Guadalupe, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROMAR CARROT CO., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-35-M 4 ALRB No. 56

DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

On April 28, 1977 Administrative Law Officer (ALO) James R. Webster issued the attached Decision. Thereafter, the General Counsel, Respondent, and the Charging Party (United Farm Workers of America, AFL-CIO, hereinafter UFW) each filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order as modified herein.

An election was held on October 9, 1975 among the Respondent's six eligible employees: two short-haul drivers and four field workers engaged in carrot harvesting. All six employees voted without challenge and the tally of ballots reflected four

votes for the UFW and two votes for the Western Conference of Teamsters. Objections to the election filed by the Teamsters were dismissed for lack of documentation. No objections were filed by Respondent. On January 22, 1976, the Board certified the UFW as the exclusive collective-bargaining representative of Respondent's agricultural employees.

The ALO found that the Respondent violated Labor Code Section 1153(e) and (a) by refusing to bargain with the UFW since January 29, 1976, and by unilaterally granting wage increases to the UFW. Respondent stipulated that it refused to bargain with the UFW and that it implemented the unilateral wage increase charged in the complaint. However, Respondent seeks to defend these actions by arguing that the six unit employees are not agricultural employees within the meaning of Labor Code Section 1140.4(b). We reject this defense.

In Hemet Wholesale, 2 ALRB No. 24 (1976) and California Coastal Farms, 2 ALRB No. 26 (1976), we held that a party could raise questions as to voter eligibility at a Labor Code Section 1156.3 proceeding only if the party contesting eligibility had timely challenged the prospective voters. As we stated in California Coastal Farms:

> A contrary rule would allow parties to await the outcome of an election before deciding whether to contest the eligibility of any voters and then, in the event the party loses the election, relying upon the asserted ineligibility of these voters as a ground for setting aside the election.

See also NLRB v. Tower Co., 329 U.S. 324, 19 LRRM 2128 (1946). Respondent herein neither challenged any of the six employees when they voted nor filed objections to the election based on

their alleged ineligibility. Rather, Respondent waited until after certification had issued before it first claimed that the six workers were not agricultural employees.

In Perry Farms, Inc., 4 ALRB No. 25 (1978), we adopted the NLRB doctrine which prevents a respondent in a refusal-to-bargain proceeding from litigating matters which were, or could have been, raised in a prior representation proceeding, absent newly-discovered or previously-unavailable evidence or extraordinary circumstances. The NLRB has applied this rule even when the issue sought to be relitigated involved the Board's jurisdiction. Empire Dental Co., 211 NLRB No. 127 (1974) (Employer's status as a covered retail enterprise); Ocean Systems, Inc., 277 NLRB No. 233 (1977) (union's status as a labor organization); B.F. Goodrich Tire Co., 215 NLRB No. 134 (1974) (employee's status as excluded managerial employees); Frontier Marketing Co-op., 229 NLRB No. 162 (1977) (employees' status as excluded agricultural employees). Clearly, rationale which precludes relitigating general representation issues in subsequent refusal-to-bargain cases also forecloses relitigation of issues as to jurisdiction or employee status which were or could have been litigated during the prior representation proceedings.

Respondent has not argued or demonstrated that its present contention is based on newly-discovered or previously unavailable evidence, nor has it argued that special circumstances warranting relitigation are present. Accordingly, we affirm the ALO's conclusions that the Respondent violated Labor Code Section 1153(e) and (a) by refusing to bargain with the UFW and by

granting a unilateral wage increase. However, a review of Respondent's brief and the record before the Board reveals one matter worthy of comment.

Respondent attached to its answer a copy of a decision [1/] by Administrative Law Judge (ALJ) Bernard J. Seff of the National Labor Relations Board, finding that Respondent violated Section 8(a) (3) and (1) of the NLRA when it terminated one Robert Baca, an employee who drove truckloads of carrots from the field to the packing shed, [2/] on July 29, 1974. In that decision, the ALJ found that Roberto Baca was an employee within the meaning of Section 2(3) of the NLRA. On review of exceptions taken to ALJ Seff's decision, the NLRB affirmed, inter alia, the ALJ's jurisdictional findings. Guadalupe Carrot Packers dba Romar Carrot Company, 228 NLRB No. 40 (February 22, 1977).

The ALO found, based on the evidence adduced at the hearing before him on April 4, 1977 that Respondent's short-haul drivers are non-agricultural employees beyond our jurisdiction and that Respondent's remaining field employees are agricultural employees under this Board's jurisdiction. We agree. In Guadalupe Carrot Packers, supra, the NLRB found Respondent's short-haul driver employee, Roberto Baca, to be a non-agricultural employee, based on the Respondent's operations in 1974. The record in the instant case indicates that the duties of Respondent's

[1/] Guadalupe Carrot Packers dba Romar Carrot Company, Case No. 31-CA 4832 (October 19, 1976).

[2/] The record reflects in the instant case that Baca was employed in the same job classification occupied by the two short-haul drivers over which this Board assumed jurisdiction.

short-haul driver employees at the time of the election were the same as they were in 1974. Accordingly, we conclude that Respondent's short-haul drivers are non-agricultural employees, outside our jurisdiction, and are therefore excluded from the certified bargaining unit.

We reject, however, Respondent's contention that the remaining field employees are also non-agricultural employees, as their work, harvesting, is a primary agricultural activity clearly within our statutory jurisdiction. Mann Packing Co., Inc., 2 ALRB No. 15 (1976).

THE REMEDY

In accordance with our Decision in Perry Farms, supra, we will order that Respondent, rather than its employees, bear the costs of the delay, now more than two years, which has resulted from its failure and refusal to bargain with the union, by making its employees whole for any losses of pay and other economic benefits which they may have suffered as a result thereof, for the period from January 29, 1976, to such time as Respondent commences to bargain in good faith and continues so to bargain to agreement on a contract or to a bona fide impasse. The Regional Director will determine the amount of the award based upon the criteria set forth in Perry Farms, supra, and Adam Dairy, 4 ALRB No. 24 (1978).

The General Counsel and the UFW have excepted to the ALO's failure to award them litigation costs. As we do not consider Respondent's defense as frivolous, such an award is not warranted in this case. Western Conference of Teamsters, et. al,

3 ALRB No. 57 (1977). The UFW also seeks to be compensated for its negotiation expenses, for the cost of maintaining contact with and supporting Respondent's employees, and for dues it would have received under a collective bargaining agreement. As in Adam Dairy, supra, we will not order the reimbursement of the union for lost dues. Moreover, we find that the circumstances of this case do not warrant the additional compensation sought. See Schuck Component Systems, Inc., 230 NLRB No. 117 (1977).

As additional remedies, the UFW requests that we order Respondent to permit post-certification access to UFW organizers, to provide the UFW with updated lists of current employees, to permit company-time speeches by UFW organizers, and to permit the UFW to use Respondent's bulletin boards. Although there is precedent for the UFW's bulletin board request (Winn-Dixie Store Inc., 224 NLRB No. 190 (1976); Betra Mfg. Co., 233 NLRB No. 156 (1977) and employee list request (Betra Mfg. Co., supra) we find no reason to believe that the relief given herein will not entirely remedy the unfair labor practice found. [4/]

To clarify Respondent's responsibilities, we shall modify the ALO's recommended cease-and-desist order regarding the unilateral wage increase to indicate that the Board's order does not require Respondent to revoke any wage increases it has heretofore granted. Architectural Fiberglass-Division of Architectural Pottery, 165 NLRB No. 21 (1967).

[4/] It is our "...continuing function ... to consider on a case-by-case basis, in the light of both our experience and the facts of each case, what remedy will best remedy the misconduct found." Heck's Inc., 215 NLRB 765, 768 (1974).

We find merit in the exceptions taken by the General Counsel and the UFW to the notice provided for in the ALO's recommended order. In substituting our standard remedial order for that of the ALO, we shall modify the recommended notice accordingly.

ORDER

Respondent Romar Carrot Co., its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its agricultural employees in violation of Labor Code Section 1153(e), (a), and in particular by: (1) refusing to meet at reasonable times and places with the UFW for the purpose of collective bargaining; and (2) making unilateral changes in terms and conditions of employment of its employees without prior notice to and bargaining with the UFW, except that nothing herein shall be construed as requiring the Respondent to revoke any unilateral wage increases it has heretofore granted.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 1152.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees, and if

an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole its agricultural employees in the manner specified in the portion of the foregoing Decision entitled "The Remedy," for all losses of pay and other economic benefits sustained by them as the result of Respondent's refusal to bargain with the UFW.

(c) Preserve, and upon request, make available to the Board or its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due its employees under the terms of this Order.

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

(e) Post copies of the attached Notice for 90 consecutive days, the period and places of posting to be determined by the Regional Director.

(f) Provide a copy of the attached Notice to each employee hired by the Respondent during the twelve-month period following the issuance of this Decision.

(g) Mail a copy of the attached Notice in appropriate languages, within 30 days from receipt of this Order, to each employee employed during the payroll period immediately preceding October 3, 1975, and to each employee employed by Respondent from and including January 29, 1976.

(h) Arrange for a representative of Respondent or

a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of the Respondent on company time. The reading or readings shall be at such times and places as are specified 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 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 wage employees to compensate them for time lost at this reading and the question and answer period.

(i) Notify the Regional Director in writing, within 30 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

IT IS ALSO ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive bargaining representative of Respondent's agricultural employees is extended for a period of one year from the date on which Respondent commences to bargain in good faith with said union.

IT IS FURTHER ORDERED that Respondent's short-haul drivers be, and they hereby are, excluded from the certified collective bargaining unit and that the certification of the United Farm Workers of America, AFL-CIO, as exclusive collective bargaining representative of Respondent's agricultural employees

be, and it hereby is, amended to reflect this clarification.

DATED: August 18, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to bargain about a contract with the UFW. The Board has ordered us to post this Notice and to take other action. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

(1) to organize themselves;

(2) to form, join, or help any union;

(3) to bargain as a group and to choose anyone they want to speak for them;

(4) to act together with other workers to try to get a contract or to help or protect each other; and

(5) to decide not to do any of these things.

Because this is true, we promise you that:

WE WILL bargain with the UFW about a contract because it is the representative chosen by our employees.

WE WILL reimburse each of the employees employed by us after January 29, 1976, any pay or other economic benefits which they lost because we have refused to bargain with the UFW.

WE WILL NOT reduce or increase the wages of our employees without first discussing these changes with the UFW.

DATED: ROMAR CARROT COMPANY

_____

(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Romar Carrot Co.

4 ALRB No. 56
Case No. 76-CE-35-M

ALO DECISION

The UFW was certified as the bargaining representative of Respondent's field employees and short-haul drivers on January 22, 1976. On January 29, 1976 the UFW requested, and the Respondent refused, to meet and bargain with regard to wages, hours and working conditions of employees in the unit. Thereafter, Respondent unilaterally granted wage increases to its field employees. Respondent denies that it is an agricultural Employer within the meaning of the Act, but neither challenged the eligibility of employees voting in the election nor filed objections to the election based on their alleged ineligibility.

The ALO concluded that Respondent's short-haul drivers were not agricultural employees within the meaning of the Act, but that Respondent's field employees were covered by the Act, and that Respondent violated Section 1153(e) of the Act by its failure and refusal to meet and bargain in good faith and by unilaterally granting wage increases to its field employees.

The ALO recommended that Respondent be ordered to bargain with the UFW and to make its employees whole for any loss of wages or other benefits resulting from Respondent's violation.

BOARD DECISION

The Board affirmed the rulings, findings and conclusions of the ALO and adopted his recommended order with modifications. Citing Hemet Wholesale, 2 ALRB No. 24 and Perry Farms, Inc., 4 ALRB No. 25 (1975), the Board held that Respondent was barred from litigating the issue of its status as an agricultural Employer, which it could have litigated in the prior representation proceeding, and concluded that Respondent violated Section 1153(e) by failing and refusing to meet and bargain with the UFW and by unilaterally granting wage increases to its employees.

The Board also found that Respondent's short-haul drivers are non-agricultural employees, i.e. outside the coverage of the Act, but that its field employees are engaged in primary agricultural activity, citing Mann Packing Co., Inc., 2 ALRB No. 15 (1976). The Board therefore excluded the short-haul drivers from the certified bargaining unit and amended the certification of the UFW to cover only the field employees.

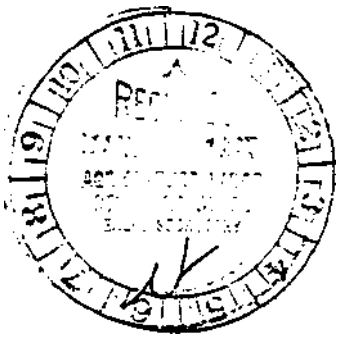
REMEDY

The Board ordered Respondent to meet and bargain in good faith with the UFW, to embody any agreement reached in a signed contract, to make its employees whole for all losses of pay and other economic benefits resulting from its refusal to bargain, and to post, mail and read a Notice to its employees. Also, the UFW's certification was extended for one year from the date Respondent commences to bargain in good faith with the UFW.

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

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATION BOARD



ROMAR CARROT, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-35-M

Francis Fernandez, Esq., for the General Counsel, Cal B. Watkins, Jr., Esq. of Dresser, Stoll & Jacobs, for Respondent, Linton Joaquin, Esq., for the Charging Party.

DECISION

Statement of the Case

JAMES R. WEBSTER, Administrative Law Officer: This case was heard before me in Santa Maria, California, on April 4, 1977. The Complaint alleges a refusal to bargain in violation of Sections 1153 (a) and (e) of the Agricultural Labor Relations Act, herein called the Act, by Romar Carrot, herein called Respondent. The Complaint is based on a charge filed September 2, 1976 by the United Farm Workers of America, AFL-CIO, herein called the Union. Copy of the charge was duly served on respondent. The Complaint was amended at the hearing to show in paragraph 5 thereof that the certification of the Union was on January 22, 1976, and in paragraph 6(a) to show that the Union requested Respondent to bargain on January 29, 1976 and that Respondent refused to bargain since that date, respondent by its answer and by stipulations at the hearing admits all factual allegations in the Complaint, but denies that it is an agricultural employer within the meaning of Section 1140.4(c) of the Act, and denies that it is amenable to or in violation of the Act, and alleges as an affirmative defense that the National

Labor Relations Board has asserted jurisdiction over it as a non-agricultural employer in case reported in 228 NLRB No. 40, dated February 22, 1977.

Briefs have been filed herein by the Counsel for the General Counsel and by Respondent. Upon the entire record and my observation of the demeanor of the witnesses and after careful consideration of the briefs filed, I make the following:

Findings of Fact

I. Issues

1. Whether Respondent is an agricultural employer within the meaning of Section ll40.4 c) of the Act.

2. If so, what classifications of employees are included in the bargaining unit of agricultural employees.

3. Was Respondent justified in refusing to bargain with the Union on the grounds that the NLRB has asserted jurisdiction and has held that an employee, classified as a short-haul driver, was a non-agricultural employee, which classification of employees was by agreement of the parties included on the eligibility list of voters in the ALRB election.

II. The Business of Respondent

Romar Carrot Co., dba Guadalupe Carrot Packers Inc., is a corporation licensed to do business in California. It is composed of four shareholders, one of whom is Clarence A. Donati, president of Respondent. Respondent is engaged in the business of custom planting, harvesting and packaging of carrots for its four shareholders and for other carrot growers, respondent does not owe or lease any land. It operates a packing shed and has two planting machines and two harvesting machines and tractor-trailers for transporting of carrots from fields to the packing shed.

There are two carrot crops each year. Planting is done by Respondent with one person operating a planter; this is either one of the shareowners, or a foreman or one of the field employees. Cultivating, Irrigating and fertilizing of the crops are done by the crop owners and not by Respondent. When the crops are ready for harvest, Respondent takes one of its harvesting machines with necessary trailers and tractors to the field with a crew of three employees. The harvester digs the carrots, toes them and conveys them to a trailer being pulled by a tractor alongside the harvester. Two employees operate the harvester and a third drives the tractor pulling the trailer. When a trailer is filled, it is taken by the third employee to the side of the field and replaced with an empty trailer.

The carrot filled trailers are then picked up by an employee classified as a short-haul driver. He drives a tractor rig and hauls two trailers at a tine from the field to respondent's packing shed and returns empty trailers to the fields. The distances from the various fields to the packing shed varies from a few miles to about 25 miles, and the hauling is done over the public highway system. Respondent employees two short-haul drivers, one hauling the trailers from each of the two harvesting crews.

At respondent's packing shed there are usually 30 employees, who operate the machinery and equipment there that wash, rinse, cool, grade, separate and package and load the carrots on railroad cars or trucks for transport to buyers.

There is no policy or general practice of exchanging employees between the field and the packing shed. Occasionally, if a field employee is sick, he may be replaced temporarily by an employee from the shed; and occasionally, if a field crew finishes early in a day, they will assist in loading operations at the shed. It takes three or four days to learn field jobs and a slightly shorter period to learn packing shed jobs.

Respondent maintains a payroll for its shed employees and another for its field employees. The short-haul drivers are carried on the shed payroll. However, short-haul driver Victor Morales is also shown on Respondent's field payroll for the quarter ending March 31, 1976 for a short period of employment with a harvesting crew, earning $27.49.

III. Certification of Representative and Refusal to Bargain

Pursuant to Petition filed October 3, 1975 and Direction and Notice of Election in Case No. 75-FC-163-M dated October 8, 1975, an election was conducted on October 8, 1975 in a unit of "All agricultural employees of the employer". The eligibility list agreed upon at the pre-election conference on October 8 contained the names of six employees, four of whom were field employees and two of whom were short-haul drivers. Respondent's field crews contained three employees each, but the payroll period for voter eligibility was the payroll period ending October 1, 1975, and two of the six employees were not eligible to vote.

The Tally of Ballots shows four votes for the United Farm Workers and two votes for the Western Conference of Teamsters and Affiliated Food Packers, Processors and Warehousmen's Union, Local No. 865. No votes were challenged, but petition to set aside the election was filed by the Teamsers. An appeal from the dismissal of this petition was denied by the Board by Order dated December 29, 1975 (GC Exhibit No. 7). On January 22, 1976, the Board issued Certification of Representative naming the United Farm Workers of America, AFL-CIO, as the bargaining representative of "all agricultural employees of the employer." On January 29, 1976 the Union requested respondent to bargain with it, and Respondent refused to so do. At that time, unfair labor practice charges and complaint against Respondent were pending before the National labor Relations Board involving the discharge of a short-haul driver, and this is given by

Respondent as reason for its refusal to bargain with the Union. On February 3, 1977, the Board issued Order Extending the Certification of the United Farm Workers to and including January 22, 1978.

In July and August, 1976, Respondent made changes in the pay rates of its field employees without consulting the Union.

Respondent filed Petition for Unit Clarification in Case No. 75-FC-163M and an Amended Petition for Unit Clarification was filed November 15, 1976. On January 12, 1977, Respondent filed a Petition to Consolidate 75-RC-163K with the instant proceedings. These petition were denied by Board Order dated February 16, 1977. The issues raied in these petition will be resolved in this Decision.

IV. The National Labor Relations Board Decision

The case before the NLRB involved the discharge of Roberto Baca, a short-haul driver, on July 29, 1974 at the insistence of Teamsters Local 865. Complaint was issued on February 13, 1976 against Respondent and the Teamsters Local 865. The case was heard by an Administrative Law Judge on April 20, 1976; his Decision was issued October 19,1976; and Decision and Order of the National Labor Relations Board issued on February 22, 1977, and is reported in 228 NLRB No. 40.

The National Labor Relations Board held that Baca, a short-haul driver who hauled trailers of carrots from fields to Respondent's packing shed, was not an agricultural laborer.

V. Legal Analysis and Conclusions of Law

There is no dispute as to the shed employees and precedent establishes them as non-agricultural.

As to the short-haul drivers, the National Labor Relations Beard decision involving this Respondent has held them to be non-agricultural, and this is determinative of this issue in the instant case. The ALRB has stated in Hemet Wholesale, Case No. 75-FC-5-F, reported in 2 ALRB No. 24, that

> "It is apparent from the definitions contained in Labor Code Sections 1140.4(a) and (b) that the Jurisdiction of this Board with regard to 'agricultural employees' precisely complements that of the National Labor Relations Board.....We are therefore bound to follow applicable precedent of the courts, the NLRB, and the U.S. Department of Labor in interpreting that definition."1/

Thus, Respondent had a bona fide question as to whether or not the short-haul drivers were agricultural employees, but I cannot say the same for its field employees. Planting and harvesting operations are performed in the fields and are basically and traditionally agricultural operations; and the fact that much of the physical labor and hand tools previously involved have been replaced by expensive machinery and the operations are done by custom contractors, does not remove these operations from that category. Furthermore, the fact that Respondent also owns and operates a packing shed where more employees are employed and from which more revenue is derived does not lessen the fact that its planting and harvesting operations are agricultural. I find, in accordance with the Board's decision in Mann Packing Co., Inc., Case No. 75-RC-36-M, reported in 2 ALRB No. 15, which dealt with a similar contention, that the harvesting and planting crews herein are agricultural employees. I find that by refusing to bargain with the Union regarding these employees since January 29, 1976, and by granting wage increases to field employees without notifying or consulting with the Union, respondent has violated Sections 1153 (a) and (e) of the Act, and that its ground for such refusal to bargain is grossly lacking in merit.

Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative

1/ Also see Associated Produce Distributors, Decision on Objections, 2 ALRB No. 47, where the Board deferred ruling on the status of truck drivers and related classifications pending a decision by the NLRB, or some future proceeding by the Board on a motion for clarification of the unit.

action designed to effectuate the policies of the Act.

In addition to recommending that Respondent bargain in good faith with the Union regarding current and future wages, hours and other terns and conditions of employment, and in view of the fact that Respondent's refusal to bargain commenced some time ago (January 29, 1976) and Respondent's defense thereto being grossly lacking in merit and further aggravated by a unilateral wage increase in July and August, 1976, and in order to redress employees for possible losses that may have stemmed from this unfair labor practice and to prevent gain from such practices, and to more nearly place the parties and the employees in the relationship they would have had absent the unfair labor practice, I shall recommend that Respondent bargain in good faith with the Union concerning wages and other applicable terms of employment for the period from January 29, 1976 to the time that bargaining for current and future matters is consummated; and if an agreement is reached, to embody such agreement in a written and signed contract, and to make whole all employees employed in the bargaining unit during this period for any losses they may have incurred, if any, in accordance with the terms of such agreement.

In view of the fact that Respondent's agricultural employees work in various fields and may have no occasion to visit Respondent's offices, I shall recommend that copies of the Notice to Employees be mailed to all agricultural employees employed from January 29, 1976 to date of such mailing. If there is a place at Respondent's offices where agricultural employees apply for work or receive their pay or otherwise have occasion to visit, a copy of said Notice should be posted there for 60 days.

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to section 1160.3 of the Act and section 20279 of the Board's Regulations, I hereby issue the following recommended. 2/

2/In the event no timely or proper exceptions are filed as provided by section 1160.3 of the Act and section 20282 of the Board's regulations, the findings, conclusions and recommended order shall become finding's, conclusions and order of the Board, and all objections and exceptions thereto shall be deemed waives for all purposes.

ORDER

Respondent, Romar Carrot, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with the Union concerning wages, hours and terms and conditions of employment of its agricultural employees.

(b) Granting wage increases or other changes in terms and conditions of employment to its agricultural employees without notifying and consulting with the Union.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain in good faith with the Union as the certified bargaining representative of its agricultural employees (l) regarding current and future wages, hours and other terms and conditions of employment, (2) regarding the amount, effective date and other terms and conditions of the wage increase unilaterally granted to agricultural employees in July and August, 1976, and (3) regarding wages and other applicable terms and conditions of employment for the period from January 29, 1976 to the tine that bargaining for current and future matters is consummated; and if an agreement is reached as a result of this bargaining, to embody such agreement in a written and signed contract.

(b) To make whole all agricultural employees employed since January 29, 1976 for any losses of wages incurred by them as a result of Respondent's refusal to bargain.

(c) Mail to each agricultural employee employed by Respondent from January 29, 1976 to date of such mailing, a copy of the attached notice to employees marked "Appendix". Said notice shall be in English and Spanish, signed and dated by a representative of Respondent and in a form approved by the Board's Regional Director. If there is a place at Respondent's offices where

agricultural employees apply for work or receive their pay or otherwise have occasion to visit, a copy of said notice shall be posted there for a period of not less than 60 days. Reasonable steps shall be taken by Respondent to ensure that the notice is not altered, defaced or covered by other material.

(d) Notify the Board's Regional Director, in writing, within 20 days from date of this Order what steps the respondent has taken to comply herewith.

Dated: April 28, 1977.

James R. Webster,
Administrative Law Officer.

APPENDIX

NOTICE TO WORKERS

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we have refused to bargain in good faith with the UNITED FARM WORKERS OF AMERICA, AFL-CIO as the certified bargaining representative of our agricultural employees. The Board has told us to send out this Notice to all agricultural employees who have worked for us since January 29, 1976. We will do what the Board has ordered, and we hereby state to our employees the following:

WE WILL, upon request, bargain in good faith with the UNITED FARM WORKERS OF AMERICA, AFL-CIO as the certified bargaining representative of all of our agricultural employees concerning wages, hours of work and other terns and conditions of employment covering the time from January 29, 1976 to such time as bargaining on these matters is completed. If an agreement is reached as a result of this bargaining, we will put it in writing and sign an agreement;

WE WILL pay all agricultural employees for any less of wages they may have had since January 29, 1976, if any, after this has been determined in good faith bargaining with the UNION;

WE WILL NOT make any changes in wages, hours of work or other terms and conditions of employment of our agricultural employees without notifying and consulting with the UNION as the certified bargaining representative of these employes.

DATED: ROMAR CARROT COMPANY

BY: _____
(representative) (Title)

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