costs increasing sharply, and he was not familiar with the plan the Union proposed that day. Thus, he was unwilling to recommend such a clause.

Although Martin's testimony on what occurred at mediation consists mostly of conclusions rather than specific facts, I credit his testimony about the maintenance of benefits clause which neither Bruner or Miranda mentioned except to say it was agreed upon. He had cogent reasons for his positions and his manner was convincing.

Although both are adamant that a settlement was reached, Bruner and Miranda remember the agreement differently. Bruner believed they were "close" to the $245 needed to fund the plan

[12] I do not credit Martin's testimony that he rejected the Union's wage proposal. Given the tenor of the whole session, I do not believe the parties left such a critical item up in the air. Further, Bruner's statement at the end, which Martin agrees Bruner made, makes little sense if Martin had not agreed to recommend the Union's wage proposal.

proposed that day. (66) Miranda remembered the Union was going, to take the approximately $36 savings and shop for a plan to meet the amount.

Under both the Union's and Respondent's versions of events, it was up to Martin to make the next move--either to prepare the contract or to give the Union a reply from Veldhuis . When the Union did not hear from him, Bruner called Martin in both early and mid-May. Martin told Bruner he had reported back to Veldhuis and needed a meeting. They agreed to meet at the Modesto airport on May 27. David Miller and Veldhuis were also to attend.

Bruner appeared with another Union representative because Miranda could not attend. Martin and Cousineau appeared, but Veldhuis and" Miller did not show up. Martin told Bruner that Veldhuis would not agree to the terms set out on April 21.

In discussing Veldhuis' position, Bruner believed Martin had incorrectly communicated the agreed upon terms and had told Velduis the Union was asking for what amounted to an $83 per day increase per employee whereas the amount had been reduced to $72.50 per day at the mediation session. (Bruner did not say how this figure relates to the amounts described above.)

Bruner and Martin agreed that Bruner would write Veldhuis directly and explain the terms, including the savings to Respondent from switching to the Union's pension plan.[13] A few

[13]Respondent complains that Bruner's letter did not explain how he would achieve the savings, but they never made clear what they wanted since Bruner gave them the amount of the employer contribution.

days later, Bruner sent Veldhuis a latter denominated a "tentative proposal." (GCX3)

In the letter, Bruner sets forth the terms the mediator "worked out" with the parties and states the cost of the health plan is $245.*56.* Three times he refers to the letter as a proposal, and he concludes with: "Please notify us of your position as soon as possible."

Bruner credibly explained that he used "tentative" because, as is typical in labor relations, the Union members would have to ratify any agreement he and Miranda reached. He gave no explanation as to why he repeatedly described the terms as a "proposal. " Nor did he ever explain why he did not assert that the parties "had reached agreement and that Respondent was required to sign off in writing. Nor did he ever explain why he asked Veldhuis to give his position if they already had an agreement.

The tenor of his letter is more consistent with Respondent's position that Martin was to try to sell Veldhuis on the terms than with the Union's that they had been agreed to and were final. Although an employer is legally required to send a negotiator to the table who is empowered to agree to a contract, in this case the parties' conduct is consistent with their having included Veldhuis personally in the negotiations about economics . Based on the foregoing, I find there was no binding agreement reached on April 21.[14]

[14]Further, Martin had not signed off on the maintenance of benefits clause, and Miranda and Bruner were not even clear whether the agreement was for Respondent to pay $236 or $245 for

At about this time, Bruner bowed out of negotiations due to personal problems, and Miranda handled matters on his own. He saw Veldhuis sometime in June when he was at one of the dairies, and Velduis said he would be sending a response to Bruner' s letter soon. He never did send Bruner a reply.

THE FAILURE TO MEET AFTER MEDIATION

Not having received any response to Bruner's letter, sometime later in June Miranda unsuccessfully tried to reach Martin at the several different phone numbers he had for him. He chose to contact Martin rather than the mediator because Bruner had written directly to Veldhuis so Miranda saw no need to use the mediator.

Ultimately, he phoned both the mediator and David Miller saying he had could not reach Martin. Neither Miller nor Miranda testified that anything was said about the agreement, or lack thereof, during their conversation.[15] Miranda did say he understood there was a decertification petition circulating at the company.[16]

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the health plan.

[15]Miller professed the purpose of Miranda's call was not clear--that Miranda communicated only that it was up to Miller to remedy the fact that Miranda could not reach Martin. I find Miller knew very well that Miranda wanted to talk to Martin about getting back together to conclude an agreement.

[16]A decertification election was in fact held on September 12. The ballots were impounded pending resolution of this charge. At the election, Miranda told Cousineau he thought the Union would lose the election. I credit Miranda that he did not tell Cousineau that the parties never reached agreement on April 21. Miranda is too experienced a negotiator to have made such a statement since he had filed this unfair labor practice charge. Respondent contends Miranda's statement indicates the Union had no interest in bargaining, apparently meaning that there was no

Miller later spoke with. Martin who stated Washington had told Martin the Union had rejected the company's earlier proposal.[17] Although Miller, in. addition to talking to Martin, talked to Veldhuis after Bruner sent the May 31 letter, he did not discuss with either of them what would happen in the future as far as negotiations other than that the employer would communicate to the Union that it was sticking with the proposal it made at the start of mediation.(397-398; 410-411.)

According to Martin, at some point after Bruner sent the letter, Washington told him the Union had rejected the company proposal, and the calls from Washington stopped coming.[18] Miranda testified the mediator never contacted him to ask his position on-the company's last offer. Assuming arguendo the mediator did tell Miranda the company rejected the 4/21 terms, Miranda made it clear he wanted to talk directly to Martin. As

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illegality on Respondent's part in not meeting. I do not agree with that view. It is complete supposition. The Union could just as reasonably be viewed as wanting progress at the table to win support from the employees in the election. There is no evidence the Union had withdrawn from bargaining other than from frustration at not being able to contact Respondent's chief negotiator.

[17] Martin did not specify what that proposal was, but Miller testified it was the proposal he had communicated to Martin before mediation began on 4/21 which was: a $200 wage package (see p. 274 where Cousineau describes the $200 as covering everything except pension), substitute the Union's pension plan for the company's 401K plan if there were a way to credit past service, and institute a health plan if an acceptable one could be found. (393) Martin acknowledged that they checked out the plan the Union proposed on 4/21 and-it was a good plan.

[18] It is not clear from either Martin's or Miller's testimony when this occurred.

the company's chief negotiator, Martin could not abdicate responsibility and require Miranda to communicate with Respondent only through the mediator.[19]

Martin did not speak to Miranda until about October when they had a heated telephone discussion during which Martin agrees that Miranda asked to meet for negotiations.[20] Martin told-him Respondent was finished negotiating, and that for "other considerations" he was not a part of negotiations anymore and Miranda should contact Miller. They both became angry as they . argued about various issues and swore at one another.

Miranda wrote Martin memorializing the conversation. (GCX4) Martin received mail at Miller's office. Rather than sending the letter to Martin, Miller decided to intervene because he believed Miranda was starting a paper trail.[21] He contacted Miranda, and they set a meeting on November 23 for Miller to be brought up to

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[19]I do not credit Martin's statement that once the mediator was called in, all communication had to go through him. Mediation is voluntary, and the decision to use a mediator is not immutable. In this instance, the parties had already reverted to direct dealing by having Bruner contact Veldhuis directly.

[20]I do not credit Martin's testimony. that he spoke with Miranda in July, that they discussed the view that the employees did not show much loyalty to either the Union or the company, that Miranda was going to file unfair labor practice charges and that Miranda did not offer to negotiate or Martin would have "responded somehow." Given what had transpired and the fact that there had been tensions between them earlier in negotiations, I find the initial contact between them, after the company, in the Union's view, was avoiding negotiation, was much more likely to be in the vein of what transpired when they spoke in October.

[21]Miller at first tried to say he thought the reference to cursing referred to both Martin and Miranda since he had heard both do so in the past. Ultimately, he acknowledged the obvious, that the implication of the letter was about Martin's conduct.

speed on the negotiations. (421)

Miller, Bruner and Miranda met. Miranda told Miller the Union's position was that the parties had reached an agreement on 4/21, and Respondent was unlawfully refusing to execute the contract. He reiterated the request for information which had not yet been provided.

Miller initially testified Miranda and Bruner refused to bring him up to date, but he acknowledged Miranda told him the agreement consisted of "the negotiation sessions, the agreements reached in the December 13th and 14th session (sic), the meetings between Ken Bruner and Ray Veldhuis, and the meeting that took place with the Federal Mediator on April 21st." (424)

It is apparent that he simply misinterpreted Miranda's remarks to mean Miranda had a copy of the agreement in his nearby office but would not provide it immediately because it was inconvenient to go get it. This is no more than a classic case of two people reading the same information two different ways.

Miranda agreed to provide the contract, but he did not do so until April 15, 1995.[22] He felt no urgency to draft it and send it to Miller because Miller had access to the same information as Miranda did. Miranda used his and Bruner's notes and drafted GCX10 which was meant to reflect the parties' agreement including adhering to Bruner's commitment to Martin on 4/21 that Respondent would prevail on vacations and holidays!'

Miranda acknowledged that he made some mistakes in his draft-

[22]Miller received the document on April 17, 1995.

-one was because he could not read Bruner' s notes on bumping rights. In other places, it shows agreement where there had been none.[23]

As of the date of the hearing, Respondent had not responded to the Union's submission of GCX10, the continuing request to bargain Miranda made to Miller in October, or its request for information which it reiterated at the November meeting.[24]

General Counsel alleges Respondent violated sections 1153 (e) and (a) by not executing a written contract. I have found there was no agreement reached on April 21. Therefore, this allegation is dismissed.[25]

Veldhuis never responded to Bruner's letter. In fact,

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[23]For example, Miranda showed the parties had agreed each employee would receive a formal lunch break or be compensated. Respondent insisted that in the dairy industry, lunch was taken "on the fly" because the cows needed ongoing attention. Miranda showed an overtime clause as agreed to because Respondent had not submitted separate language. Bruner acknowledged they were "close" but had not agreed. (39) Similarly, Bruner acknowledged they had not agreed on the start time section. (37-33) Based on Bruner's remark to Martin at mediation, the Union might have given in to Respondent on all outstanding issues, but it is clear from GCX10 there were some areas Miranda thought had been agreed to which had not.

[24]Miller characterizes the November meeting as a negotiation session. Clearly, it was not. Miller was kept up to date by Martin, and there should have been no need to have a session for the Union to tell him the status of negotiations. Miller did nothing before or at the meeting to indicate he was open to a true negotiation meeting.

[25]In view of my conclusion, it is unnecessary to decide whether, if there had been agreement on economics, the remainder of the contract terms had been sufficiently agreed upon that Respondent was required to execute a written contract. (General Hugh Mercer Corp.. d/b/a/ Princeton Holiday Inn (1986) 282 NLRB 30.

neither he nor anyone else representing Respondent ever responded specifically co the Union's proposal. Assuming arguendo, chat the mediator was told, and informed the Union, that the Union proposal was rejected and Respondent reverted to its proposal as described by Miller, this proposal stated Respondent would consider a health and welfare proposal if an acceptable one could be found. Martin acknowledged the plan the Union proposed on 4/21 was a good one.

By failing to tell the Union how its proffered plan did not meet Respondent's criteria, the Union was left in the dark as to how to respond. The same is true regarding the pension plan. The Union did not know if Respondent disagreed the Union plan was less expensive or whether Respondent had some other objection.

The Union made substantial concessions in mediation and sought to continue meeting after its proposal was not accepted. Respondent's-refusal to meet and to clearly inform the Union of its position so the Union could respond frustrated the bargaining process. (Page Litho, Inc. (1993) 311 NLRB 881.)

This case is similar to Embossing Printers, Inc. (1984) 268 NLRB 710, enforced (6th Cir. 1984) 742 F. 2d 1456 [118 LRRM 2967]. The parties there were substantially deadlocked and had ended a mediation session subject to the mediator calling the next session.[26]

Some two months later, the Union contacted the company several times requesting bargaining. The company did not reply

[26]Here, it will be recalled the next step was for Veldhuis to reply to Bruner's letter.

because the Union had written to the company principal directly and copied the letter to the company negotiator and because the company contended the mediator was going to call the next meeting.

The National Labor Relations Board ("NLRB") found the company's failure to reply to the requests violated section 8 (a) (5) of the National Labor Relations Act ("NLRA"), the corollary to section 1153(e), because an employer must treat bargaining with the same seriousness of purpose it would give to any important business matter. The delay in meeting and the refusal to respond showed an intent to delay and frustrate the bargaining process.

The NLRB determined there was no impasse relieving the employer of its duty to bargain. It extended the Union's certification and noted the employer's continuing duty to barga (Colfor. Inc. (“Colfor”) (1987) 282 NLRB 1173 [127 LRRM 1239], enforced Coif or Inc. v. NLRB (6th Cir.1988) 838 F. 2d 164 [127 LRRM 2447])

In order to reach impasse, the parties must have come to a point where they are warranted in concluding that "further bargaining would be futile." (Colfor. [citations omitted]) Whether impasse exists is a question of fact. Considerations include the bargaining history, the good faith or lack thereof, the length of negotiations, the importance of issues on which there is no agreement, and the contemporaneous understanding of the parties. The fact that no statements are made that parties are at impasse is also a relevant consideration as are statements

as to what one side must do to avoid impasse. (CBC Industries. Inc. (1993) 311 NLRB 123.

The NLR3 will not lightly find impasse. In a case similar to the case at bar, the NLRB found the parties were not at a stage of bargaining where either could reasonably believe that impasse had occurred. "The parties had yet to bargain exhaustively over core economic issues . The relatively limited discussions engaged in do not provide a basis for the Respondent's alleged belief that further bargaining would be futile." (Powell Electrical Manufacturing Company ("Powell") (1987) 287 NLRB 969, at p. 969; enforced NLRB v. Powell Elec. Mfcr. Co. (5th Cir. 1990) 906 F. 2d 1007 [134 LRRM 2732]).

In the NLRB's view, the parties had not engaged in sufficient bargaining. There was only one mediation session after the employer presented its wage proposal. The ALJ concluded the parties had only just begun to bargain and the fact that they were far apart on many issues did not justify a declaration of impasse.[27]

In the instant case, Respondent never communicated to the Union that it believed impasse had been reached. The Union made substantial concessions during mediation and continued to desire meetings. There is no evidence that further discussions would

[27]He also found there had been much posturing and little negotiating going on. In that sense, Powell is different than this case in that here the parties had reached or were near agreement on many language issues. Nonetheless, Powell applies because here, too, the company had just begun to make proposals on economics. Just as in Powell, a finding of impasse is premature.

have been futile.

Here, as in Powell. whether the parties would have reached agreement is unknown. However, as the ALJ in Powell put it: " [i]t is for the parties through earnest, strenuous, tedious, frustrating and hard bargaining to solve their mutual problem--getting a contract--together, not to quit the table and take a separate path." (at p. 974)

Here, Respondent did not give the process a chance to work. Instead, it unilaterally opted out, and in doing so failed to meet, its obligation to meet and confer in good faith.

THE REQUEST FOR INFORMATION

On December 13, 1993, the Union gave the company a written request for information. (GCX5) The Union acknowledges receipt of the material requested in items "A" and "B" but contends Respondent did not comply with the rest of its request.[28]

The Company did not give the Union the employee wage and classification information by employee name until August when it included it in its opposition to the Union's request for extension of certification which was served on the Union. The Company did

[28]Cousineau testified the Union never properly responded to Respondent's request for information on the original health and welfare plan, but the Union did provide the requested five years' experience as requested. (355-356, GCX14 and 15) In addition, it provided information on the health plan it proposed at mediation. (57) The Union also provided the requested information regarding the pension plan by letter and by having the plan administrator make a presentation and answer questions' in December 1993. (See GCX 13) Respondent did not file an unfair labor practice charge against the Union, so the only issue is whether the employer lacked the information necessary to evaluate the Union proposals and to prepare its own. I find no evidence the Union failed to respond adequately.

not provide the information because it did not believe it was necessary to do so.

Similarly, it never provided the hours worked for each employee by name also because it believed it was unnecessary. (315-316) Although at hearing Cousineau testified it would have been time-consuming to develop the information, this was not the reason given for not providing it and, in any event, is no defense.

Additionally, Respondent never provided the information regarding the company profit-sharing plan because, as Martin put it they were "trick" questions and it was impossible to respond.[29] The Union wanted the information in order to compare the employer's plan to its pension plan and to determine how much each employee would get if the company terminated the former and substituted the latter. Although Respondent is correct that the projections requested would not be absolutely accurate, clearly an actuary could make the requested calculations based on previous experience.[30]

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[29]I do not credit Cousineau's testimony that it was not provided because it was confidential. First of all, he was vague as to whether he had communicated this belief to the Union. Second, he had no legal authority to support his view. The incident to which he referred concerned the employer obtaining information which is different that the employees' duly elected representative obtaining it.

[30]This finding does not apply to that portion of the request for the amount of money available to each employee upon his termination. Unlike the request for such information at termination of the plan which was contemplated as part of the contract, the company was not required to speculate on possible termination dates of employment for its employees..,.

Where a union seeks information regarding the terms and conditions of employment of unit employees, that information is "presumptively relevant" to the union's performance of its collective bargaining duties because such information is at the "core of the employee-employer relationship" [citations omitted]. (Graphics Communications. Local 13 v. NLRB (B.C. Cir., 1959) 598 F.2d 267)

The names, rates of pay, job classifications and hours of Respondent's unit employees is presumptively relevant, and Respondent has failed to rebut the presumption. (Anthony Motor Company. Inc., d/b/a/ Honda of Hayward (1994) 314 NLRB 443; Adair Standard Corporation (1937) 233 NLRB 668). Respondent's failure to ever provide the number of hours worked by each employee and its delay from December until August in providing the wage and classification information by employee name--and doing so not in response to the request but collaterally as part of its opposition papers--violate sections 1153 (e) and (a) .

Descriptions and costs of pension benefits are also presumptively relevant. (O.W. Hubbell & Sons (Hubbell) (1991) 305 NLRB 138; Norman Huggins, Receiver for Rest Haven corporation, d/b/a Resthaven Nursing Home and Rest Haven Corporation d/b/a/ Resthaven Nursing Home (1989) 291 NLRB 617.) In Hubbell, the NLRS found the employer violated the duty to provide information by failing to provide information regarding pension vesting and benefit credits and eligibility for pension plans pursuant to the request.

In Szabo v. U.S. Marine Corporation (7th Cir. 1987) 319 F. 2d 714, [125 LRRM 2572], the court found the employer was required to provide the union with information as to the amount of money each worker had been credited under the employer's profit-sharing plan. The court, unlike the NLRB cases cited above, did require the union to establish the relevance.

In this case, under either standard, Respondent was required to provide the information, and it violated sections 1153 (e) and (a) by its refusal to do so. The fact that the Union was able to develop enough information to calculate a comparison between Respondent's plan and its pension plan is irrelevant.

REMEDY

General Counsel requests a one year extension of the Union's certification and makewhole as the appropriate remedy for Respondent's refusals to bargain. Respondent abruptly and unilaterally terminated the bargaining process, interrupting the momentum the parties had gained and preventing the possibility of mutually agreeing to a contract. It also refused to provide relevant information. Therefore, I find extension of the certification serves the purposes of the Act since it will give the process an opportunity to work.

With regard to makewhole, section 1160.3 empowers the Board to make such an award. In Mario Saikhon. Inc. ("Saikhon") (1987) 13 ALRB No. 7, the Board, citing N.A. Pricola Produce (1981) 7 ALRB No. 49, described makewhole as in the nature of an equitable remedy which cannot be invoked without reference to the

conduct of both, parties.

I find a cease and desist order is appropriate up until the date the Union provided Respondent with the purported agreement because the Union's delay in providing it after it agreed to do so was about as long as the period during which Respondent failed to meet with the Union. However, Respondent is under a continuing duty to bargain, and as of the data of the hearing, it had not responded to the Union.

Therefore, makewhole is appropriate from April 17, 1995, the date Respondent received the proposed agreement until Respondent begins to bargain in good faith.[31] I have elected not to date makewhole from some date subsequent to April 17, 1995, because after the substantial delay already caused by Respondent, it should have been prepared to respond without delay.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that:

A. The certification of the Union as the exclusive collective-bargaining representative of P.H. RANCH, INC., a California Corporation,- RAY GENE VELDHUIS, Individually and Doing Business as R-V-DAIRY, a Sole Proprietor-ship,- and VELDHUIS-DAIRY, (Respondents') agricultural employees in the State of California

[31]Respondent has not met its burden of showing that the parties would not have reached agreement even in the absence of Respondent's bad faith. (Dal Porto & Sons, Inc. v. Agricultural Labor Relations Board (1987) 191 Cal. App. 3d 1195)

extended for one year from the date of the final remedial order rendered herein;

B. Respondents, their officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith with the International Brotherhood, of Teamsters, Local 517, Creamery Employees and Drivers (Union) as the certified exclusive collective-bargaining representative of Respondents' agricultural employees in the State of California, and, in particular, from:

(i) Failing or refusing to schedule dates for and attend negotiation meetings; and

(ii) Failing or refusing to provide the Union requested information relevant to and necessary for the Union's performance as the exclusive collective-bargaining representative of Respondents' agricultural employees.

(b) In any like or related manner interfering with, restraining or coercing agricultural employees in the exercise of their 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 of the Union, meet and bargain collectively in good faith with the Union as the certified exclusive collective-bargaining representative of Respondents' agricultural employees in the State of California, including

providing properly authorized negotiators;

(b) Provide to the Union all information previously requested, and not yet provided or now outdated, with regard to (1) the cost of medical insurance premiums to the Respondents' agricultural employees for (i) the employee only, (ii) the employee and one dependent, and (iii) the employee and two or more dependents; (2) a copy of the Summary of Benefits available to Respondents' agricultural employees through the Respondents' medical plan; (3) employees' daily, hourly and monthly wage rates listed by job classification; (4) employees' daily, hourly and monthly wage rates listed by employee name; (5) the total number of hours worked by each employee; and *(6)* the total monies available to each employee in the Respondents' Profit Sharing Plan at (i) age 62, and (ii) upon termination of the Plan;-

(c) Make whole all agricultural employees employed by Respondents in the bargaining unit at any time during the period from April 17, 1995, to the date Respondents commence bargaining which results in a contract or a bone fide impasse, for all losses of pay or other economic losses said employees have incurred as a result of Respondents' refusal to bargain in good faith, such amounts to be calculated in accordance with Board precedent, plus interest thereon to be determined in the manner set forth in E.W. Merritt Farms (1988) 14 ALRB No. 5.

(d) Preserve and, upon request, make available to the 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 for a determination by the Regional Director of the economic losses due under the Board's order;

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

(f) Upon request of the Regional Director or his designated Board agent, provide the Regional Director with the date of Respondents' next peak season. Should Respondents' peak season have begun at the time the Regional Director requests a peak season dates, Respondents will inform' the Regional Director of the anticipated dates of the next peak season;

(g) Post copies of the notice in all appropriate languages in conspicuous places on Respondents' property for sixty (60) days, the periods and places of posting to be determined by the Regional Director, and exercise due care to replace any notice which has been altered, defaced, covered or removed;

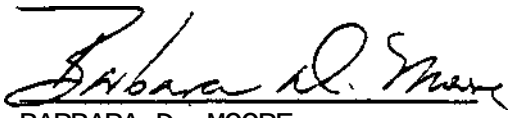
(h) Upon request of the Regional Director, mail copies of the notice in all appropriate languages to all agricultural employees employed by Respondents at any time from February 16, 1993, until the date of mailing;

(i) Provide a copy of the notice to each agricultural employee hired to work for 'Respondents during the twelve (12) month period following the issuance of a final order in this matter;

(j) Arrange for a Board agent to distribute and re. the notice in all appropriate languages to all of Respondents' agricultural employees on company time and property at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees have concerning the notice and/or their rights under the Act. All employees are to be compensated for time spent at the reading and question-and-answer period. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondents to all non-hourly wage employees to compensate them for time lost at this reading and during the question-and-answer period;

(k) Notify the Regional Director in writing, within thirty (30) days after the date of issuance of a final remedial order, of the steps Respondents have taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance has been achieved.

Dated: July 11, 1995



BARBARA D. MOORE
Administrative Law Judge

NOTICS TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Visalia Office of the Agricultural Labor Relations Board (ALRB) , the General Counsel of the ALR3 issued a complaint that alleged we, P.H. RANCH, INC., a California Corporation,- RAY GENE VELDHUIS, Individually and Doing Business as R-V-DAIRY, a Sole Proprietorship; and VELDHUIS DAIRY, ("Respondents") violated the law. After a hearing at which all parties had an opportunity to participate, the Administrative Law Judge found that we refused to bargain with the Teamsters, Local 517 "Union" the certified representative of our employees, by refusing to meet and negotiate and by refusing to provide information relevant to bargaining.

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

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

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

Because you have these rights, we promise that:

1) Upon demand by the Union, we will bargain in good faith with regard to the terms and conditions of employment of our employees and provide relevant information requested by the Union.

2) We will makewhole all of our employees who suffered economic loss as a result of our refusal to bargain in good faith with the Union as required by the Board.

DATED:

P.H. RANCH, INC., a California Corporation; RAY GENE VELDHUIS, Individually and Doing Business as R-V- DAIRY, a Sole Proprietorship; and VELDHUIS DAIRY

By: _____

(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 711 North Court Street, Suite H, Visalia, CA 93291. The telephone number is (209) 627-0995.

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

DO NOT REMOVE OR MUTILATE.