STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PEREZ PACKING, INC.,	)	Case Nos. 2012-CE-003-VIS
	)	2012-CE-004-VIS
Respondent,	)	
	)	39 ALRB No. 19
and	)	
	)	(December 19, 2013)
UNITED FARM WORKERS OF AMERICA,	)	
	)	
Charging Party.	)	

DECISION AND ORDER

On September 30, 2013, Administrative Law Judge (ALJ) James Wolpman issued the attached decision in which he found that Perez Packing, Inc. (hereafter "Employer") vioslated section 1153, subdivisions (a) and (e) of the Agricultural Labor Relations Act (ALRA)[1] by failing to provide to the certified collective bargaining representative, United Farm Workers of America (UFW), information necessary and relevant to collective bargaining. Specifically, the ALJ found that the Employer failed to provide an accurate employee list with current addresses, employees' classifications, and employee-foremen crew breakdowns. The ALJ also found that the Employer failed to comply with its statutory duty to maintain current addresses and classifications, as required by ALRA section 1157.3 and its implementing regulation, California Code of Regulations, title 8, section 20310, subdivision (a)(2).

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

On October 24, 2013, the Employer timely filed exceptions to the ALJ's decision, denying that it violated its duty to provide information necessary and relevant to collective bargaining. On November 14, 2013, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) filed a reply to the Employer's exceptions. Also on November 14, 2013, the UFW filed its reply to the Employer's exceptions.

The Board has considered the Employer's exceptions, the replies thereto, and the entire record in this case and has decided to affirm the ALJ's decision that the Employer violated the ALRA by failing to provide to the UFW information necessary and relevant to collective bargaining. As explained below, we do not adopt the ALJ's apparent view that the failure to provide employee addresses and classifications also violated section 1157.3 of the ALRA. Our analysis of the deficiencies in the address list provided by the Employer also differs somewhat from that of the ALJ.

DISCUSSION

The duty to bargain in good faith requires an employer to make a reasonable and diligent effort to comply with a union's request for relevant information. (*Cardinal Distributing Co. v. ALRB* (1984) 159 Cal.App.3d 758, 762; *O. P. Murphy & Sons* (1978) 5 ALRB No. 63.) That the information is in the possession of a labor contractor is no defense. (*Cardinal Distributing Co. v. ALRB, supra,* 159 Cal.App.3d at 768-769.) The underlying policy consideration for this rule is to foster informed collective bargaining. (*Id.,* at p. 762, citing *NLRB v. Acme Industrial Co.* (1967) 385 U.S. 432, 435-436.) The standard for defining what is relevant is a liberal one. (*Cardinal Distributing Co. v. ALRB, supra,* 159 Cal.App.3d at 762, citing *NLRB v. Leland Stanford*

Jr. University (9th Cir. 1983) 715 F.2d 473, 474.) It is only required that the information "be directly related to the union's function as a bargaining representative and that it appear reasonably necessary for the performance of that function." (*San Diego Newspaper Guild, Etc. v. NLRB* (9th Cir. 1977) 548 F.2d 863, 867, n.7, citing *General Electric Co. v. NLRB* (6th Cir. 1972) 466 F.2d 1177, 1183.) The United States Supreme Court has described the standard for relevancy as a "discovery-type standard." (*NLRB v. Acme Industrial Co.* (1967) 385 U.S. 432, 437.) The National Labor Relations Board (NLRB) and the reviewing courts consider information such as addresses and classifications, as well as information generally regarding wages, hours and other terms and conditions of employment of unit employees, as presumptively relevant. (See, e.g., *Metro Health Foundation, Inc*. (2003) 338 NLRB 802, 803; *Maple View Manor* (1996) 320 NLRB 1149, 1151*; Procter & Gamble Mfg. Co. v. NLRB* (8th Cir. 1979) 603 F.2d 1310, 1315*; San Diego Newspaper Guild v. NLRB* (9th Cir. 1977) 548 F.2d 863, 867.) It is then the employer's burden to prove any lack of relevance. (*Contract Carriers Corp.* (2003) 339 NLRB 851, 858.)

As the ALJ found, the record in this case establishes that the Employer provided an address list with numerous deficiencies and failed to provide the requested classifications and crew breakdowns until the first day of hearing in this matter, which was nearly one year from the initial request for information.[2] The Employer's claim that

[2] As a preliminary matter, the Employer argues that the ALJ, who was not the ALJ who conducted the hearing, improperly made credibility resolutions. This is based on the statement in the decision that "the General Counsel and the Union presented detailed and (Footnote continued….)

this belated provision of the requested information renders the issue moot as to classifications and crew breakdowns is without merit, as unreasonable delay in providing information constitutes a violation. (*Cardinal Distributing Co. v. ALRB, supra*, 159 Cal.App.3d 758, 768-769; *Mario Saikhon, Inc.* (1987) 13 ALRB No. 8; *As-H-Ne Farms* (1978) 6 ALRB No. 9.) In this case, the delay was extraordinary—nearly one year.[3] The labor contractor had that information at all times material and the Employer failed to make diligent efforts to obtain it.

Applicability of Section 1157.3

Section1157.3 of the ALRA requires that employers maintain accurate and current payroll lists containing the names and addresses of their employees, and make them available to the Board upon request. The Employer argues that the ALJ improperly focused his analysis on section 1157.3, which the Employer asserts has relevance only in

---

(Footnote continued)
credible testimony establishing that the information requested is relevant to fostering informed collective bargaining." However, the remainder of that passage in the ALJ's decision reflects that he based his conclusion not on demeanor, but on the facial believability and consistency of the testimony, testimony which was not refuted. (ALJ Dec., p. 11.) Therefore, it was not error for the ALJ to conclude that the testimony of UFW representatives as to the need for the requested information was credible.

[3] The Employer also claims that only address lists were mentioned in the Complaint or litigated at hearing. This is not correct. The First Cause of Action in the Complaint specifically mentions failure to provide classifications, as well as crew breakdowns, as relevant information unlawfully denied to the UFW. Therefore, there is no question that the Employer was on notice that the failure to provide this information, as well as addresses, was at issue in this case. It also is clear that the issue was litigated at hearing, as all key witnesses were questioned regarding the failure to provide the information regarding classifications and crew breakdowns and the need for the information.

the pre-election context. The ALJ appears to have found a violation of section 1157.3 as well as a violation of the duty to bargain, as he included compliance with section 1157.3 in his Proposed Order.

We believe that the Employer is correct that section 1157.3 is not directly at issue in this case. Rather, the issue is whether the Employer breached its duty to bargain in good faith by failing to provide information relevant and necessary to collective bargaining. However, section 1157.3 is relevant to the extent that, because it requires employers to maintain specified information as required for Board purposes, such information by definition must be available to provide to the certified bargaining representative if the information also is necessary and relevant to collective bargaining. If the requested information is necessary and relevant to collective bargaining, the duty prescribed by section 1157.3 negates any defense based on a failure to possess or obtain the information. *Cardinal Distributing Co. v. ALRB*, *supra*, 159 Cal. App. 3d 758, cited by the ALJ, is not to the contrary. In that case, the court rejected the employer's defense based on the difficulty of obtaining the addresses from employees by citing the requirement of section 1157.3 that placed on the employer a legal duty to maintain such information. It did not indicate that the failure to provide the information for bargaining purposes is a violation of section 1157.3. (Id. at p. 768.) Rather, the court found only a violation of the duty to bargain. Nor did the Board mention section 1157.3 in its decision or order in that case.

Application of the Necessary and Relevant Standard

While we do not find that it was proper to find a violation of section 1157.3, we do find that the ALJ's main and proper focus was on concluding whether the requested information was necessary and relevant to collective bargaining.[4] As noted above, the standard for defining what is relevant is a liberal one and the information only need be directly related to the union's function as a bargaining representative and appear reasonably necessary for the performance of that function. There is no question that current address lists for employees meet that standard, and the Employer concedes as much. (*Cardinal Distributing Co. v. ALRB, supra,* 159 Cal.App.3d 758; *As-H-Ne Farms, supra,* 6 ALRB No. 9.)

Nevertheless, the Employer argues that it had no duty to provide in-season addresses during the off-season when the original request was made. The record indicates that the UFW desired the list so that it could make home visits during the off-season to prepare for negotiations and identify employees who might want to play an active role in the process. The UFW representatives testified that they did not make any efforts to visit the out of area addresses, nor did they ever intend to. Rather, their focus was on those remaining at local addresses. The UFW representatives also claimed that

[4] The Complaint is properly focused on the duty to bargain, specifically alleging violations of the duty to bargain (citing section 1153, subdivisions (e) and, derivatively, (a) of the ALRA). It is the Prayer and, in part, ALJ's proposed order, that mistakenly include references to section 1157.3. But the allegations in the complaint clearly put the Employer on notice as to the nature of the alleged violation. Moreover, the Board ultimately is responsible for fashioning appropriate remedies and is not constrained by the remedies asked for in the complaint. (*Harry Carian Sales v. ALRB* (1985) 39 Cal.3d 209, 233-234.)

prior addresses would be useful so they would know where to look for employees when they returned to the area. However, this is not very convincing, particularly in light of the admission that the UFW received a satisfactory list of local addresses prior to the beginning of the 2012 season. The out of area addresses, as far as the record shows, are the addresses where those employees reside in the off-season. Therefore, the Employer is correct that the provision of off-season addresses was responsive to the request at the time it was made and, contrary to the finding by the ALJ, the failure to provide local addresses for all employees was not a deficiency in the list.

However, that does not resolve the issue of whether the list was otherwise so defective that a violation occurred. There were 342 addresses out of a total of 1,050 that were public or private P.O. boxes, and 80 names had no addresses listed. Even if a proportionate share of that 422 were presumed to be out of the area, thereby reducing the defective number to 328, that still results in 31 percent of the addresses being of no use to the UFW. Such a significant failure to provide an accurate and useful list would impair substantially the union's ability to communicate with employees, which is the reason address lists are considered necessary and relevant. (*As-H-Ne Farms*, supra, 6 ALRB No. 9, at p. 5.) We therefore agree that the deficiencies in the list are sufficient to constitute a breach of the Employer's duty to provide necessary and relevant information.

That the requested information concerning classifications and crew breakdowns is necessary and relevant under the liberal standard of relevance also is easy

to conclude.[5] Indeed, as noted above, such information is of the type that is considered by the NLRB to be presumptively relevant. A union ordinarily must know the various classifications utilized by the employer and which employees are in those classifications in order to formulate bargaining proposals regarding wages and working conditions. The UFW representatives who testified in the instant case confirmed that they requested classifications for those purposes. Both UFW representatives who testified in this case explained that crew breakdowns were useful in identifying any issues that might be peculiar to particular crews or foremen. The information would also be helpful in representing employees generally, as well as in formulating bargaining proposals regarding working conditions or disciplinary actions and procedures. The Employer offered no argument as to why classifications or crew breakdowns would not be relevant under the applicable standard. Rather, the Employer simply argues that there is no specific statutory requirement to provide such information. As explained above, it is well-established that the duty to provide information is considered an integral part of the express statutory duty to bargain in good faith.

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act ("Act"; Lab. Code § 1140, et seq.), the Agricultural Labor Relations Board (Board) hereby

[5] The crew breakdown information was included in the crew sheets that contained information regarding classifications and which the record shows could have been provided in a timely fashion with the required level of diligence. Therefore, there would have been no additional burden on the Employer to provide crew breakdowns along with information on classifications.

ORDERS that Respondent Perez Packing, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Failing to bargain in good faith in violation of section 1153, subdivision (e) of the Act by failing and refusing to provide the certified bargaining representative with employee addresses, classifications, and employee-crew breakdowns, or with any other information necessary and relevant to collective bargaining.

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

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

(a) Upon request, make available to the certified bargaining representative employee addresses, classifications, and employee-crew breakdowns, or any other information necessary and relevant to collective bargaining.

(b) Upon request of the Regional Director, sign the Notice to Agricultural Employees attached hereto, and after its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(c) Post copies of the Notice in all appropriate languages at conspicuous places on Respondent's property, including places where notices to employees are usually posted, for sixty (60) days, the times and places of posting to be determined by

the Regional Director. Respondent shall exercise due care to replace any copies of the Notice which may be altered, defaced, covered or removed. Pursuant to the authority granted under section 1151, subdivision (a) of the Act, give agents of the Board access to its premises to confirm the posting of the Notice.

(d) Arrange for a Board agent or a representative of Respondent to distribute and read the attached Notice, in all appropriate languages, to all agricultural employees then employed in the bargaining unit on company time and property, at times and places to be determined by the Regional Director. Following the reading, a 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 a reasonable rate of compensation to be paid by Respondent to all non-hourly employees to compensate them for lost work time during the reading and the question-and-answer period.

(e) Mail copies of the Notice in all appropriate languages within 30 days after the date this Order becomes final or thereafter if directed by the Regional Director, to all agricultural employees employed by Respondent at any time during 2011, 2012 and 2013 harvests at their last known addresses.

(f) Provide a copy of the Notice to each agricultural employee hired to work for the Respondent during the twelve-month period following the date this Order becomes final.

(g) Notify the Regional Director in writing, within thirty days after this Order becomes final, of the steps Respondent has taken to comply with its terms. Upon

request of the Regional Director, Respondent shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

DATED: December 19, 2013

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed by the United Farm Workers of America, in the Visalia Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (Act) by failing to supply the Union with information to which it was entitled under the Act.

The ALRB has told 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;
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 refuse to provide the Union with information necessary to foster informed collective bargaining.

WE WILL NOT in any like or related manner, refuse to bargain with the Union over wages, hours or conditions of employment, or interfere with, restrain or coerce employees from exercising their right under the Act

DATED:

PEREZ PACKING, INC.

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 1642 W. Walnut Ave., Visalia, California. The telephone number is (559) 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

CASE SUMMARY

PEREZ PACKING, INC. Case Nos. 2012-CE-003-VIS
(United Farm Workers of America) 2012-CE-004-VIS
39 ALRB No. 19

Background

On September 30, 2013, Administrative Law Judge (ALJ) James Wolpman issued a decision in which he found that Perez Packing, Inc. (hereafter "Employer") violated section 1153, subdivisions (a) and (e) of the Agricultural Labor Relations Act (ALRA) by failing to provide to the certified collective bargaining representative, United Farm Workers of America (UFW), information necessary and relevant to collective bargaining. Specifically, the ALJ found that the Employer failed to provide an accurate employee list with current addresses, employees' classifications, and employee-foremen crew breakdowns. The ALJ also found that the Employer failed to comply with its statutory duty to maintain current addresses and classifications, as required by ALRA section 1157.3 and its implementing regulation, California Code of Regulations, title 8, section 20310, subdivision (a)(2). On October 24, 2013, the Employer timely filed exceptions to the ALJ's decision, denying that it violated its duty to provide information necessary and relevant to collective bargaining.

Board Decision

The duty to bargain in good faith requires an employer to make a reasonable and diligent effort to comply with a union's request for relevant information. That the information is in the possession of a labor contractor is no defense. The standard for defining what is relevant is a liberal one, requiring only that the information "be directly related to the union's function as a bargaining representative and that it appear reasonably necessary for the performance of that function."

Applying the above principles, the Board affirmed the ALJ's conclusion that the information requested was relevant and necessary for bargaining and the failure to provide the information therefore violated the Employer's duty to bargain. In this case, the labor contractor engaged by the Employer possessed the requested information at all times material and the record showed that the Employer failed to make a diligent effort to obtain the information. While some of the information was provided on the first day of hearing, nearly one year after the initial request for information, unreasonable delay in providing relevant information also constitutes a violation of the duty to bargain. The Board did find that the ALJ erred in finding an independent violation of section 1157.3 of the ALRA, which requires that employers maintain current payroll lists containing the names and addresses of their employees and make them available to the Board upon request. The Board observed that section 1157.3 is not directly at issue; instead, the proper focus is on the duty to bargain. However, because section 1157.3 requires employers to maintain specified information as required for Board purposes, that duty negates any defense based on a failure to possess or obtain the information.

***

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: PEREZ PACKING, INC., **Respondent**, **and** UNITED FARM WORKERS OF AMERICA, **Charging Party.**	Case Nos. 2012-CE-003-VIS 2012-CE-004-VIS

Appearances:

For the General Counsel:
Irma L. Martinez
Stanley Marubayashi
Salinas Regional Office
342 Pajaro St.
Salinas, CA 93801

For the Employer:
Ronald H. Barsamian
Patrick S. Moody
Barsamian & Moody
Attorneys at Law
1141 W. Shaw Avenue, #104
Fresno, CA 93711

For the Charging Party:
Mary L. Mecartney
United Farm Workers of America
Legal Department
1227 California Avenue
Bakersfield, CA 93304-1303

DECISION OF ADMINISTRATIVE LAW JUDGE

JAMES WOLPMAN, Administrative Law Judge:

I. PROCEDURAL HISTORY

On February 21 and 23, 2012, the United Farm Workers, filed unfair labor practice charges No. 2012-CE-003-VIS and 2012-CE-004-VIS with the Visalia Office of the Agricultural Labor Relations Board, against Perez Packing, Inc., alleging that it violated the Agricultural Labor Relations Act by failing and refusing to provide the Union with information necessary for and relevant to collective bargaining and to the representation of bargaining unit employees, including accurate addresses for those employees as required by Section 1157.3 of the California Labor Code.

On May 22, 2012, the Acting Regional Director of the Visalia Office issued a Complaint alleging that Respondent violated Sections 1153(a) and 1153(e) of the Act by failing and refusing to maintain accurate employee lists with current addresses for its employees and by failing to provide employee lists with current addresses, employees' classifications, and employee-foreman crew breakdowns. (Complaint, ¶s 14 and 16)

On June 1, 2012, Respondent filed its Answer denying the alleged violations and raising two affirmative defenses: (1) that the United Farm Workers had abandoned the employees for 22 years without ever requesting bargaining and (2) that, by the same conduct, had failed to bargain in good faith.

The General Counsel moved to strike the affirmative defenses, the matter was briefed by the General Counsel and the Respondent, and by Order dated October 25,

2012, Administrative Law Judge Mark Soble granted General Counsel's Motion to strike both of them.

ALJ Soble heard the matter on November 5 and 6, 2012 in Visalia. After the hearing, the parties filed post hearing briefs. Subsequently, ALJ Soble became unavailable and the matter was reassigned to the undersigned.

Upon the entire record in this case, including the testimony, documentary evidence, briefs and oral arguments made by counsel, the undersigned makes the following findings fact and conclusions law.

II. JURISDICTION

Respondent admitted the charges in this matter were properly filed and served. It also admitted that it was and is an "agricultural employer" as defined in the Act, and it admitted that the United Farm Workers is and was a "labor organization" as defined in the Act.

III. FINDINGS OF FACT

Background

Respondent is a corporation organized and existing under the laws of the State of California, with its principal place of business in Fresno County. It is engaged in harvesting and packing cantaloupes and honeydew melons in the Central San Joaquin Valley. Tom Perez is the corporation's president. (Answer, ¶2)

All of Respondent's harvesting and packing operations in 2011 were performed by employees of Farm Labor Contractor Ralph Collazo Packing, Inc. The 2011 packing and

harvest season lasted from July into October. During the harvest, Collazo utilized workers from both the San Joaquin and Imperial Valleys. (E-2)

The United Farm Workers was certified by the Board as the Bargaining Representative for all of Respondents' agricultural employees in 1989 in 15 ALRB No. 19. There is no indication on the record that any bargaining took place between 1989 and November, 2012, when the UFW requested the information that is subject of this proceeding.

Requests for information

On November 8, 2011, UFW negotiator Armando Elenes wrote to Respondent's President Tom Perez, requesting, among other things,

> 1. Employee lists for all employees employed during 2011, including all direct hire employees and farm labor contractor employees that work or worked on the company agricultural properties, indicating classification, foreperson name, hire date, date laid off or date terminated, physical and mailing addresses and employee number.
>
> . . . .
>
> 4. Names and titles of the company representatives.
>
> 5. Names, addresses and license number of farm labor contractors that the company uses.
>
> 6. When each season begins and ends, i.e., harvesting, transplanting, weeding, etc.
>
> 7. The number of hours worked daily and total hours worked yearly by workers.
>
> 8. Types of the company's agricultural products.
>
> 9. Detailed summary of any benefits, bonuses, holiday and wages provided to employees. (GC-1)

Receiving no response, Elenes again wrote to Perez on November l7th, saying that charges would be filed with the ALRB if the information requested was not supplied by November 21, 2011. (GC-2)

On November 18, 2011, Perez' counsel Ronald Barsamian replied to Elenes, indicating that he would be representing Perez in the negotiations and that he would undertake to supply the relevant information. (E-1)

On November 22, 2011, Barsamian supplied Elenes with a copy of the Grower Report it had obtained from Collazo Packing. (GC-7) His covering letter responded to each of Elenes requests:

> 1.Besides the information in the Grower Report, we will be obtaining classifications for those employees who are not General Harvest Labor. We will also be securing the name of the forepersons. The hire, layoff and/or termination dates are pretty well indicated by the listing of the dates of work for each employee.
>
> . . . .
>
> 4. Mark Perez is the company representative.[1]
>
> 5. As indicated above, Ralph Collazo Parking, In. is the Farm Labor Contractor the Perez Packing uses. I will secure the address and FLC license number for you.
>
> 6. The Season usually begins around July 4th and ends around October 10th for harvesting, which is the only operation we are involved with.
>
> 7. Please see the Grower Report [for hours worked, etc.].
>
> 8. Cantaloupes and honeydews [were Perez' agricultural crops].
>
> 9. We will secure that information [regarding benefits, bonuses, holidays and wages] and provide it to you. (E-2)

On December 11, 2011, Elenes e-mailed Barsamian that he had not received the additional information promised. (GC-3) He also noted problems with the information previously supplied:

> 1. The [Grower Report] contains 114 employees with only P.O. Box addresses, 88 employees without any address. So in effect, 202 of 1150 addresses or 18% of the entire list of addresses are inadequate.

[1] At the time Mark Perez was undergoing cancer treatment; he died in March 2012. In his absence Tom Perez took his place in negotiations.

> 2. The list contains forepersons and is not broken down by crew/department. We are hereby requesting a new list broken by crew and include their classification and a separate list of all supervisors with their respective title(s) be provided.
>
> 3. As we previously provided information to you, we believe the list is incomplete as it fails to provide information on operations outside of the San Joaquin Valley. As you are aware, the certification is statewide and therefore we are re-requesting information for the other areas the company has operations as per our original request.

Barsamian immediately responded that the job classification information supplied was in the form it was kept; it was up to the union to re-organize it. He did not deny the inadequacy of the Grower Report and, in fact, indicated that Perez was seeking additional information from its labor contractor. The only explanation he offered for the missing addresses was that, "some of those are for folks who worked less than three days and left when the I-9 became due." (E-4)

On January 30, 2012, Elenes wrote to Tom Perez, proposing dates to begin negotiations and restating his original demand for:

> "Corrected employee lists for 2011 of all workers, including all direct hire employees and farm labor contractor employees that work on the company agricultural properties by department/crew and indicating classification, foreperson, hire date, current physical and current mailing addresses and employee number." (GC-4)

He went on to note that the previous data provided was incomplete as some addresses were omitted and many were not physical addresses. Around the same time he orally requested classification information. (R.T. 296)

On February 21 and 23, the instant charges were filed with the ALRB. (*Supra*, p. 2)

A month later, on March 23, 2012, Barsamian provide Elenes with a list of the foremen who worked the 2011 season. (GC-5)

In June 2011, a negotiating session was held with labor contractor Ralph Collazo present. (R.T. 175, 182, 306-308) According to Collazo, it was at this meeting that he was first made aware that additional information was being requested:

> "It was in June, when I had a meeting with Perez. . . and they wanted to go into a different way to format the procedures, and asked for additional information, through Armando [Elenes], who attended, had a meeting with Perez, there – that's what I did." (R.T. 182)

Information Maintained by or Available to the Respondent.

The Controller for Respondent, Dwight McCraw, testified that it does not collect or maintain records of the names and addresses of its labor contractor employees. (R.T. 123) The only labor contractor information it has are the invoices it receives from Collazo Packing, whom it has utilized for approximately 10 years. (R.T. 134-135) Those invoices list only the number of cartons packed, for which Respondent pays a set rate. (R.T. 133-135) They provide no information identifying workers, their addresses, their classifications, or employee-foreman crew breakdowns. (R.T. 123)

In response to the Union's November 8, 2011 request, made a month after the season had ended, Mark Perez asked McCraw to contact its Farm Labor Contractor. (R.T. 125) McCraw testified, "We asked [Collazo] for the address list and that's, basically, all I remember. It was kind of done in a rush, I remember, too." (R.T. 124) In other words, he does not recall asking about classifications. Perez himself had to renew the request. (R.T. 125) What arrived is the Grower Report, which is General Çounsel Exhibit 7—the

document that UFW representative Elenes criticized as both deficient and incomplete. (GC-3, *supra*, p. 5.)

At no time did McCraw ask Collazo to provide corrections to the Report (R.T. 126); however, he does recall asking him, sometime early in 2012, for additional information that had not been provided, and Collazo told him "that was all he had." (R.T. 131-132) The record is silent as to what, if any, "additional information" was being requested.

Collazo's own recollection of what transpired is poor. When asked whether Perez had requested only addresses, he replied:

> "At that time, I just can't recall. It's been awhile. I'm not joshing, this has been awhile. I just -- you know, can remember that they want some kind of address request, you know . . . That's what they were mainly after." (R.T. 186)

He went on to explain that in November, when the request was received, his small staff was overwhelmed with other work:

> "I tried, they asked, but I still couldn't get it all to them, because I was busy doing other work. And he called and I couldn't get it all together, at the time. I was busy. In the wintertime, when I go back down south, I've got 800, 900 people a day, to have to pay and I really don't have time to. . . ." (R.T. 175)

As a result, he delegated the task to his staff: "They did them on their own. I had things to do. . . .I've got to, you know, keep our work in line, ahead of the game, and keep going." (R.T. 179; see also R.T. 172-173, where Collazo complains that he was not being paid for performing the information searches.)

As for Respondent's efforts to ensure that it received full information, he was asked: "Mr. Collazo, so Perez never came and inspected what documents that you do keep for the workers, did they?" He answered: "No, they never did. If they did, you know, I certainly would get – no, they never did." (R.T. 180)

Had Perez representatives done so. they would have come upon the Crew Sheets that constitute General Counsel Exhibit 8. (R.T. 198) Those Crew Sheets, prepared daily by each crew foreman, provide much of the additional information requested by the Union—the name of the foreman, the names of his or her crew members, their classifications[2], hours worked, and production figures. (R.T. 198)

Although Collazo had the information contained in Exhibit 8 available to him in November 2011, it was never provided to the Union. (R.T. 310) It only surfaced at the instant unfair labor practice hearing on November 5, 2012, in response to a subpoena by the General Counsel. (R.T. 198-199) As Collazo explained, "They [Perez Packing] never asked – they had never asked for nothing like that." (R.T. 178)

The Union's Need for the Information Requested

Oscar Mejia was the coordinator for the UFW. (R.T. 39) In that capacity he was responsible for developing a committee to make home visits to individual workers and select from among them the members of the negotiating committee. (R.T. 41) He himself visited over 300 subcontractor employees of Perez in November 2011 and again in 2012. (R.T. 100)

[2]In cantaloupe crews, drivers, loaders, and safety coordinators are described as such, the rest are pickers. (R.T. 166-167) Honeydew melon crews have no separate classifications "because they all work together." (R.T. 168-169)

The work visits enable the Union to learn their concerns and, based on those concerns, formulate bargaining proposals. (R.T. 44-45) Often problems are unique to a crew to which the worker belonged. (R.T. 76-77) It is therefore important to have not only the name and actual addresses of the workers, but to have as much information as possible concerning the composition of the crew, the assigned foreman, and the classification of each member. (R.T. 77)

Using the Grower Report to carry out those functions, created difficulties for Mejia and the 4 organizers he supervised. There were no addresses for some employees; a large number of employee addresses were for Post Office Boxes, not actual addresses; a large number of addresses were for areas in the Southern part of the State where many Collazo workers reside when not working in the central San Joaquin Valley. (R.T. 62-65) In Mejia's 6 years of experience as an organizer, he has found that workers migrating north for seasonal work tend to return to the addresses where they lived during the previous season. (R.T. 63-64, 99) For that reason, having their true San Joaquin Valley addresses for the 2011 season would be helpful in locating them the following season. He also explained that written notices and letters to workers are a poor substitute for face to face communication when it comes to learning their concerns and obtaining their input in formulating bargaining proposals. (R.T. 64, 90)

Union negotiator Armando Elenes cooroborated Mejia's account of inadequacies of the Grower Report and the need for personal contact between the Union and the workers it represents both during and between seasons. (GC-3, R.T. 267-268, 271, 305-

310) And he cited the waste of time spent in contacting persons on the Grower Report who were actually foremen. (R.T. 291, 316)

IV. FURTHER FACTUAL FINDINGS AND LEGAL ANALYSIS

In *Cardinal Distributing Co. v. ALRB* (1984) 159 Cal. App. 3d, 758, 762, the Court of Appeal clearly stated the law with respect to requests for information:

> One aspect of the duty to bargain 'collectively in good faith with labor organizations' (§1153, subd. (e)) requires the employer to make a reasonable and diligent effort to comply with the union's request for relevant information. (*O.P. Murphy & Sons* (1978) 5 ALRB No. 63.) The importance of the rule, and its underlying policy considerations of fostering informed collective bargaining, are underscored by cases which hold that an employers' breach of the duty constitutes a refusal to bargain in good faith. (E.g., *NLRB v. Acme Industrial Co.* (1967) U.S. 432, 4350436; *As-H-Ne Farms* (1978) 6 ALRB No. 9.)

Here, the General Counsel and the Union presented detailed and credible testimony establishing that the information requested is relevant to "fostering informed collective bargaining;" to wit, the advantage of personal contact in learning employee needs and formulating proposals; the need to learn and address problems unique to individual crews; the impossibility of personal contact where only public or private post office boxes are provided; the unnecessary burden created by forcing union representatives to travel to the Imperial Valley and other distant locations to speak with employees; and the inadequacy of written communication as a substitute for face-to-face contact. (*Supra*, pp. 8-10.)

The Respondent did provide some of the information sought, but failed to fully comply with the Union's requests: It did not supply a complete list of local addresses.

While promising to do so, it failed to provide employee classifications. Nor did it ever provide employee-foreman crew breakdowns.

Those failings are best dealt with, category by category.

A. The Failure to Provide Local Addresses

Respondent contends that the local address information sought, even if relevant, does not exist, and therefore, under the rule laid down in *Korn Industries, Inc. v. NLRB* (4th Cir. 1967) 389 F. 2d 117, 123, it need not be provided (cf. *Harry Carian v. ALRB* (1984) 36 Cal.3d 654, 670). Thus, any obligation Respondent may have had was fully satisfied when it provided the best and only address information available—the so-called Grower Report obtained from its labor contractor. (CC-7)

The problem with that Report is that it contains a substantial number of distant addresses, public and private post office boxes, and, in some instances, no address all.[3]

Section 1157.3 of the Act provides:

> Employers shall maintain accurate and current payroll lists containing the names and addresses of all their employees, and shall make such lists available to the board upon request.

The Board in the exercise of its statutory authority to promulgate such rules and regulations as may be necessary to carry out the provisions of the ALRA

[3] The scope of those failures is amply summarized in Appendix A to the Union's Post Hearing Brief, which estimates the defects in the Grower Report provided by Callazo to the Respondent and then to the Union. (GC-7) Comparing the Union's Summary with thr Grower Report, I find the Union's figures substantially correct. Out of 1050 contractor employee names, there are no addresses for 80 workers, public post office boxes for 164, and what appear to be private post office boxes for 178. And of the 1050 names, 233 list addresses outside the San Joaquin Valley. These represent serious deviations from the requirements of section 1157.3 of the Act.

adopted Section 20310(a)(2) (See *Harry Carian v. ALRB, supra* at 668), which requires the payroll list to include:

> A complete and accurate list of the complete and full names, current street addresses, and job classifications of all agricultural employees, including employees hired through a labor contractor, in the bargaining unit sought by the petitioner in the payroll period immediately preceding the filing of the petition. "Current street addresses" means the address where the employees reside while working for the employer.

Thus, the requirement that the employer maintain "current street addresses" is part and parcel of its Section 1157.3 obligation.

The question then becomes whether that obligation carries over to requests for information in connection with bargaining, or whether, as Respondent argues, it is confined to representation proceedings. That question was answered in *Cardinal Distributing Co., supra*, 159 Cal.App.3d at 768-769. There, as here, the Union requested the names and addresses of labor contractor employees so that it could engage in "informed collective bargaining." (*Ibid.* 762) In analyzing the statute, the Court determined that Section 1157.3 requires that employers maintain accurate and current payroll lists containing the names and addresses of all their employees, including those of labor contractors, "Therefore, petitioner was under a legal duty to maintain the information." (*Ibid.* 768) Since it was unable to comply with that legal duty by supplying the requested information, a violation was found. (See also *Meyer Tomatoes* (1991) 17 ALRB No. 5 p. 4 and ALJD p. 43.)

The Court recognized that the petitioner could have satisfied its obligation to provide "current street addresses" by obtaining them from its labor contractor, but failed

to take the necessary steps to do so. (*Ibid*. 769) Here, not only did Perez lack due diligence in seeking information from Collazo (see *infra* pp. 13-14), but Collazo did not have the full and correct address information. Consequently, Respondent violated the duty to bargain by failing to provide, either from its own records or from those of its labor contractor, information that it had a legal duty to maintain.

B. The Failure to Provide Job Classifications

The circumstances of this alleged violation differ slightly from the failure to supply local addresses.

Section 1157.3, as properly elaborated in §20310(a)(2), requires agricultural employers to maintain the classification of each employee. (*Harry Carian v. ALRB, supra*, 36 Cal.3d at 668) Here, as with the local addresses, Perez failed to do so. But unlike the addresses, Collazo actually had the classification information on hand (GC-8)—it was contained in the crew sheets prepared each day by its foreman and provided to him. But despite repeated requests, that information never reached the Union.

Under both the ALRA and the NLRA employers must make a diligent effort to provide relevant information requested by the union representing their employees. *Summer Peck Ranch* (1984) 10 ALRB No. 24, p. 10 & ALJD p. 58; *N.L.R.B. v. John S. Swift Co*. (7th Cir. 1960) 277 F.2d 641. And that duty extends to information in the hands of its labor contractors. *Cardinal Distributing Co*., *supra*, 159 Cal.App.3d at 768-769[4]; *Meyer Tomatoes, supra*, 17 ALRB No. 5, p. 4 & ALJD p. 43; *Tenneco West, Inc.*

[4] The "Ortiz" described in the Court of Appeal decision was one of Cardinal's labor contractors. (See 9 ALRB No. 36, ALJD pp. 4, 6)

(1977) 3 ALRB No. 92, p. 4; cf. *Yoder Brothers* (1976) 2 ALRB No. 4, fn. 3)

Here the union's request for employee job classifications precipitated a series of communications—from Tom Perez to Dwight McCraw, from McCraw to Ralph Collazo, from Collazo to his staff. Those contacts, together with their responses, further inquiries, and further responses, failed to produce the required information. (*Supra*, pp. 7-8) It is not easy to say, on this record, where the Union's rather straightforward request went awry. McCraw only recalls a rush request to Collazo for addresses. (R.T. 124) Collazo remembers "some kind of address request," which he admits pushing it off on his staff without much direction and confesses to feeling put upon because they were given a time consuming task in the midst of a busy schedule and without remuneration. (R.T. 172-173, 175, 179)

What is clear is that, had Respondent acted with due diligence, it would have seen to it that the classification information in the hands of its labor contractor—information easily available from the crew sheets—was obtained and provided to the Union. As Collazo testified, Perez was welcome to come and inspect the documents he had. But, "They never did. If they did, you know, I certainly would get [them]." (R.T. 180]

Consequently, Respondent violated the duty to bargain by failing to provide, either from its own records or from those of its labor contractor, the classification information that it had a legal duty to maintain.

C. The Failure to Provide Employee-Crew Breakdowns

Neither Section 1157.3 nor Regulation 20310(a)(2) requires an agricultural employer to maintain employee-crew breakdown records. However, such information

was requested and is relevant to "fostering informed collective bargaining" (*supra*, p. 10; *Cardinal Distributing Co. v ALRB, supra,* 159 Cal.App.3d at 762), and it was contained in the Crew Sheets maintained by Collazo, which—once again and despite repeated requests—never reached the Union.

Perez therefore had exactly the same obligation to exercise due diligence in seeking out that information, which was in the hands of *its* labor contractor (Collazo), as Cardinal Distributing had in seeking the payroll information in the hands of *its* labor contractor (Ortiz). (*Ibid*. at 767; see *Cardinal Distributing* (1984) 9 ALRB No. 36, ALJD pp. 4, 6) Perez' lack of due diligence in doing so has already been described. (*Supra*, pp. 13-14)

Consequently, Respondent violated the duty to bargain by failing to provide the employee-crew breakdown records that in the hands of its labor contractor.

IV. CONCLUSIONS OF LAW

By failing and refusing to furnish the information set forth in the Amended Complaint, paragraphs 13, 14, 15 and 16, Respondent has engaged in unfair labor practices within the meaning of section 1153(a) and 1153(e) of the Act.[5]

V. THE REMEDY

In fashioning an appropriate remedy, I have taken into account the failure of the Respondent to provide a substantial portion of the information requested.

In particular, I have considered its utter failure to comply with Section 1157.3, as

[5]During the course of the hearing, union representative Elenes mentioned the problems created for UFW interviewers due to Perez delay in furnishing the list of foremen. (R.T. 290) However, the matter was neither charged nor litigated. Therefore no finding of a violation is appropriate.

elaborated in Board Regulation 20310(a)(2). Section 1157.3, is a separate provision of the Act that puts agricultural employers, in the words of the Court in *Cardinal Distributing Co.*, "under *a legal duty* to maintain the information [it specifies]." (159 Cal.App. 3d at 768) (emphasis supplied)

Given Respondent's complete failure to abide that legal duty—and the consequences thereof—it is appropriate to order full compliance with Section 1157.3 and, further, to give the Regional Director authority to ensure that Respondent does so and does not again attempt to push its obligation off onto its labor contractors. Thus adhering to the specific requirement in Section 1157.3 that it "shall make such lists available to the board upon request."

In addition, 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 condition among farm workers and in the agricultural industry at large, as set forth in *Tex-Cal Land Management, Inc*. (1977) 3 ALRB No. 14.

* * *

On the Basis of the entire record, the findings of fact and conclusion of law, and pursuant to section 1160.3 of the Act, I hereby issue the following recommended

ORDER

Pursuant to Labor Code section 1160.3, Respondent Perez Packing, Inc., its officers agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Failing and refusing to provide the Union with the information it requested in

Paragraphs as described in paragraphs 13, 14,15 and 16 of the Complaint, or with any other information relevant to its obligation to provide the Union with such requested information as may be necessary to fostering informed collective bargaining.

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

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

(a) Fully comply with the requirements of Section 1157.3 of the Act, as elaborated in Board Regulation 20310(a)(2), by maintaining the information called for therein, for its direct hire agricultural employees and for the agricultural employees of its labor contractors.

(b) Make available, upon request by the Regional Director, the information called for in Paragraph 2(a) above and, upon request, take all actions within its power to assist the Regional Director in confirming the accuracy of that information.

(c) Upon request, make available to the Union the information it requested in Paragraphs as described in paragraphs 13, 14, 15, and 16 of the Complaint and all other information relevant to its obligation to provide the Union with such requested information as may be necessary to fostering informed collective bargaining.

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

(e) Post copies of the Notice in all appropriate languages at conspicuous places on Respondents' property, including places where notices to employees are usually posted, for sixty (60) days, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copies of the Notice which may be altered, defaced, covered or removed.

(f) Arrange for a Board agent or representative of Respondents to distribute and read the attached Notice, in all appropriate languages, to its employees then employed in the bargaining unit on company time and property, at the times and places to be determined by the Regional Director. Following the reading, a 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 employee rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly employees to compensate them for lost work time during the reading and the question-and-answer period.

(g) Mail copies of the Notice in all appropriate languages within 30 days after the issuance of this order to all harvest employees employed by Respondents at any time during 2011, 2012 and 2013 harvests at their last known correct addresses.

(h) Provide a copy of the Notice to each agricultural employee hired to work for the Respondent during the twelve-month period following the issuance of a final order in this matter.

(i) Notify the Regional Director in writing, within thirty days after the date if issuance of this Order, of the steps Respondent has taken to comply with its terms. Upon

request of the Regional Director, Respondent shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

Dated: September 30, 2013

_____

JAMES WOLPMAN
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed by the United Farm Workers of America, in the Visalia Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (Act) by failing to supply the Union with information to which it was entitled under the Act

The ALRB has told 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;
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 refuse to provide the Union with information necessary to foster informed collective bargaining.

WE WILL NOT in any like or related manner, refuse to bargain with the Union over wages, hours or conditions of employment, or interfere with, restrain or coerce employees from exercising their right under the Act

DATED:

PEREZ PACKING, INC.

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.