Hemet, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HEMET WHOLESALE COMPANY Respondent and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-65-R 4 ALRB No. 75

DECISION

On December 2, 1977, Administrative Law Officer (ALO) Leonard M. Tillem issued the attached Decision in this matter. Thereafter, Respondent and the General Counsel each filed exceptions and a supporting brief. The General Counsel also filed a brief in reply to the exceptions of the Respondent. As the General Counsel's reply brief was not timely filed, we hereby grant Respondent's motion that it be stricken.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the ALO's conclusion that Respondent violated Section 1153 (e) and (a) of the Agricultural Labor Relations Act.

On October 12, 1978, General Counsel presented to the Board a joint motion on behalf of Respondent and Charging Party, stating that all parties had entered into a private settlement agreement disposing of all the issues in this matter, and requesting that the Board dispense with the issuance of a remedial order in this case. General Counsel raised no

objection to the joint motion of Respondent and Charging Party.

In view of the unique circumstances present herein, and noting that Respondent terminated its agricultural operations on August 2, 1978, we find that the private settlement agreement between the parties, with respect to the issues in this matter, is in accordance with the policies of the Act and, therefore, we dispense with the issuance of a remedial order in this matter. Fetzer Broadcasting Company, 227 NLRB 1377 (1977).

Dated: October 20, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCE1NSON, Member

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Hemet Wholesale (UFW) 76-CE-65-R
4 ALRB No. 75

ALO DECISION

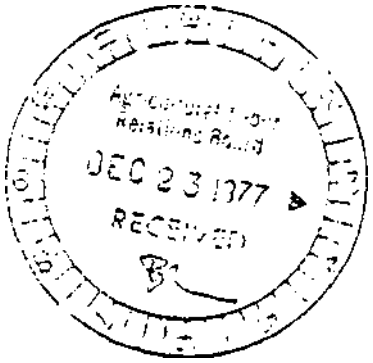
The UFW was certified as the representative of Respondent's employees on February 3, 1976. The parties began meeting on April 20, 1976, for the purpose of negotiating a collective bargaining agreement. The parties met on 12 occasions, and terminated negotiations on January 24, 1977. The ALO concluded that Respondent violated Section 1153(e) and (a) of the Act by: failing and refusing to provide relevant bargaining information requested by the UFW failing and refusing to meet regularly and promptly with the UFW; unilaterally granting general and merit wage increases; unilaterally laying off employees; failing and refusing to adequately respond to UFW bargaining proposals; failing and refusing to bargain in good faith with respect to several mandatory subjects of bargaining; excluding items previously agreed to from its counterproposal of November 8, 1976; and submitting proposals, accompanied by threat of impasse, which failed to respond to issues introduced by the UFW.

BOARD DECISION

The Board affirmed the ALO's conclusion that Respondent violated. Section 1153 (e) and (a) of the Act. On October 12, 1978, General Counsel presented to the Board a joint motion on behalf of Respondent and Charging Party, stating that all parties had entered into a private settlement agreement disposing of all the issues in this matter, and requesting that the Board dispense with the issuance of a remedial order in this case. General Counsel raised no objection to the joint motion of Respondent and Charging Party.

In view of the unique circumstances present herein, and noting that Respondent terminated its agricultural operations on August 2, 1978, the Board found that the private settlement agreement between the parties, with respect to the issues in this matter, is in accordance with the policies of the Act and, therefore, the Board dispensed with the issuance of a remedial order.

* * *



STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: HEMET WHOLESALE COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 76-CE-65-R

HARRY DELIZONNA, ESQ., General Counsel Agricultural Labor Relations Board of Sacramento, California, by TOM TOSDAL, ESQ., of San Diego, California, for the General Counsel

WILLIAM E. ROBINSON, ESQ., of Surr & Hellyer, Attorneys at Law, of San Bernardino, California, for Respondent

CHRISTINE BLEULER, for the Intervenor-Charging Party

DECISION

LEONARD M. TILLEM, Administrative Law Officer

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LIST OF EXHIBITS

General Counsel hereinafter referred to as G.C.

G.C. NO.	
1A	First Amended Complaint: admitted in evidence 5-12-77
IB	Answer: admitted .in evidence 5-12-77
1C	Complaint: admitted in evidence 5-12-77
ID	Charge: admitted in evidence 5-12-77
IE	Answer to the Amendment to the First Amended Complaint: admitted in evidence 5-13-77
2A	Petition for Certification: admitted in evidence 5-13-77
2B	Direction and Notice of Election: admitted in evidence 5-13-77
2C	Tally of Ballots: admitted in evidence 5-13-77
2D	Hemet Wholesale 2 A.L.R.B. No.24: admitted in evidence 5-13-77
2E	Certification of Representative: admitted in evidence 5-13-77
3	Letter on Hemet Wholesale stationery to David Burciaga from Tom Hamblin, dated May 7, 1976: admitted in evidence 6-15-77
4	Letter on Howards of Hemet stationery to David Burciaga from Tom Hamblin, dated May 7, 1976: admitted inevidence 6-8-77
5	Letter on Hemet Wholesale stationery to Gonzalo Molina from Tom Hamblin, dated November 26, 1976: admitted in evidence 6-7-77
6	Copy of letter on Howards of Hemet stationery to Gonzalo Molina from Tom Hamblin, dated November 26, 1976
7a 7b 7c	Photocopy of letter to Tom Hamblin from Thomas Tosdal, dated 12-13-76
8a	Payroll Record of Julio Abarca
8b	Pink slip of Julio Abarca, dated 3-22-76
9	Payroll Record of Benjamin Becerra 28

G.C. NO.	
10a	Payroll Record of Randy Lee Casburg
10b	Pink slip of Randy L. Casburg, dated 4-12-76
10c	Pink slip of Randy L. Casburg, dated 11-22-75
11a	Payroll record of Salvador Curiel
11b	Pink slip of Salvador Curiel, dated 2-16-76
11c	Pink slip of Salvador Curiel, dated 10-24-75
12a	Payroll record of Jose Chuck Duron
12b	Pink slio of Jose C. Duron, dated 4-26-76
12c	Pink slip of Jose C. Duron, dated 10-27-75
13	Payroll record of Clemente R. Gutierrez
13a	Pink slip of Clements R. Gutierrez, dated 3-29-76
14a	Payroll record of Delbert Hightower
14b	Pink slip of Delbert Hightower, dated 3-29-76
15a	Payroll record of Raymond L. Kornele
15b	Continuation of payroll record *of* Raymond L. Kornele
16a	Payroll record of Joaquin Macias
16b	Pink slip of Joaquin Macias, dated 3-29-76
17a	Payroll record of Ramon Mendez
17b	Pink slip of Ramon Mendez, dated 3-29-76
18a	Payroll record of Willie Pickle
18b	Continuation of payroll record of Willie Pickle
19a	Payroll record of David R. Robinson
19b	Pink slip of David Robinson, dated 4-25-76
19c	Pink slip of David R. Robinson, dated 3-15-76
19d	Pink slip of David Reed Robinson , dated 12-29-75
20a	Payroll record of James E. Robinson
20b	Pink slip of James Robinson, dated 4-26-76
21a	Pavroll record of Jose F. Sandoval

G.C. NO.	
21b	Pink slip of Jose F. Sandoval, dated 3-29-76
22a	Payroll record of Earl B. Siler
22b	Pink slip of Earl B. Siler, dated 3-1-76
22c	Pink slip of Earl B. Siler, dated 9-9-75
23a	Payroll record of Jesse R. Stone
23b	Pink slip of Jesse R. Stone, dated 4-26-76
23c	Pink slip of Jesse R. Stone, dated 4-12-76
23d	Pink slip of Jesse R. Stone, dated 12-6-75
24a	Payroll record of Ireneo E. Tapia
24b	Pink slip of Ireneo E. Tapia, dated 3-29-76
25a	Payroll record of David Vargas
25b	Pink slip of David Vargas, dated 4-3-76
26a	Payroll record of Jesus S. Valencia
26b	Pink slip of Jesus S. Valencia, dated 3-24-76
27a	Payroll record of Leslie Wolfe
27b	Pink slip of Leslie Wolfe, dated 10-28-76
28a	Payroll record of Gerald Worthington
28a(1)	Continuation of payroll record of Gerald Worthington
28b	Pink slip of Gerald Worthington, dated 3-29-76
29a	Payroll record of Jesus Hector Romero
29b	Pink slip of Jesus Hector Romero, dated 8-16-76
29c	Pink slip of Jesus Hector Romero, dated 11-22-76
30a thru 30g	Names of employees receiving May pay increases: admitted in evidence 6-15-77
31a	Photocopy of letter to Hemet Wholesale, Attn: Mr. Tom Hamblin, from Cesar E. Chavez, dated 2-10-76: stipulated as to receipt and admitted 5-16-77
31b	Request for Information: admitted in evidence 5-16-77
31c	Continuation of Request for Information: admitted in evidence 5-16-77

G.C. No.

31d Bargaining Unit Worker & Spouse Information Sheet: admitted in evidence 5-16-77

32 Union Master Proposal, Article 1 thru 41: admitted in evidence 5-16-77

33 Agreement between Inter Harvest, Inc. and U.F.W.,dated February 23, 1977: admitted in evidence 5-9-77

34 Collective Agreement between Akitomo Nursery and United Farm Workers of America, AFL-CIO: admitted in evidence 6-9-77

34a Akimoto Contract (additional information)

35 Collective Bargaining Agreement between Mr. Artichoke, Inc. and U.F.W. of America, AFL-CIO: admitted in evidence

36 Index of Master Agreement: admitted in evidence

37a thru 37v Letter to U.F.W. of America, Attn: Cesar E. Chavez, President, from Norman E. Jones, for Hemet Wholesale Co., dated March 5, 1976, plus various attachments: admitted in evidence 5-17-77

38 Letter to Negotiations Department, U.F.W., AFL-CIO, Attn: David Burciaga, from Norman Jones, for Hemet Wholesale Co., dated 4-14-76: admitted in evidence 5-17-77

39 Photocopy of letter to Norman Jones from David Burciaga, dated April 9, 1976, admitted in evidence 5-17-77

40 Letter to U.F.W. of America, Attn: David Burciaga,from Norman Jones, dated May 14, 1976: admitted in evidence 5-17-77

41a Letter to Norman Jones from David Burciaga, U.F.W. of America, AFL-CIO, dated May 15, 1976: admitted in evidence 5-23-77

41b Robert F. Kennedy Farm Workers Medical Plan pamphlet

42 Master Labor Agreement: admitted in evidence 5-1

43 Letter to U.F.W. of America, Attn: David Burciaga, from Norman E. Jones, for Hemet Wholesale Co., dated June 26, 1976: admitted in evidence 5-17-77

44 Photocopy of letter to Tom Hamblin from David Burciaga, dated August 31, 1976: admitted in evidence 5-17-77

45 Letter to Norman Jones from David Burciaga, dated April 10, 1976: admitted in evidence 5-13-77

G.C. nO.

46 Minutes of Meeting held on April 20, 1976 at Ramada Inn Riverside, Ca.

47 Transcript of Negotiations with Hemet Wholesale Nursery Meeting held June 11, 1976 at Little School Nursery in Hemet, Ca.: admitted in evidence 6-7-77

48 Photocopy of Negotiations Telephone Sheets (3): admitted in evidence 6-15-77

49 Dates of various meetings: admitted in evidence 6-15-77

50 Letter to Ann Smith from Norman E. Jones, dated Jan. 6, 1977: admitted in evidence 5-19-77

51a & 51b Hemet Wholesale Company Proposals to U.F.W. of America: admitted in evidence 5-19-77

52a thru 52c United Farm Workers Proposals to U.F.W. of America: admitted in evidence 5-23-77

53 Index of Company Proposal to Master Labor Agreement and Master Labor Agreement: admitted in evidence 5-19-77

54a thru 54K Papers from the file of Norman Jones: admitted in evidence 5-23-77

55 Constitution, Adopted at the 1st Constitutional Convention, Fresno, Ca., September 21-23, 1973: admitted in evidence 5-23-77

56 Copy of letter to Frank Denison from Ann Smith: admitted in evidence 5-23-77

57 Copy of letter to Norman Jones from Ann Smith, dated November 22, 1976: admitted in evidence 5-23-77

58 Photocopy of Written Notices, dated August 24, 1976: admitted in evidence 5-23-77

59 Photocopy of Wage Proposal to Hemet Wholesale submitted November 18, 1976: admitted in evidence 5-23-77

60 Letter to Ann Smith from Tom Hamblin of Hemet Wholesale dated Dec. 6,1976 (3 pgs): admitted in evidence : 5-23-77

61 Index to Revisions and Revisions to Company Proposals: admitted in evidence 5-23-77

62 Current employee list of the Hemet Wholesale Bargaining Unit(5 pgs): admitted in evidence 5-23-77

63 Photocopy of letter to Norman Jones from Ann Smith, dated Dec. 14, 1976: admitted in evidence 5-23-77

G.C. No.

64 Photocopy of letter to Norman Jones from Ann Smith, dated Dec. 14, 1976: admitted in evidence 5-23-771

65 Photocopy of letter to Thomas Hamblin from Ann Smith, dated Dec. 14, 1976: admitted in evidence 6-15-77

66 Letter to Ann Smith from Norman Jones for Hemet whole sale, dated January 24, 1977: admitted in evidence 5-23-77

67 Letter to Ann Smith from Tom Hamblin and Norman Jones, dated January 24, 1977: admitted in evidence 5-23-77

68 Letter to Norman Jones from Cesar E. Chavez, dated July 5, 1976: admitted in evidence 5-24-77

69a Letter to Tom Hamblin from Ann Smith, dated January 26, 1977: admitted in evidence 5-25-77

69b Wage Proposal for Classifications not included in Union's proposal of 11/18/76: admitted in evidence 5-25-77

69c The Robert F. Kennedy Farm Workers Medical Plan pamphlet: admitted in evidence 5-25-77

69d Photocopy of letter to Martin Luther King Farm Workers Fund from F.L.Browitt, District Director, Internal Revenue Service, dated January 7, 1976: admitted in evidence 5-25-77

69e Letter to Martin Luther King Farm Workers Fund from Jim Giroud, Supervisor, Franchise Tax Board, dated February 24, 1976: admitted in evidence 5-25-77

69f Letter to Agricultural Employers and Farm Workers; Health and Welfare, c/o T. E. Dibb, from John R. Barber, Chief, Rulings Section, IRS, dated June 18, 1969: admitted in evidence 5-25-77

69g Letter to Agricultural Employers and Farm Workers Health and Welfare Fund from James C. Stewart, Counsel Franchise Tax Board, dated February 5, 1971: admitted in evidence 5-25-77 ;

70 Copy of letter to Thomas Hamblin from Ann Smith, dated February 2, 1977: admitted in evidence 5-25-77

71 Payroll Report of Kirn E. Aidrich

72 Payroll Report of Vincente F. Alvarado

73 Payroll Report of Saul G. Ambriz

74 Payroll Report of Sercrio S. Bazan

G.C. NO.

75	Payroll Report of Rodger L. Beckelman
76	Payroll Report of Tom M. Bowers
77	Payroll Report of Raymond J. Gates
78a	Payroll Report of Alberto H. Chacon
78b	Pink slip of Alberto H. Cacon, dated 3-29-76
79a	Payroll Report of Joe Chawa
79b	Pink slip of Joe Chawa, dated January 19, 1976
80a	Payroll Report of William Jeffery Estes
80b	Pink slip of William J. Estes, dated January 3, 1975
80c	Pink slip of William J. Estes, dated February 2, 1976
81	Payroll Report of Donald R. Ferguson
82a	Payroll Report of Ervin R. Ferguson, III
82b	Pink slip of Ervin Russell Ferguson, III, dated January 3, 1976
82c	Pink slip of Ervin R. Ferguson, III, dated January 19, 1976
83a	Payroll Report of Ruben N. Fierro
83b	Pink slip of Ruben Fierro, dated March 13, 1976
83c	Pink slip of Ruben Fierro, dated April 12, 1976
83d	Pink slip of Ruben Fierra, dated March 15, 1976
84a	Payroll Report of Ernie D. Finger
84b	Pink slip of Ernie D. Finger, dated March 15, 1976
85a	Payroll Report of Kent Fraser
85b	Pink slip of Kent Fraser, dated November 10, 1975
85c	Pink slip of Kent Fraser, dated March 1, 1976
86a	Payroll Report of Geronimo P. Garcia
86b	Pink slip of Geronimo P. Garcia, dated March 1, 1976
86c	Pink slip of Geronimo P. Garcia, dated April 12, 1976
87	Payroll Report of Salvador F. Garcia

G.C. No.

88a Payroll Report of Jesus M. Gutierrez

88b Pink slip of Jesus M. Gutierrez, dated March 29, 1976

89a Payroll Report of Jim K. Hyer

89b Pink slip of Jim K. Hyer, dated March 27, 1975

89c Pink slip of Jim Hyer, dated April 26, 1976

90a Payroll Report of James 3. Johnson

90b Pink slip of James B. Johnson, dated April 26, 1976

91a Payroll Report of Robert J. Kurianski

91b Pink slip of Robert Kurianski, dated November 27, 1975

91c Pink slip of Robert J. Kurianski, dated April 26, 1976

92a Payroll Report of Paul S. Lara

92b Pink slip of Paul S. Lara, dated March 29, 1976

93a Payroll Report of Joe Leyvas

93b Pink slip of Joe Leyvas, dated May 10, 1976

94a Payroll Report of Pascual P. Lopez

94b Pink slip of Pascual P. Lopez, dated February 2, 1976

95a Payroll Report of Rebecca C. Lopez

95b Pink slip of Rebecca C. Lopez, dated February 16, 1976

96a Payroll Report of Bruce R. Loveland

96b Pink slip of Bruce Roger Loveland, dated March 1, 1976.

97a Payroll Report of Angel Edward Marin, Jr. (2 pcs)

97b Pink slip of Angel S. Marin, dated January 1976

97c Pink slip of Angel Edward Marin, Jr., dated March 29, 1976

98a Payroll Report of David L. Mearing

98b Pink slip of David L. Mearing, dated April 12, 1976

99a Payroll Report of Francis W. Middleton

99b Pink slip of Francis W. Middleton, dated April 26, 1975

100 Payroll Report of Henry p. Monte::

G.C. NO.

100b Pink slip of Henry Montez, dated March 15, 1976

100c Pink slip of Henry P. Montez, dated April 12, 1976

101a Payroll Report of William J. McGuire

101b Pink slip of William J. McGuire, dated April 20, 1976

102a Payroll Report of Salamon Moreno

102b Pink slip of Salamon Moreno, dated April 12, 1976

103a Payroll Report of Billy C. Nettles

103b Pink slip of Billy C. Nettles, dated January 5, 1976

104a Payroll Report of Jesus S. Olvera

104b Pink slip of Jesus S. Olvera, dated March 1, 1976

105a Payroll Report of Joe L. Pedilla

105b Pink slip of Joe L. Padilla, dated March 29, 1976

106a Payroll Report of Ron W. Peacock

106b Pink slip of Ron Peacock, dated January 12, 1976

107a Payroll Report of Gregorio J. Ponce

107b Pink slip of Gregorio J. Ponce, dated March 15, 1976

107c Pink slip of Gregorio J. Ponce, dated April 12, 1976

108 Payroll Report of Jose P. Rangel

109a Payroll Report of Michael R. Schmidt

109b Pink slip of Michael R. Schmidt, dated March 15, 1976

110a Payroll Report of Joe Silva

110b Pink slip of Joe Silva, dated March 29, 1976

111a Payroll Report of Richard E. Stevens, Jr.

111b Pink slip of Richard E. Stevens, Jr., dated March 15, 1976

112a Payroll Report of Larry D. Tebbe

112b Pink slip of Larry D. Tebbe, dated March 1976

113 Decision rendered in Hemet Wholesale Company and United Farm Workers of America, AFL-CIO, dated March 5, 1977: admitted in evidence 6-7-77

G.C. No.

113a Order Consolidating Cases in Hemet Wholesale Company and United Farm Workers of America, AFL-CIO. Case No.75-CE-12-R; 12-A-R and 39-R, dated December 8,1975: admitted in evidence 6-15-77

113b Charge against Employer in Case No. 75-CE-5-R, dated filed 9-6-75 : admitted in evidence 6-15-77

113c Charge against Employer in Case No. 75-CE-12-R, date filed October 1, 1975: admitted in evidence 6-15-77

113d Charge against Employer in Case No. 75-CE-12-A-R, date filed October 30, 1975: admitted in evidence 6-15-77

113e Charge against Employer in Case No. 75-CE-39-R, date filed October 31, 1975: admitted in evidence 6-15-77

114a Payroll Report of Wesley R. Mudge

114b Payroll Report of Wesley R. Mudge: admitted in evidence 6-7-77

115 Photocopy of letter to Farm Workers of America, AFL-CIO, from Norman E. Jones, dated October 3, 1975: admitted in evidence 1-5-76

116a Employment Registration of Pascual P. Lopez, dated October 16, 1974: admitted in evidence 6-7-77

116b Employment experience of Marshburn Bros.: admitted in evidence 6-7-77

117a Work Rules effective 9-1-75: admitted in evidence 6-7-77

117b Work Rules typed up in Spanish: admitted in evidence 6-7-77

118 General Field and Harvest Labor Wage RatesBefore and; and During U.F.W. Contracts (8 pgs): admitted in evidence 6-9-77

119 Date of Certification, Date of First Letter, and Effective Date of Contract for U.F.W. Contracts (7 pgs) :: admitted in evidence 6-9-77

120 Photocopy of Page 13 (only) of Master Labor Agreement: admitted in evidence 6-23-77

121 Photocopy of Meeting of Hemet Wholesale and U.F.W., date-d September 29, 1976: admitted in evidence 6-22-77

122 Photocopy of No-Solicitation Rule: admitted in evidence 6-17-77

G.C. NO.

123 Photocopy of Meeting of August 6, 1976: admitted in evidence 6-22-77

124 Photocopy of Meeting of July 9, 1976, Page 2: admitted in evidence 6-22-77

125 Photocopy of Emergency Order Adopting Emergency Regulations of the Agricultural Labor Relations Board (5 pgs) adopted August 29, 1975: admitted in evidence 6-22-77

126 Photocopy of Emergency Order Adopting Emergency Regulations of the Agricultural Labor Relations Board (5 pgs) adopted November 24, 1976: admitted in evidence 6-22-77

127 Photocopy of 3 A.L.R.B. No. 47, Cases No. 75-CE-12-R, 12-A-R and 39-R, dated March 5, 1977 (30 pgs; admitted in evidence 6-22-77

128 Photocopy of Meeting of September 3, 1976: admitted in evidence 6-22-77

129 Pencilled notes of Meeting of Hemet Wholesale and U.F.W., dated April 20th,: admitted in evidence 6-24-77

130 Photocopy of Article 30: Savings Clause of U.F.W., AFL-CIO, dated August 24, 1976: admitted in evidence 6-24-77

131a Map of Paris (pnev Michelin-Services De Tourism): admitted in evidence 6-28-77

131b Autobus Map published by Govt. of France

132 Deleted

133 Affidavit of Opal M. Leroy

134 Affidavit of Kathryn Ford

RESPONDENT'S EXHIBITS

Respondent hereinafter referred to as "R"

R. NO.	
A	WRITE IT -- Don't Say It: Intercommunicating Memoranduni dated 5-5-76: admitted in evidence 6-7-77
B	Memo of Tom Hamblin, dated 5-7-76
C-l	Charge Against Employer-Page 2
C-2	Photocopy of letter from Karen DeMott to General Counsel Agricultural Relations Board, dated 10-29-75
D	Letter from David Burciaga to Tom Hamblin, dated 8-31-76 admitted in evidence 5-18-77
E-1 thru 3	Letter from Thomas Tosdal to Tom Hamblin, dated 12-13-76 , admitted in evidence 6-7-77
F	Photocopy of letter from Ann Smith to Thomas Hamblin, dated 8-14-76: admitted in evidence 6-28-77
G	Photocopy of letter from Tom Hamblin to Ann Smith, dated 1-7-77: admitted in evidence 6-28-77
H	Massachusetts leaflet dated 7-13-76: admitted in evidence 6-17-77
I	Letter from Norman E. Jones to David Burciaga, dated 5-28-76: admitted in evidence 5-18-77
J	Letter from Karen DeMott to Mr. Hamblin, dated 5-29-76; admitted in evidence 5-25-77
K	Letter from Karen DeMott to Norman E. Jones, dated 6-1-76: admitted in evidence 5-25-77
L	Letter from Tom Hamblin to David Burciaga, dated 6-28-76: admitted in evidence 5-25-77
M	Letter from Karen DeMott to Norman E. Jones, dated 6-30-76: admitted in evidence 5-25-77
N	Letter from Karen DeMott to Norman Jones, dated 7-14-76: admitted in evidence 5-25-77
O	Photocopy of letter from Tom Hamblin to Ann Smith, dated 8-2-76: admitted in evidence 5-25-77
P	Letter from Karen DeMott to Norman Jones, dated 8-20-76: admitted in evidence 5-25-7

R. No.	
Q	Photocopy of letter from Tom Hamblin to Ann Smith, dated 9-1-76: admitted in evidence 5-25-77
R	Letter from Tom Hamblin to Ann Smith, dated 10-29-76: admitted in evidence 5-25-77
S	Photocopy of letter from Karen DeMott to Norman Jones , dated 1-19-77: admitted in evidence 5-25-77
T	Collective Bargaining Agreement between Krokaw Nursery, Inc. and U.F.W. of America, AFL-CIO (168 pgs) : admitted in evidence 5-25-77
U	Negotiation sessions (2 pgs) : admitted in evidence 6-15-77
V-1 thru 64	Wage Information
V-65	Wage Information: admitted out of order
W	Withdrawn
X-1 thru 7	Merit Raises: admitted in evidence 6-15-77
Y	Letter (Certified Mail-Return Recpt.Requested) from Tom Hamblin to U.F.W., AFL-CIO, Attn: David Burciaga, , dated 5-7-76 : admitted in evidence 6-15-77
Z	Tom Hamblin's Notes in Negotiations NOT RECEIVED
AA-1	Employer Research Form for Hemet Wholesale Nursery: admitted in evidence 6-17-77
AA-2 thru 6	Job Classifications-Hemet Wholesale: admitted in evidence 6-17-77
BB	Withdrawn
CC	Work Rules effective 12-4-75 (Updated and Replaces Work Rules dated 9-1-75): admitted in evidence 6-17-77;
DD-1	1976 Container Grown Nursery Stock Wholesale Price List: admitted in evidence 6-23-77
DD-2	1977 Container Grown Nursery Stock Wholesale Price List.: admitted in evidence 6-23-77
EE-1	Copy of letter from Norman E. Jones to Cesar E. Chaves, dated 7-8076: admitted in evidence 6-22-77
EE-2	Photocopy of letter from Karen DeMott to Norman E. Jones,dated 6-30-76: admitted in evidence 6-22-77

R. NO.

FF Copy of letter to CI.F.w. of America, dated 6-15-76: admitted in evidence 6-22-77

GG-1 Photocopy of Meeting with Hemet Wholesale on 7-9-76 at Hemet, Ca., (14 pgs): admitted in evidence 6-28-7

GG-2 Photocopy of Negotiations with Hemet Wholesale at Little Lake School, Hemet, Ca., on 8-6-76 (26 pgs) : admitted in evidence 6-28-77

GG-3 Photocopy of Negotiations with Hemet Wholesale at Little Lake School, Hemet, Ca., on 8-24-76 (1 pg): admitted in evidence 6-28-77

GG-4 Photocopy of Meeting of Hemet Wholesale on 8-24-76 (4 pgs): admitted in evidence 6-28-77

GG-5 Photocopy of Meeting of Hemet Wholesale on 9-29-76 (1 pg): admitted in evidence 6-28-77

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I

STATEMENT OF THE CASE

These cases were heard before me in Hemet, Gilman Hot Springs, and San Jacinto, California, on May 12, 13, 16, 17, 18, 19, 23, 24, 25, 26, 27 and June 7, 8, 9, 15, 16, 17, 22, 23, 24 and 28, 1977. The hearing was held pursuant to the first amended complaint issued by the Regional Director of the San Diego Regional Office upon an unfair labor practice charge brought by the charging party, the United Farm Workers of America, AFL-CIO (hereafter U.F.W.).

The First Amended Complaint alleges the refusal of respondent HEMET WHOLESALE to bargain collectively in good faith with the certified bargaining representative of its employees, the U.F.W. in violation of Section 1153(a} and (e) of the Agricultural Labor Relations Act (hereafter A.L.R.A.). During the hearing, the hearing officer permitted the First Araended Cornplaint to be further amended. This was done by stipulation of the parties. On June 15, 1977, the complaint was further amended to conform to proof.

The complaint is based upon charges filed on October 22, 1976 by the U.F.W. Copies of the charges and amended charges were duly served upon Respondent.

All parties were given full opportunity to participate in the hearing, and after the close thereof the General Counsel, the Respondent, and the Charging Party each filed a brief in support of their respective positions.

Upon the entire record, including my observations of the demeanor of the witnesses, and the consideration of the briefs

filed by the parties, I make the following findings of fact, conclusions of law and determination of relief.

II

FINDINGS OF FACT

A. Jurisdiction

HEMET WHOLESALE COMPANY, doing business in California as a limited partnership, operates a nursery. The company grows ornamental nursery stock in Riverside County. It sells its product primarily in Southern California. HEMET WHOLESALE COMPANY is an agricultural employer within the meaning of Section 1140.4 (c) of the A.L.R.A. The Respondent admitted this in its Answer, paragraph 2. I find that the employees of HEMET WHOLESALE COMPANY are agricultural employees within the meaning of Section 1140.4(b) of the A.L.R.A. I find that the U.F.W. is a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the A.L.R.A.

B. Alleged Unfair Labor Practices

The First Amended Complaint alleges that Respondent has ' interfered with, restrained, and coerced, and is continuing to interfere with, restrain and coerce, its agricultural employees in the exercise of their rights guaranteed by Section 1152 of the A.L.R.A. and has failed to bargain in good faith with the U.F.W. by: (1) unreasonably delaying in the scheduling of bargaining sessions; (2) refusing to provide information rsquested by the Union in the bargaining process; (3) unreasonably delaying in providing of other necessary information; (4) instituting a unilateral wage increase on May 9, 1976; (5) insisting upon the limitation of any contract reached to a period no longer than one year; and

(6) refusing to negotiate on the subjects of union security, dues check-off, hiring hall, and seniority.

Further violations of Section 1152 are alleged in that Respondent failed to respond to all U.F.W. proposals in Respondent's first counterproposal made on June 11, 1976, and that Respondent thereafter made only nominal concessions from the position taken by it in its first counterproposal. The first amended complaint further alleges that Respondent's November 3, 1976 counterproposal retracted articles previously agreed to by the parties or proposed by the company, and was submitted on condition that the U.F.W. accept the counterproposal in its entirety by November 30, 1976. The First Amended Complaint further alleges that a December 10, 1976 counterproposal was submitted by the Respondent on the condition that the Union accept the counter posal in its entirety by December 31, 1976.

Finally, the complaint alleges: (1) that on or about the first part of December, 1976, the Respondent provided the Union with false and misleading wage information; (2) that during the course of meetings with the Union the Respondent maintained inconsistent and contradictory positions on a number of subjects of collective bargaining; and (3) that in addition to the May 9, 1976 wage increase Respondent between February 14, 1976 and December 5, 1976, granted unilateral wage increases to a number of its agricultural employees in the bargaining unit.

C. Respondent's Nursery Operations

The Respondent operates in Riverside County a nursery which grows and wholesales ornamental nursery stock. The main nursery encompasses one hundred sixty (160) acres and is bordered

by Commonwealth & Kewitt Streets in Kernet, California. The Respondent also maintains a separate thirteen (13) acre propagation area.

HEMET WHOLESALE employs approximately one hundred thirty: (130) to one hundred forty (140) workers. There is some seasonal variation of thirty-five (35) to forty (40) workers. The fluctuation occurs during the canning season, which lasts from September through January.

The partners in HEMET WHOLESALE also own Howard Rose Company, which produces bareroot rose bushes for sale to retail outlets. The two companies share the same offices and personnel director, Tom Hamblin.

The general manager, in charge of Respondent's production, is Doug Weaver. Tom Hamfalin occupies the next lower position of personnel manager. This position was created by the Respondent in August, 1975. In the nursery and propagation area the Respondent in 1976 acted through various foremen who were supervisors within the meaning of Section 1140.4 (j) of the A.L.R.A. The six (6) foremen who hired workers, supervised work crews and recommended merit wace increases to Hamblin and Weaver were Jack Knicht: Frank Antichevich (retired 1976), Bill Russell, Deemus Weatherby, Louis Palmquist and Jesus Hector Romero (promoted 1976). in addition certain foremen had second-in-command foremen, designated by , Respondent as "leadman." Jack Knight's "leadman", Manual Quintana, translated for Knight to his largely Spanish speaking crew, re-commended workers for hire, and, per instructions from Knight:, directed the work of one-half (1/2) of Knight's crew chat occasionally worked away from the other half which was directed by Knight.

Below the "leadmen" in the company hierarchy was the general work population.

In 1976 and 1977 Respondent divided its workers into several classifications, which were nurseryman, truckdriver nurseryman, delivery and salesman, plant clerical, and maintenances Approximately seventy-five (75) to eighty-five (85) percent of the workers fell within the nurseryman classification. The nurseryman classification included and to date includes workers who performed a variety of job functions: loaders, canners, pruners, watermen and pick-out men. Nurserymen also weed, stake, tie and space the plants in cans. The workers in the propagation area, primarily women, seed and cut plants.

The majority of job functions performed by workers in the nurseryman classification require no skill or special training. Hamblin testified that the work of the pick-out men, of which there are two (2), is semi-skilled. Pick-out men are required to determine the quality and variety of the plants. Spraymen, of which there are two (2) to twelve (12), are semi-skilled and spray from cans. The seeders and cutters, of which there are from twelve (12) to fifteen (15), perform easily learned jobs.

D. Background

Commencing in late July or early in August, 1975, several of the Respondent's workers began organizing on behalf of the U.F.W. In August, 1975, Respondent's partners decided to conduct; a campaign against the Union.

In late August, 1975, Respondent adopted a "no solicitation rule" which barred non-employee solicitation on company premises at any time. (GC 122). This rule is still in effect.

U.F.W. organisers were barred from, company orsmises. The police were called on one occasion.

During the election campaign, on August 20, 1976, Hamblin, attorney McLearney, of Surr and Hellyer, and the supervisors met for three hours. Shortly thereafter, or a number of afternoons, supervisors passed out company literature to workers during working hours. Employees, however, were not permitted to hand cut literature during work hours. The U.F.W. won the election. Ninety-five (95) ballots were counted and the U.F.W. orevailed, sixty-two (62) to thirty-three (33). (C-C 2 (c)) . The Respondent filed objections to the election.

In mid or late September, 1975, the Respondent formulated a set of work rules, which prohibited any distribution of literature without company permission. (GC 117a v.19). Though not distributed to workers until October, 1975, the rules were made effective retroactively to September 1, 1975.

The U.F.W. in October, 1975, Tiled several charges of unfair labor practices relating *to* Respondent's conduct before and after the election. (GC 113(b)) . By Consolidated Complaint dated December 8, 1975, the Regional Director for the Riverside Region, A.L.R.B. alleged that Respondent engaged in extensive unlawful conduct before and after the election. (GC 113{c)),

A nine day hearing pursuant to Section 1160.2 of the A.L.R.A. was held en the complainc in January, 1976. The Administrative Law Officer found by Decision dated March, 1977, that between August and the end of October, 1975, Respondent'*s* agents unlawfully threatened and interrogated employees , discriminatorily transferred Union supporters, discharged six key Union workers, and implimented overbroad no-solicitation and work rules in re-

sponse to union activity. (GC 117(a) (b); GC 122). (Case Nos . 75-CE-12-R, 75-CE-12-A-R, and 75-CE-39-R, (1977), GC 113). In his finding the A.L.O. concluded that:

> [F]rom the testimony of several exemployees or expemployees, it is clear that pervasive fear was created among them regarding their support for the U.F.W. (GC 113 p.15, lines 11-12).

The A.L.R.B. in June, 1977, adopted the A.L.O.'s decision in full. Hemet Wholesale, 3 A.L.R.B. No.47 (1977). (GC 127).

After the hearing, Respondent's objections to the election were rejected by the Board. Hemet Wholesale, 2 A.L.R.B. No.24 (1976). (GC 2(D)). On February 3, 1976, the U.F.W. was certified as the exclusive bargaining representative for

> [a]11 agricultural employees of the Employer. (GC 2(E)).

Hamblin and the general partners of Hemet Wholesale formulated and were responsible for Respondent's labor policy. Testimony was given which stated that these decisions were arrived at by consensus.

After the certification, the parties met on twelve (12) occasions:

April 20, 1976
June 11, 1976
July 9, 1976
July 21, 1976
August 6, 1976
August 24, 1976
September 3, 1976
September 29, 1976
November 8, 1976
November 18, 1976
December 10, 1976
January 24, 1977.

At the first two (2) meetings, the U.F.W. was repre-

sented by David Burciaga. Burciaga testified that he has negotiated more than thirty (30) agricultural labor contracts with companies producing a wide variety of agricultural products.

After the first two negotiating sessions a change occurred in the U.F.W. negotiations department in June, 1976, and Ann Smith became the U.F.W. negotiator. Smith has worked with the U.F.W. since 1970. She was liaison between U.F.W. President Cesar Chavez and union negotiators in the Fall of 1975. She later negotiated with five (5) companies in Oxnard, including Brokaw Nursery, and seven (7) tomato growers in San Ysidro prior to her negotiations with Hemet Wholesale.

Respondent's negotiator was "labor/management consultant" Norman Jones of Los Angeles and San Simeon, California. Norman Jones was first hired by Respondent during the election campaign of August, 1975, after a meeting with all the general partners. He was involved in the company's campaign and represented them at the January, 1976, unfair labor practice hearing.

For a year and a half period, between August, 1975, and January, 1977, Jones met with the general partners of Respondent three (3) times; once in August, 1975; once in December, 1975, or January, 1976; and once after the U.F.W. submitted its first proposal (GC 32) on April 20, 1976, -in late May, 1976. However, the general partners met once a month, every second Wednesday. During negotiations, Jones did net consult regularly with any single partner. Communication with the Respondent's partners was Tom Hamblin's responsibility. During negotiations, Hamblin reported to the partners only on a "spot" basis.

Hamblin attended all negotiation meetings and took

sketchy notes. He did not negotiate. Prior to the Hemet Wholesale negotiations, Hamblin had not participated in any labor contract negotiations. He had only briefly looked at one labor contract. He was by his own admission unfamiliar with the terminology in labor contracts.

Contact between Hamblin and Jones was intermittent at best. Hamblin described Jones as, "a hard man to locate". Kamblin testified Jones was "very busy" and "flew a lot." Kaniblin did not meet with Jones on a regular basis due to the difficulty with Jones' schedule. On one occasion Hamblin could not locate Jones for two (2) weeks. Jones almost always arrived late for negotiation meetings. Jones testified that in 1976 he was very busy, with half of his time being consumed by his antique hobby.

Norman Jones. Norman Jones the negotiator for the Respondent was a witness whose testimony I find to have been less than credible, lie appeared to be less than candid and was unimpressive as a witness, whose recollection appeared to be imprecise. While testifying he frequently hesitated and could not recall important events.

Mr. Jones was present at and participated in the hearing even when not testifying. He was a severely disruptive influence during a long and complex hearing. His attitude and behavior stand out in even sharper contract when compared with the cooperative attitude of Mr. Tosdal, the General Counsel, Mr. Robinson, the Respondent's attorney, Ms. Bleuler the representative for the U.F.W, and Mr. Hamblin, the company personnel director, who was also present for the entire hearing.

As an example of his behavior, at the outset of the

hearing in the preliminary off-the-record conference, Mr. Jones began by asserting he was an attorney and did not have to and would not surrender documents subpoenaed by the General Counsel. After considerable time was expended arguing the issue, a decision was rendered ordering the production of the documents.

When these documents were finally produced, they were presented in an unorganized condition, causing further delay.

Further disruptions occurred when Mr. Jones frequently attempted to instruct the hearing officer in matters of law. His information and statements were usually erroneous and served only to disrupt, the hearing.

Mr. Jones was a disruptive influence not only during the actual hearing but also during the breaks outside the hearing. He repeatedly made disparaging remarks to the A.L.O. about the opposing parties. The behavior continued despite repeated admonishments from the A.L.O. and his attorney *to* stop. During breaks, Mr. Jones attempted on several occasions to engage me in private discussion concerning the case.

Overall, his attitude was one of disrespect: and distain for the A.L.R.B., the A.L.O. and for the hearing process.

Mr. Jones was frequently late for the hearing and as a result the hearing was delayed while all the parties waited for him

When testifying he was unclear and generally evasive. He would not or could not give appropriate answers to questions put to him by the General Counsel. He rambled on and on. He was stopped when it: became evident there would be no answer forthcoming from him which bore any relation to the question asked.

Another tactic adpoted by Mr. Jones during the giving of

testimony was the lapse of memory. Whenever a question was asked by the General Counsel which could have brought forth information unfavorable to the Respondent or placed Mr. Jones in an uncomfortable position he conveniently forgot which events had occurred. The fact that Mr. Jones kept no notes or organized files and therefore could not refresh his memory does not excuse his lapse of memory. It "made it appear rather a scheme devised by him to avoid unfair labor practice charges. This approach could be labelled the "If it ain't in writing they can't pin it on me," practice and purpose.

Under cross examination it became apparent Mr. Jones knew very little of the Hemet Wholesale operations. He could not articulate the concerns of the Respondent which supposedly underlay it's bargaining positions. Mr. Jones' testimony as to access, bulletin boards, check-off, grievance and unilateral wage increases was uninformed at best and at worst a poor attempt to cover up conscious attempts to sabotage the bargaining process. Exhibits GC 133 and 134, both of which were admitted into evidence; after the close of the hearing by stipulation of the parties and in conformance with appropriate provisions of the California Evidence Code, indicate what might be perjured testimony by Mr. Jones.

GC 133 is an affidavit of Opal M. Leroy, Director of Statistics for Air Midwest Inc. The affidavit indicates that the flight of June 9, 1976 left as scheduled. Mr. Jones testified that the flight was cancelled due to a tornado. Mr. Jones testifield he is a graduate of Brigham Young University School of Law, Class of 1969 or 1968 and admitted to practice in Utah and

Nevada. GC 134 as an affidavit from Kathryn 3. Ford, dean's secretary, for the J. Reuben Clark Law School, Brigham Young University states that Brigham Young University had no credited or unaccredited law school prior to 1973 and no law school graduating class until 1976.

Ann Smith. Ann Smith, the representative for the U.F.W. during negotiations was a clear, precise, coherent and, above all, creditable witness. Ms. Smith came to the hearing prepared to testify and did so in an impressive manner. She answered questions honestly and directly. She did so even when the answers required were not helpful to the U.F.W. case.

When contrasted with Mr. Jones' testimony, behavior and attitude the difference is one of cooperation versus antagonism.

E. Merit Wage Increases

Between the date of certification, February 3, 1976, (GC 2(E)) and the first meeting on April 20, 1976, the Respondent granted at least fifty-five (55) members of the bargaining unit individual merit wage increases. (GC 30). [2] Some of these workers received more than one merit wage increase. (See e.g., David R. Robinson, GC 19, 30(b); Ruben N. Pierro, GC 83, 30(e); Geronimo P. Garcia, GC 86, 30(e); Jim Hyer, GC 89, 30(e); Henry P. Mentez, GC 100, 30 (f) (i) ; Gregorio J. Ponce, GC 107, 30 (f) (i).

The wage increases varied from five cents (50.05) to twentv-five cents (SO. 25) an hour, with exceptions. [3/] The wage

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2/ Excludes momentarily Becerra, Pickle, Kernels.

3/ Wesley Mudge, (GC 114(b)): fifty dollars (?50.00) per month;
Hector Romero, GC 29 (b) (c) , 30 (b) : three dollars fifteen cents ($3.15) per hour to seven hundred dollars (5700.00) per month;

increases were recommended by a variety of supervisory personnel or instituted directly by Doug Weaver or Tom Hamblin. (GC 8-29, 71-112(b), 114(a)(b); R V(l) - (65)).

The increases were effective on a variety of dates. The majority of the merit increases were effective prior to the April 20, 1976, meeting, although several employee record forms (pink slips) indicate these wage increases were signed by general manager Doug Weaver shortly after that date. (GC 23 (b), 89(c), 90(b) , 91(c), 99 (b), 101 (b)). Further, Joe Leyvas received an increase effective April 26, 1976. (GC 93(b)). Wesley Mudge received a fifty dollar a month increase in July, 1976. (GC 30(b), 114(b)). Leslie Wolfe was granted a forty cent an hour increase in October 1976. (GC 27, 30 (c)) . Jesus Romero received two (2) increases, one in August and the other in November 1976. (GC 29, 30 (b)) .

Hamblin testified that the change in hourly rate of pay for Benjamin Becerra, Raymond Kornele and Willie Pickle, all occuring on October 9, 1976, was not a merit wage increase. Rather this was a method whereby the company compensated these employees who were transferred from Howard Rose Company to Hemet Wholesale for the loss of a profit sharing plan in which they had participated. In each case, the hourly rate of pay increased: Becerra ($3.05 - $3.20); Kornele ($3.60 - $3.78); Pickle ($4.25 - $4.46). Becerra absorbed a small loss in the change. (GC 9)

The majority of these post-certification wage increases ; given to workers in the nurseryman classification. Almost I all the increases were not contemporaneous with any change in job function or classification." [4/]

4_/ See page 14

The Respondent has no written policy regarding wages or wage increases. At no time did the Respondent give notice or their opportunity to the U.F.W. to bargain about any or all of these wage increases. This was testified to by Tom Hamblin on June 7, 1977, by Ann Smith on May 23, 1977, and by Karen DeMott on June 8, 1977. Upon questioning by Ann Smith regarding supervisors, Hamblin at one negotiation meeting did state that Romero was to be promoted. There is no evidence that both wage increases given Romero were brought to the U.F.W. attention.

In addition, several of those workers receiving individual merit wage increases after certification also received such merit wage increases prior to certification but after the dace of the election: Randy Lee Casburg (11-22-75) (GX lOfc)); Salvador Coriel (10-24-75))GC 11(c)); Jose Chuck Duron (10-13-75) (GC 12 (c); Jesse Stone (11-23-75) (GC 23(d)); Kent Eraser (11-10-75) (GC 85 (b)); Robert Kurianski (10-13-75) (GC 91(b)); Angel Marin (1-19-76) (GC 97(b)); and Richard Stevens (1-3-76) (GC 111(a)).

After the date of election, September 9, 1975, and prior to December 6, 1975, twenty-three (23) individual merit wage increases were granted to Hemet Wholesale employees. Also, between January 1, 1976, and certification, February 3, 1976, at least nine (9) employees and members of the unit received individual merit wage increases: Joe Chawa (GC 79, 30 (d)) ; William

[4/] In April ,1976 , Jim Hyer received a fifteen cent ($0.15) increase, moving from laborer to loader. (GC 89 (c)) . David Robinson received a ten cent ($0. 10) increase in April, 1976, moving from laborer to loader. (GC 19 (b)). Hire-in rate for loaders is ten cents ($0.10) per hour mere than laborer. Joe Leyvas increase came when he became a leadman, still a member of the unit. Jesus Romero's October, 1976, wage increase involved a promotion to foreman.

Estes (GC 89, 30(d)); Donald Ferguson (GC 81, 31(e)); Ervin Ferguson, (two increases); (GC 82, 30(e)); Pascual Lopez (GC 95, 30(f)); Angel Marin (GC 97(a)(b), 30(f)); Billy C. Nettles (GC 103, 30(f) fi)); Ron Peacock (GC 106; 30(f)(i)); and Richard Stevens (GC 111(a), 30(g)) .

F. The May 9, 1976, General Wage Increase

Effective May 9, 1976, Hemet Wholesale granted all its hourly employees,almost all the workers in the unit, a general wage increase of thirty-five cents ($0.35) per hour.

On May 5, 1976, Tom Hamblin requested approval for a thirty-five cent ($0.35) an hour general wage increase, to be effective May 9, 1976. He called Karen DeMott at the San Jacinto U.F.W. field office. Hamblin requested consent in writing. De Mott, then field office director for five (5) days, stated she would check with the responsible Union people.

Ann Smith testified that in 1976, the U.F.W. had a policy against agreeing to interim wage increases during negotiations. The Union believed wage increases granted at that point in time disorganizes workers and induces them to forego job protections affordable only by contract language.

Hamblin called Karen DeMott on May 7, 1976, at the U.F.W office in Corona. DeMott responded to Hamblin's request for an answer. She stated that the union did not approve of the wage increase and would not give a letter of approval. She then stated that if the company wanted to give a wage increase, they could go ahead, but the Union was still in negotiations. At the hearing, DeMott testified that by this last statement she meant the company had the power to do what they wanted, regardless of U.F.W

approval.

Hamblin testified that he was not sure that DeMott's statements were permission because the U.F.W. refused to give anything in writing. He called counsel. On advice of counsel, he sent letters dated May 7, 1976, to David Burciaga, at the U.F.W. San Jacinto office, stating that with the "consent" of the U.F.W., both Hernet Wholesale and Howard Rose were implementing thirty-five cent (SO. 35) an hour across the board wage increases. (GC 3, 4).

Karen DeMott's reaction to receipt of the May 7 letters was one of surprise. She felt that the Union was "damned if it did and damned if it didn't". If approval were given, there would be negative effects on worker organization. If approval were denied, the company would tell the workers of the large increase offered and assert that it was withheld due to the Union. Burciaga wrote to confirm that the Union did not consent in August, 1976. (GC 44). This letter was sent more than ninety (90) days after the increase went into effect.

Although Hamblin was present at the April 20, 1976, negotiation meeting and had Burciaga's phone number he never made; a request for a wage increase to Burciaga. The May 9th wage increase reflected an annual cost of $123,750, out of an annual payroll of $750.000. The decision was made after the April 20th at meeting, which Respondent received the U.F.W.'s contract proposal. (GC 32) .

General wage increases are discretionary with Respondent's management. A fifteen cent an hour increase was granted in 1970. No general increase was granted in 1971 and 1972; only merit in-

creases were given. In 1973, a percentage increase amounting to ten to twenty cents an hour was given to the better employees. In 1974, a general increase of around twenty to thirty cents an hour was granted. The Respondent granted a comparatively large general wage increase in early August, 1975, -- twenty percent. No employees received merit increases in 1975. Hamblin stated that in some years no merit increase was given because a general increase was granted.

Before August, 1975, Respondent's general labor hire-in wage was two dollars per hour. Before the May 9, 1976 increase, the hire-in rate was two dollars and twenty-five cents an hour. After the May increase, the hire-in rate was two dollars and sixty cents an hour.

G. Acts of Union Animus

Karen DeMott, U.F.W. field office director, complained to Hamblin in late May, 1976, that Justo Garcia, an active U.F.W. member, was being denied the vacation time he traditionally took. After a long discussion culminating in DeMott's statement that an unfair labor practice charge might be filed, Hamblin reversed his decision, stating that he had been merely playing a game with her head.

Earlier in 1976, in April, Sandy Montoya had been searching for Norman Jones. She callad Hamblin and asked for Jones' address. Hamblin refused to divulge both Jones' and the company's address. In addition see Hemet Wholesale 3 A.L.R.B. No. 47.

H. Scheduling Meetings

Company negotiators first met with U.F.W. negotiators two and one-half months after the U.F.W.'s written request for a

preliminary negotiations meeting, after repeated phone calls by U.F.W. representatives. Subsequent meetings were scheduled far apart due generally to the unavailability of Norman Jones. Company representatives frequently cancelled scheduled meetings with little or no advance notice. Conditions were placed on meetings with the U.F.W. negotiators. On occasion, Respondent's negotiator failed to attend scheduled sessions. The company representatives were also chronically late to meetings, resulting in extremely short sessions, effectively reducing the time spent on substantive negotiations.

On February 10, 1976, the U.F.W. sent a letter to Tom Hamblin, the personnel manager of Kemet Wholesale, requesting a preliminary negotiations meeting with the company. (GC 31(a)) . Attached to this letter was a request for information which the U.F.W. needed to formulate bargaining proposals. (GC 31(b)}. The Respondent did not respond until March 5, when company negotiator Norman Jones sent a letter, submitting only a portion of the information requested. Not only was the information sent the U.F.W. incomplete, it was also inaccurate. Mr. Jones' letter did not contain dates, times and places for a meeting, as requested in the U.F.W.'s letter. However, it stated, "When you have a written proposal for a complete contract to present to the company, then we can set up a time and place to start negotiations." (GC 37) .

U.F.W. representatives called Jones in the middle and latter part of March to repeat the request for an initial meeting Several phone calls between Burciaca and Jones followed, wherein Jones insisted that the U.F.W. have a complete written proposal

before the parties met. Burciaga urged that the parties meet in Hemet, where the company is located.

On April 5, Sandy Montoya, Burciaga's assistant, phoned Norman Jones' office and identified herself as a U.F.W. representative seeking to set up a negotiations meeting with Hemet Wholesale. Mr. Jones was not available. Montoya phoned twice, each time leaving a message for Jones to return the call, which he failed to do. On April 6, Montoya again called Jones and spoke to him. She requested a meeting, which was then set up for April 20. Jones suggested meeting in Riverside or Los Angeles; but Ms. Montoya did not agree to these locations. It was decided that Ms. Montoya would find a place to meet and then confirm the time and location in a letter to Mr. Jones.

On April 10, 1976, Mr. Burciaga sent a confirming letter to Mr. Jones, which designated Hemet as the location of the meeting (GC 44) .
In a reply letter of April 14, 1976, Jones stated that he had made arrangements for the meeting in Riverside. (GC 38). The first negotiations meeting between the U.F.W. and Respondent took place in Riverside, about 30 miles from Hemet where the company is located.

At the April 20th meeting, at which time he submitted the U.F.W.'s initial proposal, Mr. Burciaga requested that subsequent meetings be held in Hemet. He explained the U.F.W.'s policy of holding sessions near the work site, so that the members of the Negotiating Committee could attend the meetings without an unnecessary loss of pay. The company did not pay the workers for time spent off the job in these negotiations meetings.

Burciaga also asked for a counterproposal from the company. Mr. Jones replied that, after the U.F.W. sent the company the trust documents on its health and medical plans and the U.F.W Constitution, the company would submit a counterproposal within two weeks, at which time he would meet again. Jones would not set a date for the next session. (GC 46). At the time of his request, Jones testified he already had a copy of the U.F.W. Constitution and By-laws.

On April 29, Burciaga sent Jones the clan information and requested that a second meeting be held on May 19, 20, or 21. (GC 54). Such a meeting date allowed the company well over two weeks in which to formulate its proposal. However, Jones, by letter of May 14, stated that he would meet on June 4, which was I two weeks later than the suggested dates and more than one month after receipt of the trust documents. (GC 40). In the same letter, Jones said he would meet in the Riverside area, disregarding Mr. Burciaga's explanation that such a location made it difficult for the workers to attend.

David Burciaga responded in a letter of May 15, stating that he had another meeting scheduled for June 4, and suggested June 8, 9, or 10 as meeting dates. He again repeated his request to meet in Hemet, so as not to impose undue hardship on the workers' negotiating committee. (GC 41).

A meeting was scheduled for June 10 at 1:00 p.m. in Hemet. (R. J. R. K) . This meeting did not: take place. Tom Hamblin called on the morning of the meeting to say that Jones was in Kansas and his flight had been delayed by a tornado. Mr. Burciaga had driven 3-1/2 hours that morning from Bakersfisld to

Hemet to attend.

Instead the meeting was held on June 11. Mr. Burciaga cancelled scheduled negotiations meeting with another company to attend this session. U.F.W. representatives picked up the comp-any counterproposal at the Hemet Wholesale office on June 10. Although Jones had conditioned submission of this counterproposal (and the next meeting) on receipt of the U.F.W. trust documents, the counterproposal was a standard "boilerplate" proposal, which Mr. Jones used regularly in negotiations. (GC 42). Consideration of the U.F.W. benefit plans had in no way figured into this counterproposal.

At the June llth meeting, Mr. Jones said that his flight was held up due to a tornado in Garden City, Kansas, and that he had missed his Denver, Colorado, flight. Sandy Montoya called the airlines in Denver and Garden City to determine whether there had actually been such a delay. A representative of Frontier Air-lines, an airline flying out of Garden City, told Ms. Montoya that there had been no delays and no tornado. (Testimony of Sandy Montoya, May 18, 1977). Air Midwest, the other airline flying from Garden City to Denver, flew on the evening of June 9, 1976. Flight 905, scheduled to leave at 6:40, departed Garden City, Kansas at 7:05 p.m. CDT, June 9, 1976, arriving at Denver at 7:40 p.m. MDT. (GC 133).

The next negotiations meeting was scheduled for July 1. The meeting was cancelled by Jones, in a letter of June 26, which stated that he had to go to the hospital on June 29 and would be unable to attend. This letter was received by the U.F.W. on June (GX 43). On June 29, Karen DeMott, the director of the

U.F.W. San Jacinto field office, called Hamblin to inform him that the U.F.W. could not meet on July 1, due to changes in the negotiating department. On June 30, Ms. DeMott and Mr. Hamblin arranged a meeting for 1:00 p.m. on July 9, one of the dates suggested by Jones in his June 26 letter. (R. (M)).

On July 9, Ann Smith, the U.F.W. negotiator who took over the Hemet Wholesale negotiations in late June, and the Negotiating Committee arrived promptly at 1:00. Hamblin and Jones did not arrive until 1:15. They offered no explanation or apology for their lateness. The meeting lasted 2 hours and 15 minutes. The parties set a tentative data of July 13 and a firm date of July 20 for the next meeting.

The next meeting took place on July 21. Ms. Smith could not meet on July 13, and Mr. Jones was unavailable on the firm date of July 20. Ms. Smith and the company representatives arrived on time; the Committee was five minutes late. The session lasted one hour and five minutes. Ms. Smith urged that the parties meet for an entire day so that progress could be made in the negotiations. A meeting was scheduled for July 29 at 8:30 a.m

The meeting did not take place. It was cancelled by the company at 7:30 a.m., an hour before the meeting. Hamblin called; to say that Jones, due to an eye problem, was unavailable. Ms. Smith had driven from San Ysidro at 5:30 a.m. to attend. Although Mr. Hamblin said that he had tried to call the San Jacinto and San Ysidro field offices the day before, Ms. Smith testified that; she had been in San Esidro on July 28 and had received no message nor had she received a message upon her arrival at the San Jacinto office on the 29th. A meeting was then scheduled for August 6 at

8:30 a.m.

On August 6, Smith and the Committee arrived at 8:30. Kamblin and Jones did not arrive until 8:50. This session lasted three (3) hours. Ms. Smith requested two straight days of meeting to expedite negotiations. Because of vacations, Harablin and Jones were unable to meet until August 23. Ms. Smith asked to meet on August 24, and a meeting was scheduled on that date at 1:00 p.m. Then, the U.F.W. was on time while the company was fifteen (15) minutes late. The next meeting was set for September 3, at 1:00 p.m.

On September 3, Smith and the Committee arrived at 1:00 and Hamblin arrived at 1:30, He stated that he did not know Mr. Jones' whereabouts and that he would go back to the Hemet Wholesale office to await word of Mr. Jones. AL 2:00 he returned without Jones. Mr. Jones arrived at 2:30. His only comment upon arrival, which was directed at Mr. Hamblin, was that "planes are sometimes a problem." He did not apologize to Ms. Smith or the Committee until the end of the session, which lasted one hour and thirty-five minutes.

This apology was the only one that the company representative ever extended to the U.F.W. for their chronic tardiness. The company representatives never gave an apology or an explanation for their lateness, nor did they ever inform the U.F.W. ahead of time that they would be late for a meeting. Their lack of courtesy continued throughout negotiations. Furthermore, Ms. Smith testified that it was usual for an employer during negotiations to offer to pay the workers for time missed at the job because of ; tardiness of the employer's representatives. In this case, the company did not offer to pay. On September 3,

when Mr. Jones was one and one-half hours late, Ms. Smith requested that the Negotiating Committee be paid for time lost. company agreed to pay. However, in a subsequent meeting on November 18 to which Mr. Jones was forty-five minuses late, Ms. Smith, stating that such chronic tardiness showed a lack of respect to the workers and the Union, requested that the Committee be paid. The company representatives replied that henceforth the company would not pay for time lost when they were late to meetings.

Meetings with Hemet Wholesale for September 13 and September 16 were tentatively set at the September 3 meeting. However Jones could not meet on the 13th and Smith could not meet on the 16th. At the hearing, Respondent contended that September 16 was a firm date. The evidence shows that it was a tentative date. Smith testified that the date was tentative, and Hamblin's negotiation notes show that both the September 13 and September 16 meetings were tentative dates. (GC 128). Moreover, although Hamblin testified that all meetings were regularly confirmed by letter between Karen DeMott and himself there is no correspondence as to a September 16 meeting date.

Despite Smith's request for an earlier meeting date, made on September 3, Hamblin informed Smith that Jones was unavail able until September 29. A meeting was scheduled for the 29th at 1:00 p.m. Ms. Smith and the Committee arrived on time. Mr. Jones and Mr. Hamblin arrived at 1:20. The session lasted two hours and fifteen minutes, and the next meeting was arranged for October 12 at 1:00 p.m.

The October 12 meeting did not take place. Ms. Smith and the Committee arrived at 1:00. Mr. Hamblin arrived at 1:20

and said that he had not heard from Mr. Jones and that he would go back to the Hemet Wholesale office to wait. At 2:00, he returned, with no word from Mr. Jones, and suggested scheduling another meeting. At 4:00 Mr. Hamblin called Ms. Smith at the San Jacinto field office to say that Mr. Jones had told him that there was no need to meet on the 16th nor was there a reason to meet before October 26, because the U.F.W. had not submitted a wage proposal. Mr. Hamblin said that Mr. Jones' absence was due to a death in the family, "either the father or the mother", and problems with airline connections.

Ms. Smith cancelled the October 26 meeting. A few days before the meeting, she informed Mr. Hamblin that she would be unavailable due to difficulties in scheduling negotiations in San Ysidro.

A meeting was scheduled for November 8 at 1:00. Ms. Smith's car broke down in Riverside on her way to the meeting. She immediately called Ms. DeMott, who then phoned the company to inform the representatives that Ms. Smith would be late due to the break-down. Ms. Smith arrived at 2:30. At this meeting, the company presented its "complete" contract proposal. The session lasted 20 minutes.

A meeting for Monday, November 15 was arranged. Mr. Hamblin cancelled the meeting on the Friday before, stating that Mr. Jones would be unable to meet on that date. He gave no explanation for Mr. Jones' unavailability. A meeting was set up for November 18 at 1:00 p.m.

On November 18, Ms. Smith and the Committee arrived on time, as did Mr. Hamblin. Mr. Jones came at 1:45. There was no

discussion between the parties before his arrival. Mr. Hamblin sat in his pickup truck until Mr. Jones appeared. This meeting, at which **Ms.** Smith enumerated the omissions in the company's November *8* counterproposal, lasted forty-five minutes. A meeting for December 1 was arranged.

The December 1 meeting was cancelled by Hamblin the day before the meeting. Smith had sent a letter to the company on November 22, listing the omissions in the company proposal and requesting certain information. (GC 57). Hamblin stated that he did not want to meet until he had compiled the information. A meeting was scheduled for December 10 at 1:00 p.m.

On December 10, Smith and the Committee arrived at 1:00; Jones and Hamblin did not arrive until 1:20. This meeting, in which the U.F.W. rejected the company's November 8 proposal presented by Mr. Jones as a complete contract, lasted forty minutes.

The next, and last, meeting between the U.F.W. and Respondent was held on January 24, 1977. Ms. Smith requested a meeting in a letter of December 14. Mr. Jones did respond by letter on January *6,* 1977. He specified certain dates in January when he would meet. (GC 63; GC 50) . To arrange the meeting, Ms. Smith tried to contact Mr. Jones. On January 7, she called both of Mr. Jones' numbers and left messages with his answering service and with the person answering his other number. Jones did not return the calls. On January 10, Ms. Smith again called and left messages. Mr. Jones did not call back, so she then called Mr. Hamblin. Ms. Smith requested a meeting, explaining that Cesar Chavez, the president of the Union, was going to attend to see if

progress could be made in these negotiations. She urged that a meeting be held soon. When Mr. Hamblin called back, he said that Mr. Jones would only meet on the dates specified in his January 6 letter to Ms. Smith. (GC 50).

Smith and Hamblin scheduled the meeting for January 24 at 10:00 a.m. Smith requested that the Hemet Wholesale partners be present. She emphasized that the meeting was an important one in that, with Chavez and the partners present, the parties could seriously meet and discuss the reasons for problems in the negotiations .

On January 24, Cesar Chavez, along with Ann Smith and the Negotiating Committee, came to the meeting. Norman Jones and Tom Hamblin were the only company representatives present; none of the partners attended the meeting. Mr. Jones exhibited a rather disrespectful attitude. Mr. Chavez declared a boycott against Hemet Wholesale and the U.F.W. contingent walked out. The meeting lasted fifteen minutes.

I. Providing Information

After the date of certification, the U.F.W. made three separate requests for information from Respondent that would aid the union in negotiations. Heraet Wholesale Company responded to each request insufficiently, and failed to provide requested relevant information.

1. First Request. By letter dated February 10

, 1976, from

Cesar Chavez and received February-12, 1976, by Tom Hamblin, the U.F.W. requested employee wage, benefit and costing information. (GC 31(a) - (d)). The letter prefaced the request for information as:

> [I]nformation necessary to the Union's ability to present meaningful contract proposals at our coming negotiating sessions. (GC 31(a)).

To facilitate negotiations, Chaves requested forwarding of the requested information "to us within ten days." (GC 31(a)}.

It was not until approximately twenty-four (24) days from receipt of the request that the U.F.W. received a response from the company. By letter with attachments, dated March 5, 1976, Norman Jones stated:

> This is in regards to your letter of February 19, 1976, to Hemet Wholesale Company wherein you requested certain informations (sic). Attached hereto is the information that we believe will be helpful in good faith bargaining between the parties. (GC 37(a)). (emphasis added).

The attachments to Jones' letter of March 5, 1977, appear to be a number of different documents that were "thrown" together. They do not show that any thought was used in their compilation. The attachments in no way corresponded to the order of the union's request. There appears to be no internal organization; to the material. Several pages of the attachments appear to be form bulletins or letters to emoloyees. (GC 37(g) - (i)) .

Hemet Wholesale's response dated March 5, 1976, was incomplete. Referring to the U.F.W.'s request (GC 31 (b) - (d)) by paragraph, the following information was not supplied by the Respondent: .

Paragraph I (GC 31 (b)): Hemet Wholesale Company failed completely to provide age, sex, date of birth and social security number of bargaining unit members.

Job classification of unit member was designated by a letter, with a key stating what word the letter designated. Nowhere was there a description of the job functions each classification involved. Nor did respondent, within the very broad nurseryman classification, describe the differing duties of each workerfalling within that classification. There is no way of knowing how many paid holidays are guaranteed or on what terms they are guaranteed.

No spousal information was provided: name, age, date of birth and residence.

Paragraph 2(a) (GC 31(b)):Information regarding health insurance not provided was "the past two (2) years claim experience, including the amount of loss and the number of claims." (GC 31(b)para.2(a)

Paragraph 2(b) (GC 31 (b)): No information was provided regarding the U.F.W.'s request for information on profit sharing or retirement benefits. No statement was made that Hemet Whole-sale Company did not offer such benefits.

Paragraph 2(c) (GC 31 (b)):No information was provided as to life insurance or death benefit program. No statement was made as to whether Hemet Wholesale Company offered such benefits.

Paragraph 2(d) (GC 31 (b)): The only information provided regarding paid holidays was the bottom paragraph of what appears to be a bulletin. (GC 37(g)). That paragraph states that:

> Paid company holidays are granted to those employees having 6 months of (sic) more of continuous full-time employment with the company. (GC 37(g)).

"Continuous" and "full-time" employment are phrases which each employer may define differently. Nowhere did Respon-

dent define these terms.

Respondent also failed to provide "the aporoximate number who qualified last year for each paid holiday." (GC 31(b) 1 paragraph 2 (d)).The "approximate number"' could not: be deter-mined from an examination of the list of unit members. (GC 37(b) - (f)). That list did not: indicate seasonal lay off, of which Respondent has some, or persons discharged as of the date of the list but who qualified for one or more paid holidays "last year". (GC 31(b) paragraph 2(d)). With such factors, an examination of the list would not yield even an "approximate" number of those who qualified. Respondent did not indicate that the Union was to make such a comparison.

Paragraph 2(e) (GC 31 (c)}: No information was provided enabling the U.F.W. to comprehend how eligibility for paid vacations was determined by Respondent. The only vacation information provided appeared to be a bulletin, dated October 7, 1969. (GC 37(g)). That bulletin stated:

> In order to be eligible for vacation time, employment must: be continuous,full-time, and you must be working regularly both before and after the normal vacation period.

No information was given regarding the "amount of pay received" (GC 31(c) paragraph 2(e)) for paid vacations. That portion of the bulletin (GC 37 (g)) that states pay "will be based on" does not indicate the actual pay employees received.

None of the "names of these employees who received such pay during the past year", (GC 31 (c) paragraph 2 (e)) , were pro-vided.

Paragraph 2(f) (GC 31 (c)) : No information was provided regarding "sick pay, jury pay, supplemental unemployment insurance, housing or other fringe benefit." (GC 31(c) paragraph 2(f)) No statement was made as to whether Hemet Wholesale Company offered such benefits. No disclosure forms were provided. (Par. 2(g) } .

Paragraph 3 (GC 31(c)): No information was included in the company's response to the U.F.W. request for:

> A summary of the wages, fringe benefits and other compensation now offered by your Company to all other employees outside the bargaining unit; and a summary of the wages, fringe benefits and other compensation now offered by your Company to all other employees at other properties maintained by you and not covered in this certification.

No statement was made as to whether Hemet Wholesale Company had employees at other properties not covered by the certification.

Paragraph 4 (GC 31(c)): No information was provided in response to the U.F.W.'s request regarding compensation under a contract with another labor union. No statement was made as to whether Respondent had such a labor contract.

Ann Smith renewed the U.F.W.'s request for demographic material (GC 31 (b) paragraph 1) at the July 9, 1976, meeting. She stated such information was necessary to formulate the plans. Tom Hamblin stated in response that such information was on the employee applications.

Hamblin indicated to Smith that since the source of this information was the employees, the union ought to obtain this in-

formation from the employees. Norman Jones stated that if the company agreed to the pension plans, the information would be provided.

Much of the demographic information requested by the U.F.W. (GC 31(b) paragraph 1) is contained on the employment registration forms that Hemet Wholesale employees were required to complete upon hiring. (GC 116(a) - (b)). Included thereon are employee's sex, marital status, date of birth and social security number. (GC 116 (a)). Also contained in the forms is information regarding "emergency names and address", (GC 116(a)), frequently the employee's spouse. The social security number of each employee is also kept by Respondent on a computer.

2. Second Request. Approximately 75-85% of Hemet Wholesale workers fall within the broad "Nurseryman" classification. Within that classification, a number of different job functions were and are performed and are designated by the company: loader, canner, pickout man, waterman, pruner, and spray man.

At the meeting of September 3, 1977, Ann Smith requested the company provide her with job descriptions to enable her to fit a U.F.W. wage proposal to a particular job description. She was told "good luck" by the company, and job descriptions were not provided.

3. Third Request. On November 8, 1976, Respondent presented a wage proposal to the U.F.W. (GC 53 Article 22). At the November 13, 1976 meeting, Ann Smith presented the company with a wage proposal covering most employees. (GC 59) .

By letter dated November 22, 1976, to Norman Jones, Ann Smith requested further information relevant to wage negotiations

(GC 57). Four sets of information were requested.

First, a current list of unit employees, their date of hire and wage and classification were requested because of the passage of time from the date of the first list, February 14, 1975

Second, Ann Smith requested:

> A list in writing of all wage increases that have been paid to individual workers and/or groups of workers since the certi fication, the amount of the increase and the date it became effective. (GC 57 p.4 Item (2)) .

By letter dated December 6, 1976, Tom Hamblin stated that "la] list in writing of all wage increases will also be provided." (GC 60 p. (3) Item 2).

Attached to the letter of December 6, 1976, (GC 60) was a list of employees (GC 62) hourly wage rates, date of hire and some classification designations. A cover sheet stated:

> With the exception of two employees, listed below, there have been no other rate changes [since the thirty-five cents/hr wage increase]

The two employees listed were Hector Romero, 8/14/76, $0.25 hr., and Lester Wolfe, 10/23/76, $0.40 hr. (GC 62)

The information provided did not respond to the U.F.W.'s request which had been for a list of all increases paid since certification. The December 6th letter specified only those increases given subsequent to the May 9th wage increase and ignored the three month interval between certification and the May 9th increase. Also, the company failed to include the wage increase received by Wesley Mudge on 7/3/76 along with those of Wolfe and Romero.

The December 6th response did, not contain information on at least eighteen (18) other wage increases granted after certification but prior to May 9th to the following employees: (excluding Becerra, Pickle and Kornele):

Julio Abarca
Saul Ambriz
Randy Lee Casburg
Salvador Curiel
Jose Churck Duron
Clements Gutierrez
Joaquin Macias
David R. Robinson
Ramon Mendez
James E. Robinson
Jose Sandoval
Earl B. Siler
Jesse Stone
Ireneo E. Tapia
Jesus S. Valencia
David Vargas
Joe Leyvas
Delbert Hightower

(GC 37(b) - (f) ; GC 62; GC 8-29, 114(a) and (b)).

While a comparison of the list submitted in March (GC 37 with the December 6th list (GC 62) establishes that there were indeed wage increases affecting the pay levels of those seventeen employees, the failure of the company to list the specific date and amount of each increase made the information useless for purposes of wage negotiations.

Further, the information provided by the company on December 6th (GC 62) failed to name forty-two other workers who appear on the March list (GC 37). These workers received individual merit wage increases from" five cents co twenty-five cencs an hour and more between the certification dace and May 9th. (Those employees are listed in GC 30(D) - (g)).

In total, Respondent omitted the names, amounts and date

of wage increases of at least sixty (60) workers, almost half of the work force, who received individual merit wage increases. These very substantial omissions were made even after Hamblin cancelled the negotiation meeting set for December 1, 1976, because he wanted to gather the information requested by Ann Smith in her letter of November 22, 1976.

J. Respondent's Conduct at the Bargaining .Table

Respondent's attitude at meetings. Respondent engendered a negative bargaining atmosphere. The mood or climate of a meeting often contributes much to the constructiveness of a negotiating session. Respondent's negotiator Norman Jones openly exhibited contempt for U.F.W. officers and negotiators during the negotiation meetings.

David Burciaga, who testified he tries to conduct negotiations in a friendly manner, found Jones' tone throughout the first two meetings sarcastic. Jones lounged and grinned in a contemptuous manner. At one point in the first meeting between the parties, on April 20, 1976, Jones stated: "I've had misunderstandings with your Union before. Ask your El Presidente or Dolores Huerta. They know me." Chavez testified he had not met Jones before January 24, 1977. At the same meeting, and in response to a request to meet near Hemet, Jomes stated he wasn't interested in a hospital or church but wanted a "neutral" place. (GC 46 p.4) .

At the end of the first meeting, David Burciaga, an experienced negotiator, felt that the mood was "very bad." The meeting was one of the worst he'd ever attended. He thought the U.F.W. would never get a contract with Hemet Wholesale.

Jones' demeanor did not change at the second meeting, held on June 11, 1976. For example, Burciaga questioned the company's position that a U.F.W. representative need obtain permission prior to access to company premises. Jones responded... "You want to be able to come in any time? You want to be a little God I or a little Cesar?" (GC 47 p.11).

Ann Smith testified that she recalled the Hemet Wholesale negotiations so well because of the contrast to other negotiations Jones' conduct during meetings was rude. He would clean his fingernails during discussions.

Jones made numerous contemptuous remarks about the U.F.W and its negotiator. On two occasions, he called the U.F.W. the "screaming eagles". He made contemptuous reference to the names of U.F.W. benefit plans. During a discussion at the July 9, 1976, meeting of a Union proposal on non-discrimination for political belief, Jones, while looking at Ann Smith, stated, "I don't like negotiating with card-carrying communists." Further undercutting the decorum of meetings, Jones made comments about Ann Smith being prettier than David Burciaga and, with regard to the access issue, he stated that "[Y]ou're close enough to kiss but not kissable.... You haven't romanced me enough."

Often, Jones' mood would govern his conduct. At some meetings, he would state he was in a good mood and make a few minor concessions ("that's ail the yeses I have today"). Other times he was very hostile.

At the final meeting of January 24, 1977, Jones was consistent in his expression of contempt. Chavez testified he attended that meeting to see if he could get negotiations moving.

Upon all persons being seated, Jones, who was situated directly across from Chavez, had his body turned at right angles to Chavez and was facing Ann Smith, seated near Chavez. Jones spoke first to Ann Smith. In a contemptuous and hostile tone of voice, he stated, "I see a couple of new faces. Do you want to introduce them?" A secretary for Chavez introduced himself. Jones then stated to Ann Smith something to the effect that "I haven't seen your 'El Presidente' for a while." Jones then stated "where do we go from here?" When Chavez then spoke, Jones looked at him and stated "Oh, do I direct my remarks to you?" By contempt and insult, Jones converted a potentially constructive session into thirteen minutes of tension.

1. Respondent's Response to the U.F.W. Proposal.

U.F.W. negotiator David Burciaga submitted the Union's bargaining proposal to the company at the first negotiations meeting on April 20, 1976. This proposal contained forty-one (41) articles which set forth the Union's position on all subjects which the Union felt was important in good collective bargaining relationship. (GC 32). Although Mr. Burciaga requested a counter-proposal at this meeting, the company negotiators conditioned the submission of the counterproposal on receipt of U.F.W. trust documents. Mr. Burciaga sent the information on April 29th; the company did not submit its counterproposal until June 10. (GC 39; GC 54) .

At the June llth meeting, Mr. Jones stated that anything not contained in the counterproposal was unacceptable to the company. When Mr. Burciaga noted the lack of response to certain provisions in the U.F.W. proposal, such as dues check-off

and hiring hall, Mr. Jones indicated that the company opposed them.

The company negotiators, in their June 10th counter-proposal, failed to respond to more than 20 areas of concern expressed in the U.F.W. proposal. (GC 42). They ignored several U.F.W. articles in their entirety, and responded only partially to others. The company counterproposal did not address the following issues expressed in the U.F.W.'s proposal:

Recognition (Article 1): The U.F.W. article spells out the scope the employer's commitment to its new contractual relationship with the Union. The company counterproposal did not reflect the concepts set forth in sections B through G of the U.F.W. article. Section 3, for example, provides that, if the employer forms other business associations, the collective bargaining agreement would cover the agricultural employees in these new enterprises., thus preventing the employer from circumventing its contractual obligations to the Union. The company proposal did not respond to this idea.

Section F, which provides that the company will inform its workers and supervisors of its obligations under the new contract, was not dealt with by the company. Ms. Smith testified that such a provision is extremely important, to the orderly administration of the contract; she explained this to the company. it is necessary because the contract effects a complete change in the management-employee relationship, the supervisors, who have day-to-day contact with the

workers, must be made aware of the newly established policies. A contract would accomplish nothing if the supervisors could not comply with the contractual procedures. Ms. Smith also stated that, in her experience as a negotiator, she never encountered opposition on Section F, because it was clear to the companies that they also needed this provision.

Hiring (Article 3): The purpose of the U.F.W. article is to replace t-he historical method of hiring used in agricultural labor which was riddled with discrimination and favoritism. The system proposed by the U.F.W. provides that the hiring of new or additional workers would be done through a hiring hall on a first-come, first-serve basis. The company counterproposal did not contain an article on hiring and did not respond to the Union's hiring concept; its broad Management Rights clause (Article XVI of the counterproposal) stated the company's exclusive right to hire workers. No reference was made to a hiring procedure.

Seniority (Article 4): The U.F.W. article provides that vacancies would be filled and promotions made on the basis of seniority. This method of filling jobs would make employee placement more objective and lessen the danger of favoritism. The article also provides that an updated seniority list be given to the Union by the company every three months. Ms. Smith testified that such a provision was important not only to the workers in determining lay-offs and promotions, but was also im-

portant to the company. An error in employee placement caused by the lack of an up-to-date seniority list could result in the filing of a grievance and in the company's subsequent liability for backpay. Ms. Smith stated that an agreement on furnishing seniority lists had never been a problem in her negotiations with other companies.

The Respondent's counterproposal did not respond to the issue of determining employee replacement by seniority nor to the issue of seniority lists.

Grievance and Arbitration Procedure (Article 5):Several areas of the U.F.W. proposal were not addressed by the company negotiators in their counterproposal. For example, Section D of the U.F.W. article provides for the presence of the supervisor in the grievance procedure. This would encourage the parties to work out their problem at the lowest level of the grievance procedure by ensuring more truthful meetings on the part of both parties. The counterproposal did not respond to this concept, nor did it respond to the Union provision for an expedited arbitration procedure in Section K, which reflects the U.F.W.'s concern for speedy resolution of disputes.

Discipline and Discharge (Article 7): The U.F.W. article provides that the company has the right to discipline and discharge employees for just cause. The phrase, "just cause," enables the Union to use the grievance procedure after an unjust disciplinary action by the company.; This article also provides for the presence of a

Union steward when the company makes charges, and for written notification to the Onion of the reasons for the discharge. A written notice would eliminate grievances caused by faulty communications or misunderstanding between workers and supervisors and would thus ensure that only legitimate grievances would be pursued.

The company negotiators did not respond to any of the three concepts in their counterproposal.

Leaves of Absence (Article 10): The company's counterproposal did not respond to the U.F.W.'s provisions for leaves of absence due to union business, jury and witness duty, and illness or injury.

Health and Safety (Article 13): The U.F.W. article expresses several areas of concern, including proposals on the formation of a health and safety committee, the use of pesticides, the condition of toilets and drinking water, and the furnishing of tools.

The company counter, Article XIV, simply stated that the company would make "reasonable provision" for the employees' safety. Ms. Smith testified that this article was not responsive. Because "reasonable provisions" was not defined, there was no way of knowing whether such "provisions" covered the Onion's concerns.

The company negotiators also completely failed to respond to the following U.F.W. articles in their entirety:

Workers Security (Article 9): This article provides that the workers would not be forced to cross a picket line set up at another company nor would they be asked to do the

work of another company's employees who are out on strike. Such a provision would prevent a struck employer from borrowing workers from other companies, a probable occurrence in a closely-knit agricultural community.

Maintenance of Standards (Article 11): This article ensures that all benefits and favorable conditions provided to the workers before the contract will be maintained.

Supervisors (Article 12): The purpose of the article, which ? provides that non-unit employees, such as supervisors, may not perform unit work, is to prevent the erosion of the bargaining unit.

Mechanization (Article 14): This article ensures that unit members will not be displaced, if possible, through mechanization of operations.

Union Label (Article 16) : This provides for the mandatory use of U.F.W. labels on all company boxes. The purpose of the label was to let the public know, particularly in light of the U.F.W.'s long boycott history, that the product was handled by U.F.W. members. -The label also serves to affirm the workers' sense of pride in the product and their work.

New or Chanced Job Operations (Article 17): The purpose of this article is to set up a procedure to handle situations , arising after the date of the ccntract. If the company ' were to introduce a new job classification, this article! establishes the procedure whereby the new wage rate would be negotiated.

Rest Periods (Article 22): This provides for a maximum of three days' pay to an employee who must make funeral arrangements or attend a funeral.

Jury Duty and Witness Pay. (Article 24): The article provides that a worker will be reimbursed for the difference between witness or jury pay and his or her daily earnings.

Records and Pay Periods (Article 26): The article requires the company to keep records and to furnish the employee with a copy of his or her hours worked and wages paid.

Income Tax Withholding (Article 27): The purpose of the provision is to ensure that an employee will not have to pay a large tax bill at the end of the year.

Credit Union Withholding (Article 28): This provision helps a worker use the U.F.W. Credit Union, so that he or she need not pay the high interest rates on loans supplied through regular banks.

Report on Payroll Deductions (Article 32): The weekly summary re-port provided in this article ties in with the U.F.W.'s benefit plans.

Subcontracting (Article 36): This article serves to protect the work *of* the bargaining unit by preventing the employer from subcontracting work to a third party.

Location of Company Operations (Article 37): This ties in with the access provision; the Union representatives must know the location of company properties which they may enter.

Successor Clause (Article 40): This article ensures that the comp any can not circumvent the collective bargaining agree-

ment by selling its business to another company.

The company counterproposal also failed to respond to the provisions in the U.F.W. proposal for employee benefit plans: Robert F. Kennedy Farm Workers Medical Plan (Article 29), Juan de Cruz Farm Workers Pension Fund (Article 30), and Martin Luther Fund (Article 31). Article XX of the company counter bore the heading "Group Health and Accident Insurance", but there was no written provision following the title. (GC 32; GC 42).

By letter of June 26, 1976, Mr. Jones submitted three unnumbered articles, stating that they were "items left off due to typing errors."(GC43). These were "Union Leave of Absence," New and Changed Job Classifications,." and "Separation Pay Plan." Ms. Smith testified that the first two items did respond to the equivalent U.F.W. articles.

The company counter failed to respond in substance to the U.F.W.'s proposal; the form of the counterproposal also did not follow the U.F.W. proposal. The numbering of the company's articles did not coincide with the U.F.W. articles, and the heading on company articles were often different from those in the Union proposal. For example, the company's response to the U.F.W. Article 6, "Access to Company Property," was entitled "Union Representation," Article XV. Furthermore, certain provisions which were treated as separate articles in the U.F.W. proposal were grouped together under heading called "General" in the company proposal. Ms. Smith testified that, in her experience as a negotiator, companies usually submit: counterproposals which follow the form of the Union proposal so that comparison and discussion of the proposals are made easier. The different lumbering of re-

spondent' s counterproposal probably made discussion more difficult.

The company negotiators did not address several areas of concern to the U.F.W. in their counterproposal. Yet Respondent did not present it as a partial proposal, but rather as a complete proposal. Hemet Wholesale's failure to submit a written response was not cured by an oral explanation of their position. Because they did not counter the Union's proposal, there was little basis for serious discussion on these issues.

2. Respondent's Inconsistent Positions and Refusal to Bargain.

The company's failure to respond in its counterproposal to issues expressed in the U.F.W. proposal evidenced a lack of response to U.F.W. concerns throughout negotiations . In addition the company representatives did not explain their proposals nor did they explain their problems and concerns with U.F.W. proposals. Mr. Jones' bargaining method consisted of flat rejections of U.F.W, proposals and insistence on the company's proposals, with no discussion of either position. Because the company's concerns were never expressed, the U.F.W. negotiators had no way of accommodating these concerns. Mr. Jones' refusal to discuss concepts was compounded by the lack of any consistent posture in company policy. Mr. Jones shifted position on several articles during negotiations!, making reasonable discussion of the proposals impossible.

3. Recognition.

Throughout negotiations, Mr. Jones insisted, without explanation, on limiting the scope of the bargaining unit.

In the April 20 meeting with Mr. Burciaga, Mr. Jones, perusing U.F.W. Article I on Recognition (GC 32) which establishes the unit as "all agricultural employees," stated that the certi-

fication language would have to be spelled out. He also said there would be "a battle" over section 3 and indicated that section G would be a problem. (GC 46).

The company counterproposal was presented on June llth. (GC 42). This proposal did not spell out the language of the certification, which designated "all agricultural employees, of the Employer" as the appropriate unit. (GC 2-E). Instead, the company Article I placed geographical boundaries on the unit: "All agricultural workers at the main nursery on both sides of Hewett Street and at the propagation unit on Menlo Street...." This language appeared to be taken from the Notice and Direction of Election, as amended by the A.L.R.B. decision, Hemet wholesale, 2 A.L.R.B. No. 24 (1976), not from the Certification of Representative. (GC 2-B; GC 2-E). Jones would often insist this was the language of the certification.

Burciaga told Jones that the company provision limited the unit by placing these boundaries on it. Burciaga pointed out the language in the Certification. Jones said that the company clause did not mean what it said, but he would not explain his statement.

At the July 9th meeting, Mr. Jones stated to Ann Smith that the company would not sign a contract without the exact language of the certification, again referring to sec-ion 3 of the company proposal. Ms. Smith expressed the Union's concern that the company would move beyond these geographical boundaries sec forth in section S, and that the unit would be lost. She explains section 3 of the U.F.W. article to Mr. Jones, who simply rejected it without explanation.

The U.F.W. Recognition article contained several sections. At this same July 9th meeting, Mr. Jones said he saw no problems with section C, rejected section D, and accepted the first sentence of section E. He accepted the first part of section F; the company rejected the idea that it should "encourage workers" to participate in union business. Jones 'also said that section G belonged in the article on Grievance Procedure. These acceptances and rejections were made without explanation of company concerns and policies.

On August 6, Mr. Jones again said that the company would not sign an agreement without the exact language of certification. He stated that the company had no plans to add acreage and that this contract would have a one-year duration. Ms. Smith pointed, out, as an analogy, that, although the Union had no plans to strike, the company would want a no-strike clause. Mr. Jones replied that perhaps there was language to cover the problem.

However, at the August 24th meeting, Jones repeated that the company would not sign without the certification language. He said that the language of the U.F.W. article was not good enough, but he did not suggest new language.

Although he had agreed to section C on July 9th, he now rejected this section, without explaining his reversal. Section C simply states that the company recognises the rights and obligations of the Union to negotiate and administer the contract. Ann Smith testified that she had never had problems with agreement on this section before. Mr. Jones also rejected sections D, F, and G. He rejected section E in its entirety, although on July 9th, he had accepted the first sentence of the section. In

rejecting it, he said the matter was covered by state law.

The August 24th meeting can be divided into two sessions) At the beginning, Mr. Jones maintained his typical "bargaining" posture of skimming through the U.F.W. articles, rejecting them out-of-hand, without explanation. Because of these tactics, Ms. Smith, after a caucus with the Negotiating Committee, made a strong protest. She declared that the company was not bargaining in good faith and that Mr. Jones' attitude prevented any progress in negotiations. Mr. Jones thereupon accepted section C, to which he had agreed at a previous meeting. He also stated, as an explanation for his rejection of section G, that the section was beyond the scope or bargaining.

On September 3, Mr. Jones repeated the company's stand on signing a contract only if it contained the exact certification language. On September 29, he only stated that the parties disagreed on recognition. Mr. Jones never made known the company's concerns on the other provisions of the proposed U.F.W, article, nor did he ever give a reason for, or an explanation of, the company's insistence on the "language of certification" or, more corretly, the language of the election notice and A.L.R.B. decision. This occurred despite repeated requests.

Although other sessions were held after September 29th, there were no actual discussions of the proposals after that; session. The company submitted a proposal on November 3th, Ms. Smith enumerated the omissions in that proposal on November 13th, and the company submitted a corrected proposal on December 10th, but the parties did not discuss it. The last meeting on January 24th was very short. The parties again did not discuss the pro-

posals.

4. Union Security and Dues Check-off

The company insisted on an open shop provision and adamantly opposed dues check-off, but gave no adequate explanation for their position.

At the April 20 meeting, Mr. Jones, in looking over the U.F.W. proposal, said only that there would be a problem with Article 2, "Union Security." (GC 32; GC 47). In this article, all workers are required to become Union members within five days of employment, and good standing of members is to be determined by 11th Union. The Company is required to deduct dues, upon presentation by the Union of authorisation signed by the workers. (GC 32).

On June 11, the parties went over the company counter-proposal, which provided for an open shop, contained no dues check-off section, and defined "good standing" as the "payment of monthly dues." (GC 42).. Mr.Burciaga said that, if the dues, 2% of the gross wages, were not deducted, it would be impossible for the Union to collect dues. Mr. Jones replied that the company did not have to do the Union's bookkeeping for it, and that deducting the dues was too costly. Mr. Burciaga remarked that the counter stated that employees were not required to join the Union; Mr. Jones said "That's right." There was no discussion on the issue.

On July 9th, Mr. Jones stated only that the parties' positions were already defined as to Union security. He said that the company was against check-off on principle, although he did not explain the principle involved. He repeated that the company would not do the Union's bookkeeping for it.

No mention was made of union security at the July 21st meeting. On August 6th, Mr. Jones, referring to union security, dues check-off, and hiring hall, told the U.F.W. representatives that he did not want them to have misgivings on the company position. Me said that there might be compromise on union security, but none on the other two subjects. Mr, Jones did not explain this position or raise company problems and concerns with the concepts involved. At the very next meeting on August 24, Mr. Jones, disregarding his statement of a possible compromise on union security, declared that the company was "diametrically opposed" to workers being required to join the Union. He did not explain the reasons for this opposition.

In the second part of the bifurcated August 24 meeting, Mr. Jones added to the company's Article II (D) provision that good standing would be determined by payment of monthly dues, "and/or union uniform initiation fees. " The determination of good standing under the N.L.R.A. is based on payment of such fees and dues. The criteria for determining good standing under Section 115.3 (c) of the A.L.R.A. are much broader. Mr. Jones was not aware of this. .Furthermore, on June 11, Mr. Burciaga had told ;Mr. Jones that the Union was not asking workers for initiation fees. (GC 47}.

At the September 3 and September 29 reeling, Mr. Jones, in skimming the proposals, simply said there was no chance in the company's position and that the parties disagreed.

There was no substantive discussion throughout negotiations on the subject of union security and checkoff. The company representative gave no substantial reason for the company's

opposition to check-off. Mr. Jones simply stated that the company was opposed on principle and that it would not do the union's bookkeeping for it. At one point, he mentioned that it. was too costly. However, Mr. Hamblin testified that the payroll records were computerized. The company regularly deducted such items as F.I.C.A., S.D.I., state and federal income tax, medical insurance, and gloves and tools. Some of these amounts, such as medical insurance, were regular sums deducted *at* each pay period, which other amounts, such as income tax, varied with each payroll

period. (GC 28(a)).

5. Hiring Hall.

On April 20, Mr. Jones said hiring hall. Article 3 of the U.F.W. proposal, was going to he a problem, and mentioned that the company did not have a seasonal work force. On June 11, when Mr. Burciaga asked for the company's position because the company counter had no provision for a hiring hall or a hiring procedure, Mr. Jones replied, "We're saying no to your hiring hall," but gave no explanation for this position.

At a July 9 meeting, Mr. Jones called the hiring hall "a big stumbling block" in negotiations. Ms. Smith explained to Mr. Jones that the purpose of the hiring hall was to replace the j arbitrary and discriminatory system of hiring which was prevalent in agricultural labor. She informed him of the changes in the Union's system over the past few years, whereby only new and additional workers would be dispatched by the Union through this facility. Previously, all employees were dispatched through the j hall. Now, all those employees on the seniority list go directly to work.

Ms. Smith explained these changes to alleviate any possible fears or prejudices against the old hiring hall system which the company might have had. However, the company representatives did not express their concerns over the hiring hall. Mr. Jones simply stated chat the Hemet Wholesale work force was not. seasonal. Ms. Smith pointed out that the hiring hall could therefore be of less burden to the company, because the hall would be used only rarely. She stressed, however, that when new workers were needed, they should have an objective hiring system, which the hiring hall could provide. Mr. Jones did not respond to these comments.

On July 21, the issue was not mentioned, but, on August 6, Mr. Jones said that there would be no compromise by the company on hiring hall. At the beginning of the August 24 meeting, Mr. Jones stated that the company rejected the hiring hall provision. At the end, he said that other companies despised it. When Ms. Smith asked him for the names of these companies, Mr.Jones' would not give them, but only stated again that Hemet Wholesale opposed the hall.

On review of the articles on September 3 and September 29, Mr. Jones said that there was no change in the company's position and that it was "diametrically opposed" to the hall.

Testimony indicated that at no time did Mr. Jones raise any substantive concerns of the company. At no time did he explain or give reasons for the company position. The Respondent simply refused to discuss the hiring hall.

6. Seniority - Probationary Period for New Employees.

The company insisted on a probationary period for new

employees without recourse to the grievance procedure. The. company representatives did not give explanations for the inclusion of this provision.

At the June 11 meeting, in examining the company counter Proposal; Burciaga questioned the provision in Article IV (B) and (CI for such a probationary period.(GC 42). Jones said only that the company wanted the provision. When Burciaga objected to the fact that the workers had no recourse to the grievance procedure j and could thus get fired at will, Mr. Jones said, "How about 30 days?" before a worker could grieve. Burciaga rejected the idea of any time lapse before a worker could grieve.

On July 9, Ms. Smith told Mr. Jones that the U.F.W. was opposed to the ninety day probationary period. Ms. Smith stated that the grievance procedure is exchanged for a non-strike clause if workers give up the strike weapon, workers should be able to react from the first day of employment to company action through the grievance procedure. Ms. Smith also pointed out to Mr. Jones the U.F.W. provision for a fourteen day period before employees' names are put on the seniority list, but stated the workers must always have the opportunity to grieve.

No mention was made of the probationary period at the next two meetings. On August 24, Mr. Jones said that the company insisted on such a period; at the end of the meeting, he reduced the probationary period to 75 days, with a thirty day period before recourse to the grievance procedure.

At the September 3 and September 29 meetings, Jones stated that there was no change in the company's position and that the parties disagreed. The Union sought further discussion but Jones refused.

Throughout negotiations, Mr. Jones gave no reasons for the company's insistence on this provision. Respondent did contend at the hearing that this was a training period. However, Mr. Kambiin testified that almost all the workers at Kernet Wholesale are unskilled and that the semi-skilled jobs require only a very short training period.

7. Access to Company Property .

The company negotiators insisted throughout negotiations that Union representatives obtain permission from the company before entering the premises to service the contract.

Article 6 of the U.F.W. proposal provides that union representatives had right of access to company property to conduct normal Union affairs and that the representatives would notify the company that they were on the premises. (GC 32). On April 20, Mr. Jones asked if the article meant that the representatives had to first obtain permission, and Mr. Burciaga replied that only notification was necessary.

The equivalent article in the company counter, Article XV, "Union Representation," required Union representatives to ask the company's permission before entering. (GC 42). In reviewing the counter on June 11, Mr. Jones seated that the company still owned and ran the property; if the U.F.W. was denied access, they could take it to arbitration. He stated that "the Union gets no special privileges," (GC 47).

On July 9, Ms. Smith discussed both proposals and stated that the basic disagreement between notification and permission was a difference crucial to the union. with a permission provision, the company could interfere with contract administration, ,

making it difficult or impossible to converse with members on the job or to investigate grievances properly. When Ms, Smith stresse the importance of access, Mr. Jones said that U.F.W. representative were already abusing access. Ms. Smith asked for specifics, but Mr. Jones only said that the foremen had said there were problems. However, Mr. Hamblin said that no problems had occurred and that Karen DeMott, the director of the U.F.W. San Jacinto field office, always called first.

On July 21, Mr. Jones said merely that access was a thorny issue and that he would talk to the Kemet Wholesale partners .

At the August 6 meeting, Mr. Jones submitted three new proposals, one of which was "Union Representation." (GC 51). This proposal was identical in concept to the company'-s June 10 proposal. Both articles simply divided access into two time frames: section A provided that Union representatives "may be granted permission to enter" before and after working hours and/or at lunch break, while section 3 stated that Union representatives must ask permission to enter during working hours. At this August 6 meeting, Ms. Smith pointed out that there was no difference in the proposals. Mr. Jones then changed "may" to "shall" in section A.

This change did not affect the company position that permission must be asked during working hours. Ms. Smith testified that this access was essential and that she had never *seen a* Union contract without such a provision. But Mr. Jones gave no reason or explanation for the company position on this point, other chan the fact that the company "still owned and ran the property". He raised no problems that the; company might encounter if such a pro-

vision were included in a collective bargaining agreement,

On August 24, Mr. Jones said that there was no change in the company's position. At the September 29 meeting, when the subject was brought up, Mr. Jones told Ms. Smith without further explanation that, on the access issue,, they were "close enough to kiss but not kissable. You have to romance me first".

8 . Discrimination.

The parties took three months to agree on this relatively minor article. The company negotiator stated his own personal reasons for opposing part of the U.F.W. proposal and never stated the company's position on this issue.

No mention of U.F.W. Article 8 on discrimination was made at the April 20 meeting. On June 11, Mr. Jones objected to the U.F.W.'s provision for non-discrimination for political belief. (GC 32). He stated that he objected to people with a Communist card "for personal reasons". He did not state the company's position. Mr. Jones said he would agree to non-discrimination because of "language spoken".

On July 9, Mr. Jones said he would agree to the article if "lawful political belief" were included, because Communism was not lawful. He said that he did not like to negotiate with card-carrvino Communists. This statement was directed at Ms. Smith. She testified that this and other statements by Jones and his general attitude showed hostility and contempt for the U.F.W.

On July-21, the parties reached agreement on this article: They combined the first phrase of the company's Article XIX, entitled on-discrimination, " that "The parties agree no continue their long standing policies," with the U.F.W. article. The

company article had included "membership or non-membership in the Union," but this phrase was not included in the agreed upon provision.

9 Bulletin Boards .

The parties spent an unreasonable amount of negotiating time discussing this minor issue, due to the company negotiator's shifts in position and due to the company's failure to propose, and agree upon, this benefit which it had already been providing its employees.

U.F.W. Article 38 on Bulletin Boards requires that the company furnish bulletin boards en which the Union may post notices of Union business. (GC 32). At the April 20 meeting, upon reading this proposal, Mr. Jones said, If you want one, you will have to put one up." Article VII of the company counter stated that the company would provide the space for a board and that no political literature could be posted. (GC *52).* On June .11, when Mr. Burciaga asked Mr. Jones if he wanted the Union to come onto the property to build one, Mr. Jones said no, but that the company would provide only the space for a board. Mr, Jones did not elaborate as to how the bulletin boa-rd would come into existence.

There was little mention of bulletin boards until August 6, when the company agreed to provide boards, provided no political literature was posted. Although Ms. Smith said that it was difficult to know what constituted "political literature," Mr. Jones did not explain the company's meaning. On August 24, Ms. Smith, to find out the company's definition of the term, asked Mr. Jones if he considered Proposition 14 literature to be political literature and not related to Union business. Mr. Jones said

that he did, so Ms. Smith did not agree to the article.

However, on September 3, when Ms. Smith again asked for a definition, Mr. Jones reversed, and stated that Proposition 14 was not political. He gave, as examples of Union business, Union meetings and blood drives.

Ms. Smith testified that about one-half hour was spend on this issue. She said that she had never had difficulties over bulletin boards before, and that discussion never took more than a few minutes.

The company representatives gave no reason for their opposition to providing boards. Hemet Wholesale was already providing boards for employee use at various locations.

10. Subcontracting.

The company negotiators refused to seriously discuss this issue at any time during negotiations.

The company's June 10 counterproposal did not respond to the Union's Article 35, "Subcontracting," which was designed to protect the work of the bargaining unit. (GC 32). At the July 9 meeting, when Ms. Smith asked if Hemet Wholesale had subcontracted in the past, Mr. Hamblin replied that no agricultural work had been subcontracted, but that shoo work, such as repair of heavy equipment, had been.

On July 21, no mention was made of the issue and no counterproposal was submitted. On August: 5, when Mr. Jones submitted three counterproposals, a subcontracting clause was included under Article XXI, "General". (GC 51). However, this clause gave the company the right: to subcontract any and all work. Ms. Smith explained to Mr. Jones the purpose of the subcontracting

clause and the U.F.W. concern that the bargaining unit would be eroded by subcontracting work. Mr. Jones' only response was, "Should I mark it 'hold' or 'no'?" When Ms. Smith asked him what he meant, he said, "No", you don't agree, or 'hold', you want to study." Jones made no substantive comment.

On August 24, Mr. Jones added section C of U.F.W. Article 36, which states, "The Company will notify the Union in advance of any subcontracting," as a second paragraph to the company's Article XXI(d). However, there was no change in the company's position as to its right to unilaterally subcontract.

11. Successorship

The company negotiator shifted positions on the successor ship issue during negotiations and failed to discuss the underlying concept.

The company's June 10 counterproposal contained no response to the U.F.W.'s Article 40 on successorship. (GC 32). On July 9, Mr. Jones said that the company would submit a counter "along the same lines" as the U.F.W. provision. However, at the next meeting on July 21, he did not give the U.F.W. the promised counterproposal. And, on August 6, Mr. Jones stated that the company rejected the concept and did not want a successor clause. He gave no explanation for the rejection or for the shift in position. He repeated the company's opposition to the article en August 24.

On September 29, Mr. Jones again promised a counterproposal on successorship. This counter did not materialize until December 10. However, this provision, section K of Article 26, "General," was a weak provision which did not include the es-

sential concept of notice to the successor employer of the existence of the contract and which covered only the "business at the location covered by this Agreement." (GC 51). Mr. Jones never expressed the company's concerns or problems over this issue of successorship.

K. Respondent Rejected Items Which It Had Previously Proposed or no Which It Had Agreed.

On November 8, 1976, the company representatives presented the U.F.W. with a contract proposal which, they said, represented everything the company thought should be in a contract and which contained all agreements that the parties had made.

This contract proposal was prepared in an all-day session at the end of October by Mr. Kamblin, Mr. Jones, and John Mc-Alearney, an attorney from the firm of Surr & Hellyer, whom the company had consulted on labor matters on several occasions. They compiled this contract using Mr. Hamblin's negotiation notes, Mr. Jones' notes, and the notes written in the margins of the various proposals during negotiations. Mr. Hamblin also testified that he met again with Mr. Jones after the all-day session to review the prepared contract.

Jones presented the contract proposal to the U.F.W. as a complete contract which included everything that Hemet Wholesale felt should be in an agreement. The contract proposal contained virtually the same provisions as in the company's June 10th proposal for such major issues as recognition, Union security and check-off, seniority, and hiring hall. And, upon examination of this proposal , Ms. Smith discovered that numerous items, a majority of the matters either agreed to by the parties or proposed by

the company, were not included in the contract proposal. (GC 53).

At the next meeting on November 18, Ms. Smith told the company negotiators that the contract proposal was completely unacceptable and protested that it did not even include the few agreements made in half a year of negotiations. The company, in the November 8th contract proposal failed to include the following items:

1. Union Security. Article 2(D) of the November 8th contract defined good standing only as "payment of monthly dues," although the company had added "and/or initiation fees" at the August 24 meeting.

2. Seniority. Article 4 contained a seventy-five day probationary period for all new employees and a seventy-five day period without recourse to the grievance procedure. However, on September 3, the company had reduced the probationary period for Nurseryman to sixty days, with a seventy-five day period for other job classifications. And, on August 24, the company had proposed a thirty day period without recourse to the grievance procedure.

The seniority article also included, in section D(e), the phrase that seniority would be lost by overstaying a leave "without permission or a satisfactory explanation acceptable to the Company," which Mr. Jones had agreed to delete from the company counter on September 3.

The company had agreed, on September 29, to section B(5) of the U.F.W.'s seniority article, which provided that a worker who becomes a supervisor loses his or her seniority. (GC 32). On the same date, the parties had agreed also to section B(7), which required the company to provide the Union with

a biweekly list of employees who had lost seniority (because the company used biweekly lists) . The company did not include these two agreements in the November 8 contract, even though agreement was clearly exhibited in Tom Hamblin's negotiation notes. (GC 121)

3. Bulletin Boards. The November 8 article provided only that the company furnish space for the boards, although Mr. Jones had agreed to supply the boards on August 6.

4. Vacations: Article 8 stated that an absence of six days disqualifies an employee for vacation credit in that month, although the company had agreed to sixteen days on July 21.

5. Holidays. Article 10 (B)(2)(d) established a qualifying period of six months before an employee is eligible for holiday pay. However, Jones had reduced this qualifying time to three months on July 21 or August 6, and to thirty days on August 24.

6. Maintenance of Standards. Article 12 did not include) the parties' agreement on section B of the U.F.W.'s Article II, wherein the Union agreed to narrow the scope of the provision by deleting the words "or other mutually agreed upon change" which followed "The Company agrees to observe all past... practices favori able to the workers ... unless...altered by this Agreement." The U.F.W. also agreed to alter section A; instead of "conditions of" employment shall be improved," the parties agreed to "conditions.. shall be changed and/or improved." (GC 32).

On October 12, Ms. Smith submitted a counterproposal with these agreed changes to the company. (GC 52). The company's June 10th counterproposal had not contained a Maintenance of Standards article. These agreements were not included in the

November 8 contract. Ann Smith testified that this omission was particularly distressing in that she felt that this was one of the few articles which had resulted from substantive discussion and an interchange of language between the parties.

7. Leaves of Absence. The company's Article 15 contained a six month limit on jury and witness duty leave, which had never been proposed before.

The section for leaves due to illness or injury was limited to six months, with no provision for an extension of time upon valid medical proof, which the company had proposed on September 3.

The company also placed a six month limit on pregnancy leave with no extension for medical complications, although the company had agreed on September 3 to a nine month leave and an extension.

8. Safety and Health. Article 18 of the November 8 contract proposal did not contain the preamble of the Union's article, which the parties had agreed to on September 29, nor the agreement to provide records of pesticide use to the Union, as in Article 13(d) of the U.F.W. proposal. (GC 32).

9. Management Rights. Article 20 provided that the company had the right to discharge "for cause," although the parties had agreed, either on July 21 or August 6, to discharge "for just cause. "

10. Grievance and Arbitration Procedure. Section B(l) of Article 23 stated that grievances must be taken up within seven working days, although the company had agreed to ten days on September 29, after the initial June 10 proposal of five days. [GC 53; GC 42).

Section B(3) provided for a ten day limit in which to advise the other party that a grievance would be taken to arbitration, despite agreement on September 29 to shorten the period to seven days .

Section C(1)(a) of the company's June 10 counter proposed a seven day limit in which to select an arbitrator. (GC 42) . On September 29 , the parties agreed to a three day limit but the November 8 article again established a seven day limit, which did not respond to the Union's efforts to shorten the procedure. Also, section C(l) (b) established a thirty day limit in which to commence arbitration, although the period had been shortened to ten days on September 29, from the June 10th company Counterproposal of thirty days .

11. Non-discrimination. Article 24 did not include language agreed upon by the parties on July 21, on non-discrimination for political belief, language spoken, and religion.

12. Subcontracting. On August 24, the company had agreed to notify the Union in advance of any subcontracting, as stated in U.F.W. Article 36 (C) . (GC 32) . This advance notification was not included in the November 8 proposal. Article 26 (D) , "General." (GC 53) .

13. Written Notices. Section F of Article 26, "Written Notices." did not contain the time limit clarifications to which the parties had agreed on August 6. (GC 51 (b)) .

14. Discipline and Discharge. On August 6, the company had agreed to two issues: 1) the Union steward's right to inter-View workers in private, and 2) the company's notifying the union, in writing, of a discharge, Ms. Smith submit -ed these agreements

in writing on October 12. (GC 52). However, they were not included in the November 8 contract.

The November 8th contract proposal rejected more than twenty proposals or agreements that the company had made in the course of negotiations.

At the November 18 meeting, when Ms. Smith went through the contract and enumerated the omissions and changes, the company representatives claimed that the omissions were due to typing errors.

In a December 6 response to Ms. Smith's November 22 letter which enumerated the changes, Mr. Hamblin admitted that his notes reflected several of the omissions and changes pointed out. (GC 57; GC 60). Examination of the negotiation notes of both Jones and Hamblin exhibited more agreement. {GC 120, 12.1, 123, 124) .

L. Respondent Remained Inflexible On Major Issues and Made Only Nominal Concessions Throughout Negotiations.

The company representatives never discussed or came to grips with the important articles and concepts basic to a collective bargaining agreement, despite the U.F.W.'-s constant attempts at serious discussion. That the company's June 10th Counterproposal is almost identical to the December 10th counterproposal on all major issues indicates that the company made no movement or serious attempt to reconcile the differences between the parties.

The June 10th counterproposal included a recognition Clause which severely limited the unit, an open shop provision, and a broad management rights clause. It contained no provision for dues check-off or for a hiring hall. Its seniority clause

Contained a ninety day probationary period in which to acquire Seniority, with no recourse to the grievance procedure, but con-Tained no provisions that employee placement would be determined by seniority. The wage rate clause established the company's Right to pay higher wages to any employee or any classification, Without consulting the Union. (GC 42).

The June 10th counterproposal ensured, in effect, that The company would retain complete control over the wages and work-ing conditions of its employees, subject to minimal interference From the Union. On all major issues, the company's December 10th Counterproposal did not vary from its previous proposal; it set Forth the same limited Union recognition, no check-off, no hall, no Union security, a broad management rights clause, a probation-ary period for new employees , although with a somewhat reduced time period, and company control over the wage rate. (GC 53; GC 61) .

The company representatives conceded only minor points . And, for the most part, these concessions were unaccomoanied by discussion of the issues. Rather, Jones would sporadically enumeri-ate certain items, giving limited concessions . These concessions consisted mainly of increasing or decreasing numbers in a parti-cular article. For example, a typical concession was Mr. Jones' handling of the U.F.W.'s Seniority Article 4(3) (3), wherein a la id -off worker loses seniority if he or she fails to report with-in three days after recall. (GC 32 Article 4 13) (3)). The comp any counterproposal provided for a five day recall procedure and, in a subsequent meeting, Mr. Jones changed the time limit to Seven days. This "concession" was not even requested by the

UFW either in its proposal or in discussions, and did not deal With the concepts of seniority loss which were at stake in the Article.

Other company concessions were also marginal. After Several meetings, the company representatives finally agreed to Furnish two bulletin boards and to withhold income tax. These Benefits were already the practice of the company. (GC 28 (a)). They also agreed to ten minute rest periods and certain health and Safety provisions, such as supplying drinking water, toilets and First-aid supplies. These benefits are all required by state law.

The company's negotiator's intransigence and failure to Voice the company's concerns made it impossible for the U.F.W, Representatives to move on their proposal and reconcile the differences between the parties. The U.F.W. representatives were willing to explain their positions on issues to the company.

U.F.W. flexibility to accommodate a company's concerns is evidenced by a comparison of two other U.F.W. contracts with nurseries, Akitomo Nurseries (GC 34) and Brokaw Nursery (R T) . The Akitomo contract was negotiated from the Interharvest Master Agreement, and the parties resolved the local issues in negotiations. Brokaw Nursery, on the other hand, was a special company with particular concerns and particular employment policies, which the company expressed to the U.F.W. during negotiations. The result is a very different agreement than that reached in the ; Akitomo contract .

The Hemet Wholesale representatives never expressed their concerns. Despite this, the U.F.W. negotiators modified their provisions on discipline and discharge, workers' security,

maintenance of standards, seniority lists, time limits and scope of the grievance procedure, among others. (GC 52).

The Respondent's second counterproposal was presented at the November 8, 1976 meeting, which lasted twenty minutes. In presenting the proposal, Norman Jones statsd that the document was a complete contract, containing all agreements heretofore made and everything the company thought ought to be in a contract. Jones stated further that the proposal would be on the table until November 30, 1976, and if accepted and ratified by the Union before that date, the wage schedule contained therein would be effective November 1, 1976. In so stating, Jones' tone of voice was one of disgust, as if he .was tired of being at the table.

In main, the counterproposal presented on November 8, 1976, contained no changes on key issues between the grower and the Union. (GC 42, 53) . However, the November 8th counterproposal did contain some changes in the articles presented in the June 10th counterproposal, and, as well contained some additional articles addressing subjects presented in the original U.F.W. proposal. The November 8th counterproposal added provisions on bereavement pay, rest periods, subcontracting, and new or changed job classifications. However, some, of the additions represented chances which the company was required to make by law and thus cannot be considered concessions on the company's part. Such additions included the provision for rest periods and the guarantee in Article 18 that the company's employees would be provided with adequate toilet facilities and potable drinking water in the field.

Aside from ,minor changes, important articles of the first

company counterproposal remained essentially the same: non-recognition of the unit, open shop, broad management rights, employer discretion regarding wage increases, access by the permission only, probationary period for unskilled employees. (GC 53). In addition, the November 8th counterproposal omitted most of what few concessions respondent had made.

After Ann Smith by person and letter (GC 57) had raised the omissions with Respondent, Heine t Wholesale submitted revisions to its November 8th counterproposal. These revisions took the form of the December 10th counterproposal which was submitted for ratification and signature by the Union "on or before December 31, 1976'." (GC 61, Article 34). Ann Smith asked Jones whether the proposal was a package. Jones replied that it was. Jones stated on December 10th that he wanted Union rejection of the proposal in writing. Then, he stated, the company could decide whether the parties were at legal impasse.

No date was set for a future negotiation meeting.

At the January 24, 1977 meeting, Cesar Chaves requested that the ultimatum be withdrawn. The Respondent refused.

M. Lay-offs. After 'the January 24, 1977 meeting, Respondent laid off between fifteen and twenty workers because of a new method of weed control. The new weed control program commenced by October, 1976. The U.F.W. was not notified and given an opportunity to bargain about the Lay-offs.

III

CONCLUSIONS OF LAW

A. Jurisdiction

The Respondent, Hemet Wholesale Company, is an agricultural

Employer within the terms of the A.L.R.A., the U.F.W. is the Labor Organization representing agricultural employees within the meaning of the A.L.R.A., and the employees are agricultural employees Within the meaning of the A.L.R.A

B. Bargaining Sessions: Scheduling and Attendance

1. Conditions on Meetings. On February 10, 1976, the U.F.W. Sent the Respondent a request for a preliminary negotiations Meeting to which the Respondent did not respond until March 5,1975. The Respondent's March 5th letter, besides enclosing some information requested by the Union in its February 10th letter, contained the following statement conditioning the scheduling of the First meeting:

> When you have a written proposal for a complete contract to present to the Company, then we can set up a time and place to start negotiations.

In light of the Respondent's stated refusal to meet to establish such preliminaries as setting ground rules, opening lines of communication and formulating a schedule for meetings, and the paucity of information provided by it in response to the Union's request for data regarding pension plans and other fringe benefits indicates Respondent's reply was not made in good faith. Respondent had an experienced negotiator whose awareness of the contents of the U.F.W. contract proposal in general must surely have led him to realize that he had net provided sufficient data upon which the Union could formulate a "proposal for a complete contract." The letter of March 5, 1976, wan an attempt co stall negotiations by placing an unreasonable condition upon the initial; meeting of the Union and Respondent.

At the first meeting of the U.F.W. and the Respondent, the Respondent's negotiator conditioned a second meeting upon his receipt of Union trust documents with regard to U.F.W. health and medical plans and the U.F.W. Constitution. Since the Union had requested a counterproposal from the Respondent at this meeting, the Respondent was within its rights to request health and medical proposals, but to condition a meeting or development of a Counterproposal upon receipt of the U.F.W. Constitution or its trust documents is indicative of Respondent's bad faith conduct in the bargaining process. See United States Gypsum Co., 200 N.L.R.B. No. 46, P. 305, 308, 82 L.R.R.M. 1240 (1972). This conclusion is reinforced by the fact that the Respondent's negotiator already had a copy of the U.F.W. Constitution and so was merely engaging in a dilatory maneuver.

2. Scheduling of Meetings. At the April 20th meeting, the Respondent would not set a date for a second meeting. On April 29, 1976, the U.F.W. sent Respondent a request for a second meeting suggesting three dates (May 19th, 20th or 21st) which were well beyond the two-week period requested by Respondent for development of a counterproposal. The response of Respondent's negotiator, giving the date of June 4, 1976, a date six weeks after the first meeting, is indicative of a desire to delay, particularly since the Respondent did not inform the Union of the June 4th date until May 14th when the Respondent's negotiator sent the Union a letter.

The second meeting was ultimately scheduled for June 10, 1976 because the Union's negotiator had another meeting on May 4th. However, the June 10th meeting did not take place because of

Respondent's negotiator's apparent inability to attend. Tom Hamblin, the Respondent's personnel director, had informed the Union on the morning of the meeting of the delay of the negotiator plane flight from Kansas due to a tornado. However, a call made by a union employee to an airline flying out of Garden City, Kansas, and Denver, Colorado, the locations from which Respondent negotiator was said to be traveling, established that there were no delays or tornadoes affecting the Respondent ' s flights . Respondent ' s negotiator lied about the reason for his inability to attend the June 10th meeting. His perjury in establishing his excuse is worse than providing no excuse at all. The lack of sincerity of the Respondent's negotiator points up the cavalier attitude of Respondent in the negotiation process. Binder Metal Products, Inc. v. International Union of Allied Industrial Workers of America, Local 976, A.F.L.-C.I.0.,154 N.L.R.B. No.125 (1955).

The Respondent's negotiator arrived fifteen to twenty minutes late to the July 9th meeting, the August 6th meeting, and the August 24th meeting without an explanation or apology. He was one and one-half hours late to the September 3rd meeting and did not appear at all for a meeting scheduled for July 29th. The July 29th meeting, scheduled in Hemet so that the employees' Negotiating Committee could easily attend, was not cancelled until an hour prior to its 8:30 a.m. starting time. The day before the meeting the Respondent's personnel director apparently knew that Respondent's negotiator would not attend but he did not contact the U.F.W.'s negotiator with the news in order to save her a futile three hour drive to He met.

The pattern of delay without legitimate excuse evidenced

in Respondent's attendance record indicates a lack of concern on Respondent's part with making serious progress in bargaining. The National Labor Relations Board has found a refusal to bargain in good faith where the employer's dilatory tactics involved actions far less open to censure than Respondent's. Exchange Parts Co., 139 N.L.R.B. 710, 51 L.R.R.M. 1366 (1962), enforced, 339 F.2d 829, rehearing denied, 341 F.2d 584 (5th Cir. 1965). In Exchange Parts, the board found a refusal to bargain where in an eight Month period, meetings were held on an average of only two times a month, the employer's representative was often tardy, and he was unable to schedule the next meeting at the end of the last.

That Respondent's negotiator was busy with other activities besides those he had undertaken for Respondent provides an Explanation for his consistent tardiness, unwillingness to schedule meetings on consecutive days, and occasional complete absence from the scheduled bargaining session. However it does not justify such an approach to bargaining. Nor does the fact that the record does not reveal frequent vehement protests by the Union representative about the conduct of the Respondent's negotiator in any way counteract the evidence of bad faith indicated by the behavior of Respondent's negotiator. In Insulating Fabricators, Inc., 144 N.L.R.B. 1325, 54 L.R.R.M. 1246 (1963), enforced mem., 338 F.2d 1002, (4th Cir. 1964) , the Board found that the fact that the employer's negotiator was a busy labor relations attorney located eight hundred miles away who could not schedule or remain at meetings in order to successfully conduct negotiations was not an adequate excuse for his dilitory behavior.

The Board noted that :

> the employer could not, excuse his failure to provide a diligent representative by showing that the Union representative agreed to postponement in meetings or did not protest delay. There was no need for persistent or unpleasant reiteration of a demand to keep it alive. 144 N.L.R.B. at 132. See "M" System Inc., 129 N.L.R.B. 527, 47 L.R.R.M. 1017 (1960).

The unavailability of the Respondent's negotiator is Underscored by the fact that no bargaining sessions were held After September 3, 1976, until the 29th of that month because the Respondent's negotiator could not meet until then, despite the Union's request for an earlier meeting.

The cavalier attitude of Respondent's negotiator is Further pointed up in his failure to notify the U.F.W. or the Respondent's personnel director who also attended these sessions That he would not attend the next scheduled meeting on the 12th of October. The fact that: Mr. Hamblin, the Respondent's Personnel Director, was present at the September 3rd session to which Respondent's negotiator was one and one-half hours late, and at the October 12th session at which Respondent's negotiator did not appear at all, does not diminish the significance of the conduct of Respondent's negotiator. Mr.Hamblin did not have the authority to negotiate for Heine nor did he have sufficient knowledge of the process to move negotiations along. Thus, on these occasions, the Respondent simply failed to provide a negotiator.

The Respondent failed in its duty to furnish a represents tive who could meet regularly and promptly with the Union representative. If the Respondent's selected negotiator could not carry out that duty then it was Respondent's responsibility to find a negotiator who did have the time. In making a determina-

tion of Respondent's bad faith, it is not necessary to consider Respondent's intent. B. F. Diamond Construction Co., Inc., 163 N.L.R.B. No. 25, 64 L.R.R.M. 133 (1967). Respondent's intent aside, the result of the behavior of the Respondent's negotiator was to stall negotiations and frustrate the bargaining process . Thus, Respondent is found to have violated Section 1153 (e) of the A.L.R.A. by refusing to bargain collectively in good faith with the Union .

C. Respondent's Response to the Union's Request for Information

1. The February 10th Request. The Union's first request for information from the Respondent was made in its February 10th letter requesting preliminary negotiations with Respondent. The U.F.W. stated that it felt that the information requested was necessary to its ability to negotiate and formulate proposals . At issue here is whether the respondent delayed, or in some instances , failed to provide information which it was aware had been requested by the Union.

The Union's request may be divided, roughly, into four Subparts . The first subpart, containing a request for demographic data on employees and their spouses, was ignored completely by the Respondent in its March 5th response. That subpart also contained a request for job classification, current wages, and date of hire of each employee to which Respondent did respond. The Union's request for the data which Respondent failed to supply was not unreasonable , nor. would its compilation have been unduly burdensome to Respondent. The Union needed some of the demographic data for use in formulation of its benefits package because age and date of birth are used by actuaries in formulating benefit plans. The

request for Social Security numbers was reasonable because they enable the Union to clearly identify migrant and oft-moving farm workers .

The Supreme Court has held that where information is needed by the bargaining representative for proper performance of its Duties, there can be no question of the general duty of an em-Ployer to provide it. N.L.R.B. v Acme Industrial Co., 385 U.S. 432 (1966) .

In Curtis-Wright Corp. v. N.L.R.B., 347 F.2d 61 (3rd Cir. 1965) , the Court of Appeals noted that wages and related information pertaining to the employees in the bargaining unit is "presumptively relevant" in the bargaining process and the Union is not required to show its precise relevance unless effective employer rebuttal is forthcoming. 347 F.2d at 69. See San Diego Newspaper Guild v N.L.R.B. 548 F.2d 863, 867 (9th Cir. 1977). Here there was no rebuttal at all of the U.F.W.'s request but simply silence on the Respondent's part; Respondent's March 5th response totally ignored the Union's request for demographic data. The effect of Respondent's lack of response was to deny the Union information upon which to base benefits proposals, thus crippling the bargaining process rather than facilitating it. The fact that some of the demographic data requested may have been available through the unit employees does not vitiate the Respondent's duty to provide such information where relevant. The National Labor Relations Board has held that the union need not seek elsewhere for information which can readily be supplied be the employer where the employer is the most convenient: and accurate source of the data. N.L.R.B. v Item Co., 220 F.2d 956 (5th Cir. 1955). While

the Respondent had no obligation to provide records on information it does maintain, it had a duty to "rebut" the Union's request if such was the case. The Respondent testified that it did not keep reliable records pertaining to the data requested by the Union on the spouses of employees. However, the Respondent did not inform the Union that it kept no such information so that the Union could seek it elsewhere. The Respondent failed to make any response at all to the Union's request. In any case, the .Respondent did have the demographic data requested as to each employee and it did not supply that information either.

The second subpart of the February 10th request was for a summary of fringe benefits offered by the Respondent to the unit employees including information with regard -to the past two years of claims experience on Respondent's health insurance plan. While the second subpart listed some types of benefits specifically with regard to which it desired data, the directions were clear in stating that the Respondent should provide information on all of its benefit plans.

In its Hearing Brief, Respondent contends that its failure to supply information on claims experience is justified under the rules set forth in Sylvania Electric Products, Inc. v N.L.R.B. 358 F.2d 591 (1st . Cir.) cert . denied, 385 U.S. 852 (1966). The Sylvania court said:

> An employer is not required to disclose welfare plan cost information for the purpose of bargaining about whether he is receiving the best coverage for his money, because he is not obligated to discuss this matter with the Union. ... However, when the Union makes the same demand in order to better evaluate the desirability of an increase in wel-

> fare benefits as against an equivalent increase in the take-home pay, matters as to which the employers must bargain, the Board might properly conclude that the information, though collateral, was so necessary to effectuate negotiations that withholding it without good reason was inconsistent with the duty to "exert every reasonable effort to make and maintain" agreements . 353 F.2d at 593 .

Testimony of the Union's representative at the hearing established that the U.F.W. sought data on Respondent's claims experience to determine the adequacy of the Respondent's health plan in relation to that developed by the Union. Certainly such a purpose is consistent with the Union's need to measure health benefits presently provided the employees against other benefits which could be provided, including increased health benefits.

The Respondent did not provide information regarding profit-sharing and retirement benefits and did not state whether it provided such benefits. Similarly, the failure to provide any data on life insurance or death benefits was not accompanied by any statement: indicating the Respondent had no such programs. However, the Union couched its request in such a form that the Respondent might have reasonably assumed that where a request was not pertinent because the Respondent did not have the program, the Respondent need not make any response. Since no evidence was presented establishing that the Respondent had the following programs for its agricultural employees, no finding of refusal cc provide information is made here as to information requested en life insurance, death benefits, profit-sharing; retirement programs sick pay, over-time pay, supplemental unemployment insurance, or housing benefits.

While the Respondent could have couched his response to the Union's request for information regarding paid holidays in Somewhat clearer terms by defining "continuous" and "full-time," it would not be found that the information provided fell so short of the Union's request as to constitute a refusal to provide in-Formation but for the fact that the Respondent's failure to de-fine those two terms made it impossible for the Union to make a Determination of the number of employees who had qualified for such holidays in the previous year. The same weaknesses are in-Herent in the information provided the U.F.W. with respect to paid vacations. Respondent's failure to define its terms renders the data provided relatively useless for the Union's purposes.

The third subpart of the Union's February 10th request Amounted to a repetition of the data requested in the second sub-part, except that the Union sought the data as it pertains to employees outside the bargaining unit and at other properties maintained by Respondent, not included in the certification. While information, such as wage data pertaining to unit employees is presumptively relevant to the bargaining process, such informa-tion as that requested by the Union in the third subpart is not ordinarily pertinent to the Union's performance of its duty and requires a showing of relevancy by the Union before the Respondent: must comply. San Diego Newspaper Guild v N.L.R.B., 548 F.2d 363, 867 (9th Cir 1977). Since the Union failed to make such a show-ing at the time of the request it cannot be said that the Respondent violated its duty to provide relevant information.

Finally, the fourth subpart requested a copy of any con-tract that the Respondent might have with other labor unions, in-

cluding benefit schedules connected therewith. Since the union had been certified as the exclusive bargaining representative for the Unit employees, it is not clear what contract the Union might be referring to unless it would be those in which employees outside the unit represented by the Union, were involved. Since the Union made no showing of the relevance of such data the Respond ent's failure to respond is not indicative of bad faith.

2. The July 9th request. On July 9, 1976, the Union renewed its request for the demographic data for the Respondent's Employees and their spouses . This time the Respondent flatly Refused to provide the data it had available unless and until it first agreed to the benefits plan proposed by the U.F.W. Since some of those plans required that the Union first obtain the demographic data requested, the Respondent's second denial served to continue the aggravation of the bargaining process steming from the initial denial.

3. The September 3rd Request. The request made by the Union on September 3, 1976 that the company provide job descriptions to enable the Union to develop a wage proposal was flatly denied by the Respondent. Particularly, the Union needed a breakdown and definition of the tasks included under the "nurseryman" classification which involved a number of different types of functions including loading, pruning, and spraying. The denial of the Union's request is a clear breach of Respondent's duty to bargain in good faith, since the information requested is clearly relevant to the bargaining process and both "reasonable and necessary to the Union's role as bargaining agent." Curtis-Wright Corp, v N.L.R.B., 347 ?.2d 61, 58 (3rd Cir. 196 5) .

4. The November 22nd Request. By letter dated November 8, 1976, the Union requested an updated list of employees, their date of hire, wage and classification, and, as well, a list of all wage increases, the amounts, and the dates given since certification. The Respondent's response on December 6, 1976, two weeks later, failed to include classifications for all employees listed and, more importantly, contained misleading information with regard to wage increases. The Respondent's response indicated that only two employees, Romero and Wolfe , had received increases subsequent to May 9th. The Respondent excluded another employee, Wesley Mudge , who had received a wage increase on July 7, 1976, and more significantly failed to specify the dates and amounts of increases received by sixty other workers between the date of certification and May 9th. The Respondent's response is a flagrant violation of its duty to bargain in good faith.

The omissions are too substantial and numerous to reflect Mistakes on Respondent's part, particularly in light of Respond-Ent's cancellation of a December 1st negotiation session so that it would have more time to gather the data requested by the Union.

5. Finding. Respondent is found to have violated Section 1152 of the A.L.R.A. in that it has denied the right of its employees to bargain collectively by both refusing to provide information to the Union relative to the bargaining process and in providing false information. Also, Respondent's failure to provide data necessary to the union in the preparation of its proposal constitutes a refusal to bargain collectively in good faith in violation of Section 1153 (e) of the A.L.R.A.

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D. One-Year Term for Collective Bargaining Agreement

Insistence without good reason that the term of a collective bargaining agreement conclude at the end of a Union's certification period or that it run for less than a year is evidence of a lack of good faith in bargaining. Insulating Fabricators, 144 N.L.R.B. 1325, enforced, 338 F.2d 1002 (4th Cir. 1964) and Solo Cup Co., v N.L.R.B., 332 F.2d 447 (4th Cir. 1964). However, mere insistence on a contract to run one year is not sufficient grounds upon which to conclude that there is bad faith. The Respondent's negotiator insisted on a one year contract. There is no evidence, however, that the Respondent demanded that the contract terminate upon the Union's certification data or that the Respondent insisted that the Union accept a term of less than one year. The contention that Article 33 in the Respondent's November 8th counterproposal and Article 34 in the Respondent's December 10th counterproposal conditioned Union acceptance upon agreeing to a term of less than one year is supported by insufficient evidence to warrant a finding of bad faith. The dates contained in the " article reflect, in the case of the November 8th counterproposal a period of one year, and in the case of the December 10th counter proposal a period of one year and one month. The contention of the General Counsel appears to be that since the articles specify a period during which the contract would have a retroactive effect there would be less than one year of contract time ahead of the parties upon signature. However, there is insufficient evidence that the dates contained in the articles were not subject to chance upon the Union's request or that they constituted any more than the Respondent's proposal for a time frame.

E. Unilateral Wage Increases

The wage increases given by the Respondent to its employees may be divided in time between those given prior to April 22, 1976, and those given subsequent to that date. Because the charges upon which the complaint against Respondent was based were filed on October 22, 1976, April 22, 1976, is the earliest date not precluded from consideration by the statute of limitation Section 1160.2 of the A.L.R.A. The Supreme Court in Local Lodge No. 1424, International Association of Machinists v N.L.R.B., 362 U.S. 411, 416 (1960), has explained the effect of the statute of limitations very well.

> [O]ccurrences within the six month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within limitations period; and for that purpose § 10b ordinarily does not bar such evidentuary use of anterior events.

Thus, a determination has not been made herein as to whether or not wage increases given by Respondent prior to April 22, 1976, were violative of the A.L.R.A. Those increases have been con-Sidered, however , in the examination of the Respondent's overall Wage practices.

Respondent has no written wage policy, its merit increases Being given on an individual basis at the discretion of its manage-ment , and its general wage increases occurring upon what appears to be the momentary determination of Respondent's general partners; that it was not competitive in the labor market.

The specific wage increases in issue here are: 1) those of

four employees, Leyvas (April 26, 1976), Wolfe (October 1976), Romero (an increase in August 1976 and one in November 1976) , and Mudge (July 1976); 2} the general wage increase given most unit employees on May 9, 1976; and 3) the change in hourly rate of pay of three employees, Becerra, Kornele, and Pickle on October 9, 1976. With the exception of the May 9, 1976, general wage increase, the Respondent never gave the Union prior notice regarding any of these increases. Respondent contends that the increases given the first group of four employees are isolated wage adjustments which can in no sense be considered to constitute an illegal unilateral action to change working conditions. But it is difficult, indeed impossible, to classify the increases given these four employees as "isolated" when they are viewed against a background of the merit increases given at least fifty-five unit employees between February 3, 1976 and April 22, 1976. Even if Respondent's actions with respect to Romero, Mudge, and Wolfe had been isolated, it must be pointed out that mere isolation would not diminish the seriousness of granting unilateral wage increases to selected employees during negotiations. See N.L.R.B. v John Zink Co., 551 F.2d 799, 802 (10th Cir. 1977) and N.L.R.B. v Ralph; Printing & Lithographing Co., 433 F.2d 1058, 1062 (8th Cir. 1970).

The Supreme Court has found that unilateral chances made by the employer in conditions of employment under negotiation is a per se violation of Section 3 (a) (5) of the National Labor Relations Act. N.L.R.B. v Katz, 69 U.S. 736, 743 (1962). However, increases granted as part of a long-standing non-discretionary pattern of practice may be secure from attack as per se violations of the duty to bargain in good faith. But, no such increases are

involved in the raises given Leyvas , Wolfe, Romero and Mudge . Those increases were based upon the discretionary assessment of the performance of each individual by that individual's supervisor The Respondent's actions as to Romero , Wolfe, Mudge and Leyvas constitute a per se violation of Section 1153 (e) of the A.L.R.A.

On May 5, 1976, Respondent's personnel director informed the Union of Respondent's intention to institute a general wage increase on May 9, 1976, covering almost all of the unit employees At issue here is whether the four days of lead-time given the Union was sufficient to enable the Union to bargain with respect to the increase and if not, whether by failing to register an immediate vehement protest the Union waived its right to bargain on the matter. In Ralph Printing & Lithographing Co., 433 F.2d 1058, 1063 (8th Cir . 1970), the Court of Appeals noted that:

> The duty to notify the Union regarding proposed unilateral changes requires that notice be reasonably calculated to afford the Union an opportunity to bargain concerning the proposed changes.

The opportunity to bargain of which Respondent may not deprive the Union requires that the Union have a reasonable opportunity to make a counterproposal. See N.L.R.B, v Exchange Parts Co., 339 F.2d 829, 831 (5th Cir.1965). The Union had just held its first negotiation session with Respondent two weeks earlier and was awaiting a response to its request that the Respondent select a date for the second meeting. The U.F.W. had been given incomplete information in response to its February 10th request for wage data and as yet knew little about the Respondent's wage practices, stand on non-economic proposals, or position with regard to the Numerous types of fringe benefits which were potential bargain-

ing topics. Four days notice under such circumstances is hardly enough time to develop an intelligent counterproposal. Finally, there were no exigent circumstances which necessitated the immediate granting of such an increase by Respondent and thus excusing the short notice. A-V Corp. and Local No. 666, 209 N.L.R.B. No. 53, 451, 453 (1974) .

The Respondent's notice to the Union of its intentions put the Union on the spot. Regardless of the position which the Union might take, the Union's status in the eyes of the employees it represented would be damaged. If the Union consented to the increase it would give up a powerful bargaining tool in obtaining maximum non-economic benefits for employees and if the Union refused to approve the wage increase the employees would be unhappy. The National Labor Relations Board outlines this dilemma well in C & C Plywood Corp.:

> [T]he Union, by virtue of the unlawful [unilateral wage increase] conduct, was compelled to take a position which would hardly prove popular with employees in the represented unit. Thus, Respondent C & C Plywood's action forced the Union to a choice between two evils : it could resist the company's action, thereby risking disaffection from the group of employees whose wage increases it would appear to oppose in resisting the company's unilateral actions , or it could acquiesce in the company's action, thereby demonstrating its unwillingness if not its inability, to protect and maintain the carefully worked out wage differentials in the collective bargaining agreement. Either choice would necessarily expose the Union to a charge of unsatisfactory representation of employee interest and weaken its prestige and authority as I their representative, with erosion of majority status the probable result. C & C Plywood Corp.," 163 N.L.R.B. No.

136, 64 L.R.R.M. 1488, 1489-1490 (1967), enforced 413 F.2d 112 (9th Cir.1969).

The response of the Union's negotiator to the Respondent request for approval of the wage increase was to tell the Respondent's personnel director on May 7th that the Union did not approve the increase and would not give the requested letter of approval. The comment of the Union's negotiator, Karen DeMott, to the effect that " [w]e were not approving any wage increase and we would not give any letter of approval , but if they wanted to give one they could go ahead," when examined in light of the circumstances surrounding its making is nothing more than a simple acknowledgement that the U.F.W. was not in a position at that moment to do anything to prevent what amounted to a fairly precipi tous action on the Respondent's part.

The position of the National Labor Relations Board with respect to waiver by a bargaining representative of its right to bargain with regard to certain matters set forth in Insulating Fabricators, Inc., 144 N.L.R.B. No. 125, 54 L.R.R.M. 1246 (1963), enforced, 338 F.2d 1002 (4th Cir.1964) , is particularly relevant Here. There, the Board was confronted with a situation similar to that involving the May 9th increase. The Board explained its Position :

> While a Union may waive its right to bargain over certain matters , such waiver must be clear and unequivocal . We find in the circumstances here pre-sent no such waiver could reasonably have been inferred by the Respondent from [the Union negotiator's] mere failure to respond to the announcement of merit increases .

The Union's response to the Respondent's statement of its

intention to grant a wage increase did not constitute the clear and unequivocal waiver of the Union's right to bargain required under the National Labor Relations Act. Respondent confronted the Union with its unit-wide wage proposal four days before it was to take effect, thus guaranteeing that the Union would be unable to make an effective rebuttal .

The May 9th wage increase cost the Respondents S123,750,C in the first year, an increase in the Respondent's gross annual Payroll for hourly employees of over fifteen percent. It is in-Credible that the Respondent would give effect to such an in-crease upon so short a notice to the Union and after apparently Considering the action itself for less than a week. The circum-Stances of the May 9th increase support my conclusion here that the Respondent's action had its primary purpose in undermining the collective bargaining process .

The Respondent's failure to provide any creditable ex-Planation for its eleventh hour contact of the U.F.W. or of the need for such precipitous action are facts unnceceesary to a Determination that Respondent failed to bargain in good faith. However, those facts serve to underscore the unilateral nature of Respondent's action and the finding I make here that the Re-

The change in the hourly rate of three of re-Spondent’s employees, Becerra, Kornele, and Pickle, in the final Question to be dealt with here. The wages of these three individu-alls were all increased on October 9, 1976 by amounts ranging from Fifteen ($0.15) cents to twenyty-eight ($0.28) cents an hour when

the three transferred from the employ of Howard Rose Company to that of Hemet Wholesale Company. The circumstances of these changes in wage level do not indicate facts sufficient to establish that the Respondent gave a unilateral wage increase. Thus, the change in computation of the wages of Kornele, Becerra and Pickle is not found to constitute a unilateral change in working conditions violative of Section 1153 (e) A.L.R.B.

F. Employee Lay-Offs

In late January 1977, after the January 24th meeting with the Union, the Respondent laid off at least fifteen employees because of the institution of a new method of weed control. The Union was not informed of the pendency of these lay-offs and found out about them after they had occurred. Experimentation with the new method of weed control began in October giving the Respondent ample time to inform the U.F.W. of the new method's possible effects on the numbers in the Respondent's work force.

Lay-offs such as those made by Respondent are changes in the conditions of employment as to which Union is entitled to prior notice and a reasonable opportunity to bargain. See N.L.R.B v. Exchange Parts Co., 339 F.2d 829 (5th Cir.1965). While a Legitimate business emergency may support lay-offs made upon short Notice (see Burns Ford, Inc., 182 N.L.R.B. 113 (1970)). the Respondent herein has no such excuse. The Respondent had more than three months in which to bring the topic to the bargaining table and failed to do so. Thus, the Respondent is found to have breached its duty to bargain in good faith in violation of Section 1153 (e) A.L.R.A. in its lay-off of fifteen employees in late January 1977.

G. Respondent's Refusal to Negotiate with Respect to Certain Mandatory Subjects of Collective Bargaining

1. Check-off. Dues check-off has been determined to be a Mandatory subject of collective bargaining. Sweeney and Co. v N.L.R.B., 437 F.2d 1127 (5th Cir.1971). While this means that the Respondent must bargain with respect to check-off, it does not Mean that the Respondent must agree to it. However, the duty to Bargain in good faith requires that the Respondent's position on Check-off reflect a legitimate business purpose. See N.L.R.B. v J. P. Stevens & Co., Inc., 538 F.2d 1152, 1165 (5th Cir.1976) and N.L.R.B. v F. Strauss and Son, 536 F.2d 60 (5th Cir.1976).

The first indication of the Respondent's stand on check-off came at the April 20th meeting when Respondent's negotiator in looking over the Union's proposal noted there would be a problem with Article 2, "Union Security," which included a provision for the Union to deduct dues. The Respondent's counterproposal Submitted to the U.F.W. on June 11, 1976 contained no provision for dues check-off. In discussing this omission Respondent's Negotiator stated that the Respondent did not want to do the Union's bookkeeping, that check-off would be too costly, and that Respondent did not want to know who the Union members were.

An employer's unwillingness to grant check-off because of inconvenience, cost, or to avoid giving "aid and comfort to the Union" has been found to constitute bad faith bargaining where the Employer already made other deductions from its employee's pay-
"
Checks. Longhorn Machine Works, 205 N.L.R.B. 635, 34 L.R.R.M. 1307 (1973) and Steelworkers v. N.L.R.B., 363 F.2d 272, (D.C.Cir. 1966), cert. denied, 385 U.S. 351 (1966). Since the Respondent

has computerized its payroll records and regularly deducts such Items as state and federal income tax, tools, gloves and medical Insurance, a legitimate business purpose is hardly reflected in its complaint about the cost of deducting one more item. Finally, no legitimate business purpose at all is reflected in Respondent's Lack of desire to do "the Union's bookkeeping" or to know which of its employees were Union members. The Respondent's failure to Bargain in good faith with respect to the subject of dues check-off constitutes a violation of Section 1153 (e) of the A.L.R.A.

2. Hiring Hall. The Respondent's June llth counterproposal Contained no reference to hiring procedure in response to Article 3 of the Union proposal dealing with the institution of a hiring Hall. At the April 20th meeting the Respondent's negotiator said That since Respondent had no seasonal work force the hiring hall Issue would be a problem. At the June 11th meeting the Respondent's Negotiator stated flatly that "[wlere saying no to your hiring Hall," but gave no explanation for the position. There was sub-Stantial discussion of the subject at the July 9th meeting at which The Union explained how the hiring hall provision would work and Why the U.F.W. felt it necessary. Respondent's negotiator did not Detail its concerns with the procedure but continued to state That because the Respondent's work force was not seasonal, the Hiring hall was not necessary. At the July 9th meeting, Re-Spondent's negotiator stated that the Respondent could not com-Promise on the subject and at the August 24th meeting he flatly Rejected it. This position was reiterated at the September 3rd and 29th meetings.

The issue of hiring hall, like check-off, is an aspect of

Union security which is a mandatory subject of collective bargaining. Houston Chapter, Associated General Contractors, 142 N.L.R.B 409, 53 L.R.R.M. 1299 (1963), enforced, 349 F.2d 449, (5th Cir. 1965), cert. denied, 382 U.S. 1026 (1966). Thus, Respondent's Position with respect to hiring hall must reflect a legitimate Business purpose, otherwise the Respondent will be found to have Bargained in bad faith. J. P. Stevens (supra at 1165) . While the Respondent's stated reasons for rejecting the Union's proposal may have held merit, the failure of Respondent's negotiator to further explain the Respondent's position or respond to the Argument of the Union establishes the Respondent's unwillingness to bargain with respect to hiring hall. Respondent's bargaining Posture with respect to the hiring hall issue reflects the Respondent's intention to "stand pat" on the matter in the absence of any legitimate business purpose for doing so. Respondent's Actions constitute a failure to bargain in good faith in violation of Section 1153 (e) of the A.L.R.A.

3. Seniority. Seniority is obviously a condition of employment and as such has been found to be a mandatory subject of collective bargaining under the National Labor Relations Act. Oliver Corp., 162 N.L.R.B. 813, 64 L.R.R.M. 1092 (1967) and Houston Chapter, Associated General Contractors (supra). Specifically, it has been contended that the Respondent refused to bargain with respect to two areas of seniority, the length of the probationary. period and whether or not any time period should be allowed to lapse after hire before a worker would have recourse to a grievance procedure. At the June 11th meeting the Respondent proposed a ninety-day probationary period for new employees without re-

Course to a grievance procedure. When the Union's negotiator objected to the lack of recourse to a grievance procedure Respondent Countered with a proposal that the period during which an employee Could not grieve be reduced from ninety to thirty days. The U.F. W. rejected any lapse before an employee could grieve. At the August 24th meeting the Respondent reduced its proposal of a Ninety-day probationary period to seventy-five days, maintaining The thirty-day period before an employee would have recourse to A grievance procedure. Finally, at the September 3rd meeting, The Respondent reduced its proposed seventy-five day probation to Sixty days for those in the nurseryman classification.

The Respondent's rationale for the length of the period Was that newly hired employees require an initial screening Period to prove they are qualified. The actions of the Respondent Do not present a picture of an adamant employer refusing to change Its positions without good reason. The Respondent had a legitiMate purpose in desiring a longer probationary period and ReSpondent changed its position during negotiations while the Union Did not change its position. The Respondent's actions with reSpect to seniority do not establish that Respondent failed to barGain in good faith.

4. Union Security (Closed Shop) . Union security is also Mandatory subject of collective bargaining under the National Labor Relations Act. N.L.R.B. v Association of General ConTractors of America, 243 F.2d 519 (9th Cir.1957). The Respondent' Counterproposal contained a provision for an open-shop. At the August 24th meeting the Respondent's negotiator stated that ReSpondent was "diametrically opposed" to requiring employees to

join the Union. The Respondent's negotiator did not explain its position which had been arrived at despite his position at the August 6th meeting that there might be a possibility of a compromise on the subject. The Respondent's negotiator never explained the Respondent's position on the open-shop issue. As with the issue of hiring hall the Respondent's negotiator took a stand from which he refused to move without providing any legitimate business rationale.

The Respondent's action with respect to the security issue constitutes a failure to bargain in good faith in violation of Section 1153 (e) of the A.L.R.A.

H. The Respondent's Failure to Include in Its November 8th and December 10th Counterproposals Items Previously Agreed to By the Parties

1. The Ultimatum. On November 3th, 1976, the Respondent submitted a second counterproposal which contained in Article 33 Specific dates on which the proposal would become effective as a contract if approved by the Union by November 30, 1976. It is contended that the provisions contained in Article 33 forced the Union into a position where it had, with respect to Respondent's proposal, to "take it or leave it." The same contention is made as to the Respondent's December 10th counterproposal which contained the same provision in Article 34. The particular offensive language is as follows (taken from the December 10th counterproposal which contained no typographical errors) :

> This Agreement shall be in effect for a basic term,' commencing November 1, 1976, provided it is ratified and signed by the Union on or before December 31, .1076, and ending midnight November 30.

1977, and shall continue in effect from year to year thereafter, unless or until [illegible] hereinafter provided.

Taken in the context of the statement of Respondent's negotiator upon the presentation of the November 8th proposal that the document contained everything that the Respondent thought should be in a contract, the pertinent provision cannot be said to constitute anything more than the Respondent's proposal as to what the significant date of the contract should be. The article simply does not state that the Union is prohibited from offering any counters.

However, the behavior of the Respondent's negotiator at the December 10th meeting at which Respondent's third counter-proposal was issued is such that Respondent is found to have refused to bargain in violation of Section 1153 (e) of the A.L.R.A. At that meeting the Respondent's negotiator said he wanted U.F.W. rejection of the counterproposal in writing so that he could decid whether the .parties were at legal impasse. In light of the finding above that the Respondent had refused to bargain in good faith with respect to check-off, hiring hall, and Union security, Respondent was not in a position in which it could claim to have reached a legitimate impasse. Thus, Respondent's tactic at the December 10th meeting amounted to the taking of a final position from which it refused to recede. The taking of such a position by the Respondent is violative of its duty to bargain in good faith. N.L.R.B. v Big Three Industries, 201 N.L.R.B. No. 105, 700, 82 L.R.R.M. 1411 (1973), affirmed, 497 F.2d 43(5th Cir.1974)

2. Rejection of Previously Agreed Upon Items. There were

fourteen items as to which Respondent and the Union had agreed in earlier negotiations which were omitted from, or changed in, the Respondent's November 8th counterproposal. While the rejected or changed items were on minor points, they reflected areas where the parties had been able to reach some agreement. The U.F.W. registered its concern over the omission of these items from Respondent's November 8th counterproposal in a letter to the Respondent's negotiator on November 22nd. The response of the Respondent in a letter dated two weeks later acknowledges that with respect to ten of those fourteen items it was indeed in error. As to two other items "maintenance of standards" and "holidays," the Respondent did not acknowledge any omission in the November 8th proposal but it did concede to the Union the Union's version of those items. On the disposal of the other two items, "management rights" and "grievances and arbitration procedures," Respondent's letter is not clear.

Resnondent's reply excuses failure to include some of the agreed-upon items on "typographical error," but gave no excuse for most of the omissions. The quality and extent of Respondent's "mistakes" render it highly improbable that they were the result of typographical errors. Most of the fourteen items involved omissions of, or changes in, the wording of entire sentences or phrases. Finally, when it is considered that the proposal was reviewed by the Respondent's personnel director and negotiator after it was typed the claim of typographical error or inadvertent: omission becomes incredible. Even if the Respondent's failure to include the items could be explained away as mere inadvertence , the Respondent's performance would not be justified. Collective

bargaining is a serious matter; the parties must address sufficient attention to its processes to achieve its goal. That the Respondent did not apparently have adequate records of the agreements reached between itself and the Union to put together a valid counterproposal is indicative of the cavalier fashion in which the Respondent appears to have approached the entire bargaining process.

The National Labor Relations Board has held that an employer's presentation of a proposal which in effect counteracts a previously agreed-upon item is bad faith bargaining. Hollywood Film Co., 213 N.L.R.B. No. 78, 87 L.R.R.M. 1659 (1954). The Respondent's subsequent acknowledgement that it was to blame for its omissions in its counterproposal does not diminish the significance of its attempt to achieve acceptance of a proposal which it must have known did not reflect the agreements reached by the parties in the preceeding six months at the bargaining table. Thus, the Respondent's failure to include items previously agreed upon between the parties in its November 8th counterproposal is found to constitute a violation of its duty to bargain in good faith pursuant to Section 1153 (e) of the A.L.R.A.

I. The U.F.W. Refusal to Discuss Economics

The Union's April 20th proposal contained a large part of its economic package (provisions for over-time pay, reporting and stand-by time, rest periods, vacations, bereavement pay, holidays,} travel allowance, jury and witness pay, and pension plan benefits)) However, at the June 11th meeting, the Union's negotiator expressed a desire to postpone discussion of a wage structure until after the non-economic issues such as access and Union security

had been worked out. The U.F.W.'s position of putting off discussion of "economics" until non-economic issues were settled was reiterated at the August 24th meeting by another of the Union's negotiators who , in answer to a specific demand by the Respondent negotiator for such information, said, " [a] fter we make some progress in the language."

The conditioning of discussion of economics upon settlement of all non-economic issues has been found to constitute evidence of bad faith. See N.L.R.B. v. Patent Traders, 415 F.2d 190, 198 (2nd Cir.1969) . However, the circumstances of the instant case are distinguishable from those of Patent Traders. In that case, the employer had refused to discuss any economic issues at all , unlike the Union herein which had presented a large part of its economic package in its original proposal. Also, the Patent Traders employer had deceived its employees' bargaining representative by claiming that it needed more time to out together economic proposals while in actuality it had made a prior unexpressed determination to put the subject off to the very end of negotiations The Union in the instant matter clearly stated its desire to put off economics and certainly made no attempt to deceive the Respondent with regard to its position.

The issue here is whether the Union's insistence upon postponing discussion of wages was indicative of bad faith on the Union's part. In light of the Respondent's failure and in at 1 least one instance outright refusal to provide the Union information with regard to job description and wage increases, the Union position cannot be said to constitute a failure to bargain in good faith. The Respondent failed to provide the Union in respons

to the Union's February 10th request with sufficient descriptive information on the job classifications of its employees to enable the Union to formulate a complete wage proposal . A second Union attempt to get this data was turned down on July 9th. Finally, a Union request on September 3rd for specific job descriptions was met by a wish of "good luck" on. the part of the Respondent and a failure to provide the information.

The duty to bargain in good faith precludes either party from controlling the course of negotiation by refusing to discuss economics until it comes up on the party's undisclosed schedule. I find that the U.F.W. 's position did not constitute a violation of that duty. The Respondent's refusal to provide the Union with the data it needed made it impossible for the Union to comply with the Respondent's request for early presentation of a wage proposal If the Respondent had indeed entertained a legitimate desire for an early resolution of the wage issue it would have done well to provide the data it withheld from the Union's negotiators.

J. The Respondent's Response to the U.F.W. Proposals

1. The June 10th Counterproposal. On April 20, 1976, the Union presented the Respondent with a proposal containing forty-one articles setting forth the Union's position on all points of bargaining which the Union felt important. The Respondent's counterproposal submitted on June 10, 1976 failed to address at least twenty subject areas discussed by the Union in its proposal. The issue here is whether the Respondent's failure to address these various items constitutes a failure to bargain on the Respondent's part. The National Labor Relations Board has established guide-

lines to be followed in examining whether the party's response at the bargaining table lacks good faith or constitutes a failure to bargain. However, since neither the National Labor Relations Board, nor the Agricultural Labor Relations Board in following: the former's precedent may compel either party to make concessions, the role of the Board is limited to determining whether failure to bargain in good faith may be inferred based upon the contents of the proposals advanced by the parties. N.L.R.B. v. Florida Machine & Foundry Co., and Fleco Corp., 441 F.2d 1005, 1009 (D.C. Cir. 1970) .

Thus, it is permissible to determine the Respondent's motivation based on an evaluation of his bargaining position vis-a-vis the Union. The June 10th counterproposal was the Respondent's first and as such would not be expected to embody the Respondent ' s rock bottom stand on every issue. See N.L.R.B. v. Fitzgerald Mills, 1 313 F.2d 260 (2nd Cir. 1963). However, the June 10th counterproposal was a response to the Union's April 20th proposal and was not formulated in a vacuum; the Respondent had full knowledge of the extent of the Union proposal. That the Respondent's June 10th proposal was calculated by the Respondent to be a complete response to the Union's April 20th proposal is borne out by the statement of Respondent's negotiator at the June 11th meeting that anything not contained in the counterproposal was unacceptable to the Respondent. The contents of the Respondent's June 10th counterproposal must be examined to determine whether they provide a basis for future negotiations or whether they present a concrete wall up against which the Union would battle futilely because of a predetermined intention on the Respondent's part; net

to bargain.

The successful operation of the bargaining process requires that the parties be informed of one another's position with respect to each issue. Here the Respondent provided no counterproposal to some twenty items presented by the Union . The Respondent ' s failure to provide a written explanation of its position with regard to these twenty issues was not explained by Respondent's negotiator. Without some explanation of the Respondent's position the Union was unable to determine what concessions it could make. Bargaining was made more difficult because the U . F . W . was not informed as to why the Respondent had excluded specific items except that anything not in the Respondent's proposal was "unacceptable" to the Respondent.

While the duty to bargain in good faith does not compel either party to accept the other's proposal, it does require some effort be made to respond to issues presented for bargaining by the- other party. See N . L . R . B . v. Arkansas Rice Growers Cooperative Assoc., 395 F.2d 745 (8th Cir. 1968). Here the Respondent's counterproposal provided no basis for further discussion on some twenty issues. The fate of one of the issues neglected by the Respondent, hiring hall, is illustrative of the impediment to fruitful negotiations created by the Respondent's silence. Because there was no information about the Respondent's position on the hiring hall issue in the Respondent's counterproposal, the Union could not begin to bargain on the matter. Throughout negotiations, the Respondent's negotiator never gave the Union more grounds for finding the item unacceptable than that since the Respondent ' s work force was not seasonal, a hiring hall was unneces-

sary. The Respondent's unwillingness to articulate its criticism of the Union's hiring hall proposal made it impossible for the Union to do any restructuring to better suit the Respondent's situation. The Respondent's failure to respond in its June 10th counterproposal to many items set forth in the Union's April 20th , proposal is found to constitute failure to bargain in good faith with the Union; Respondent's behavior, instead of enlightening the Union with respect to the Respondent's position on many items contained in the Union's proposal, served only to maintain the Union in a position of ignorance. The Respondent's failure to bargain in good faith is a violation of Section 1153 (e) of the A.L.R.A.

2. The November 8th and December 10th Counterproposals. The November 8th counterproposal and the corrections made in it and presented by the Respondent as the December 10th counterproposal, will be considered as constituting a single proposal for the purpose of determining whether the Respondent continued subsequent to the submission of the June 10th counterproposal to take a nonresponsive approach in meeting the Union's proposals. The December 10th counterproposal reflected the .Respondent's final offer. The Respondent's negotiator indicated, in the presentation of the December 10th counterproposal,, that the Union's failure to accept it would cause the Respondent to make a determination of whether or not imoasse had been reached. At issue here is whether the contents of the December 10th counterproposal were so lacking in concessions of value that it may be said the Respondent tendered the proposal anticipating its rejection by the U.F.W. This issue may be resolved through an evaluation of the bargaining position

taken by the party. East Texas Steel Casting, 154 N.L.R.B., 1080, No. 94, 60 L.R.R.M. 1097 (1965).

The Respondent remained fixed in its original position against a Union shop in its December 10th counterproposal. Similarly, the Respondent's position with regard to recognition of the unit remained unchanged with the Respondent refusing to accept the language of the Certification of Representative. The Respondent continued to demand a broad management rights clause while retaining authority in itself to use total discretion with regard to wage increases. The Respondent failed to respond in its December 10th counterproposal to the Union proposal regarding dues, check-off, and hiring hall and had provided no adequate explanation for its position with regard to these issues in prior bargaining.

The Respondent knew when it tendered its December 10th proposal that it could anticipate rejection by the U.F.W. of a proposal containing so many provisions which were antithetical to the Union's position. It does not constitute bad faith to drive a hard bargain, but bad faith is to be found in the presentation of a proposal framed as complete which fails without good reason to respond to issues introduced by the other party and which is accompanied by the threat of impasse if it is not accepted. The Respondent's November 8th/December 10th presentation was such a proposal.

The Respondent's December 10th proposal reflects the Respondent's unwillingness throughout negotiations to respond to the Union's proposals in a manner which clearly stated the Respondent's position in the light reflecting good faith business

purpose. The Respondent's practice of simply ignoring significant - issues, such as hiring hall and giving spurious rationalizations for its position on such matters as recognition and dues check-off are evidence of bad faith bargaining.

Thus, it is found that the bargaining position reflected by the Respondent ' s second counterproposal embodied in. its November 8th and December 10th presentations is one of bad faith and the Respondent is found to have violated Section 1153 (e) of the A.L.R.A

CONCLUSION

The totality of the Respondent's conduct at the bargaining table evidences its unwillingness to take seriously its statutory duty to bargain in good faith. The negative atmosphere created at bargaining sessions by the sarcasm of the Respondent's negotiator, his failure to attend meetings in a timely fashion, and his unwillingness when he did attend to have sufficient respect for the bargaining process to explain fully the Respondent's position on issues discussed, are illustrative of the approach of Respondent's negotiator to his duty.

It has not been necessary to our findings that we introduce evidence of the Union animus to be found in the past activities of the Respondent. However, prior labor relations history is relevant in determining the state of mind of an employer in bargaining cases (N.L.R.B. v. Reed & Prince Manufacturing Co., 205 ?.2d 131 (1st Cir.), cert, denied, 346 U.S. 887- (1953;), and is mentioned here only to point up the apparent continuing strength of the Respondent's Union animous. The certification of the Union and its request for bargaining came within five months of a "strenuous and!

unlawful battle to defeat the U.F.W.," in which Union supporters were threatened, interrogated and discriminatorily transferred and discharged. Hemet Wholesale, 3 A.L.R.B. No. 47, p. 16 (1977). The Respondent's position' during negotiations with respect to the use by the U.F.W. of bulletin boards on the Respondent's property points up the Respondent's willingness to turn an insignificant matter into one of major concern, while its position relative to Union recognition illustrates its willingness to take a frivolous position on an important point.

The Respondent did not initially agree to provide a bulletin board for use in posting Union notices despite the fact that it already provided them for employee use at various locations on its property. Its first response was that the Union should put up the bulletin board, but it finally agreed to provide space for two boards for Union postings provided that no "political literature" was posted. At three different meetings the definition of politic literature was discussed. The credible testimony of *Ms.* Smith, the Union's negotiator at these meetings, was that she had never had such difficulties over bulletin boards in any of her prior negotiating experiences and that discussion of the subject had never encompassed more than a few minutes .

The Respondent attempted to restrict the certification from that authorized in the document entitled "Certification of Representative" which defines the unit to include "[a] 11 agricultural employees of Employer" by placing geographical boundaries on the unit. The Respondent's June 10th counterproposal contained the following unit definition: "All agricultural workers at the main nursery on both sides of Kewett Street and at the propagation unit

on Menlo Street...." This language is that of the Notice and Direction of Election but it does not appear in the Certification of Representative. The Respondent's insistence upon using languag- other than that, appearing in the Certification illustrates Respondent's willingness to thwart negotiations by the use of spurious rationalization and excuses.

IV

REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of its employees rights under Section 1152 and 1153 of the A.L.R.A., I shall recommend that: ıt cease and desist therefrom and take certain affirmative action designed to effectuate policy of the A.L.R.A.

In addition to recommending that Respondent be required to bargain in good faith with the Union with regard to wages, hours, and other terms and conditions of employment, I shall recommend that Respondent's employees be made whole for any losses they may have suffered as a result of .Respondent's failure to bargain in good faith.

The National Labor Relations Act's notable absence of a specific provision authorizing make whole has led to the cautious delineation in International Union of Electrical, Radio and • Machine Workers, AFL-CIO v. N.L.R.B., 426 ?.2d 1248 (D.C. Cir.), cert. denied, 400 U.S. 950 (1970) (hereafter Tidee Products, of the conditions under which the N.L.R.B. may make such an award. The Tidee decision limits the authority of the N.L.R.B. award make whole to those instances where the employer's refusal to bargain is "a clear and flagrant violation of the law." 426

F.2d at 1248. Thus, in Tidee Products, Inc . , the Court of Appeals determined that where an employer's objection to an election was frivolous, make whole was an appropriate award to insure meaningful bargaining. 426 F.2d at 1248.

Since the A.L.R.A. in Section 1160.3 contains specific authorizations for the award of make whole "when the Board deems such relief appropriate," the decision in Tidee Products, Inc.,[1] and subsequent Court of Appeals decisions (United Steel Workers of America, AFL-CIO v. N.L.R.B., 496 F.2d 1342 (5th Cir. 1974); Culinary Alliance and Bartenders Union, Local 703, AFL-CIO v. N.L.R.B., 488 F.2d 664 (9th Cir. 1973); Ex-cell-o-Corporation v. N.L.R.B., 449 F.2d 1046 (D.C. Cir. 1971)), are not applicable precedents that restrict the application of make whole under the A.L.R.A. (Labor Code, Section 1148). The focus under the A.L.R.A. must therefore be upon determining when make whole relief "appropriate" to "effectuate the policies of this part." (Labor Code, Section 1160.3)

The Administrative Law Officer in Adam Dairy (Case No. 76-CE-15-M) adopted a "substantial harm" test for determining when make whole should be applied. The Adam Dairy decision specifically notes that where "harm to employees is insubstantial, the use of the make whole remedy is appropriate." -Adam' Dairy at 49. This approach, however, has, I believe, an inherent weakness in that it forcuses the Board's attention upon the amount of injury; sustained by the employee and not upon the ameliorative purposes which underlie the A.L.R.A. Certainly make whole may be appropriate where the employer, through failure to bargain in good faith, has caused substantial harm. Conversely, make whole is also an

appropriate remedy where, as a result of bad faith bargaining, the employer has caused insubstantial harm; in such a case the compensation is commensurate with the loss and the purposes of the Ad Act are effectuated.

The "totality of the circumstances" test set forth in P & P Farms (Case No. 76-CS-23-M) is, I believe, an approach 1 which also incorrectly focuses the analysis on the nature of the conduct or state of the Respondent's mind.

An examination of the harm encompases a much more complex set of factors than simply ascertainig a dollar amount. Such an examination entails a determination of how the employee and his bargaining representative can best be protected in the exercise of their rights under the A.L.R.A. In eschewing the delineation of the degree of severity of damage in determining the appropriateness of the make whole remedy the "totality of the circumstances" test emphasizes part of the remedial nature of make whole. An employer is not "punished" because his bad faith bargaining has produced substantial harm, instead, the money he must pay reflects the nature of the injury produced by his bad faith and the purpose of the A.L.R.A. to not only protect, but also encourage the exercise by agricultural employees of their rights to bargain collectively.

In my opinion, Section 1140/2 of the A.L.R.A. sets forth the underlying policy considerations which muse determine "appropriateness" :

> "It is hereby seated to be the policy of the State of California to encourage and protect the right of agricultural employees ... to negotiate the terms and conditions of their employment, and to be free from

> interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. For this purpose this part is adopted to provide for collective-bargaining rights for agricultural employees . " (emphasis added)

Because encouraging and protecting collective bargaining rights is the fundamental purpose of the A.L.R.A., I find that "make whole" is appropriate in every case where a violation of Section 115 3 (e) results in economic loss to the agricultural employees of the unit affected. Thus, the determination of whether or not make whole should be ordered should focus exclusively on whether or not a loss was suffered by the workers for whom the Act was designed to protect.

I believe there are several sound policy reasons for this approach. Examination of loss by workers, as opposed to the severity of the violation, places emphasis on the proper remedial nature of the ultimate order. If make whole were to be determined by the degree of misconduct, the circumstances underlying the employer's conduct, or upon the employer's motives, then the remedy might be considered punishment against some who have violated 1153 (e). Moreover, the' real loss to agricultural workers is not determined by the reasons or motivations of the employer who refuses to bargain in good faith. Employees suffer by the very fact of a refusal to bargain in good faith.

The Respondent's granting of unilateral wage increases, lack of cooperation in setting up and attending bargaining sessions, and unwillingness to supply information necessary to the

Union's development of its proposal are instances which reflect the need for the application of make whole.

I shall therefore recommend that the Respondent's employees be made whole for losses they have suffered as a result of Respondent's failure to bargain in good faith. The definition; of wages provided in Ware v. Merrill, Lynch, Pierce, Fenner & Smith, 24 Cal.App.3d 35 (1972), encompasses a wide variety of employee benefits "so as to include compensation for services rendered without regard to the manner in which such compensation is computed." 24 Cal.App.3d at 44. I recommend that the Ware definition serve as a guide to benefits which may properly be included in any sum awarded to the Respondent's employees.

I further recommend that the period encompassed within the make whole award begin at the time when -here was first evidence of the Respondent's bad faith and terminate upon the Respondent's bargaining in good faith. There is ample evidence in the record indicating Respondent's lack of good faith in its granting of unilateral wage increases after the election but prior to the first bargaining session on April 20, 1976.

Since, however, this evidence is of acts occurring outside of the six month limitation period established by Section 1160.2 of the A.L.R.A. it may not be considered in setting the time frame for make whole. Therefore, I recommend that the time frame extend from April 22, 1976, the earliest date not precluded from consideration by the statute of limitation in Section 1160.2.

In addition to the "make whole" remedy explicitlv pro-l vided by Section 1160.3 of the A.L.R.A., the language or that Section grants additional powers not included under the National

Labor Relations Act. Section 10 (c) of that National Act reads that Respondents shall be served

> an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of the Act.

The remedial powers granted the Board by Section 1160.3 of the A.L.R.A. appear to be broader:

> the Board . . . shall issue ... an order requiring such person to cease and desist from such unfair labor practice . to take affirmative action, including reinstatement of employees with or without backpay, and making employers whole when the board deems appropriate, for the loss of pay resulting from the employee's refusal to bargain, and to provide such other relief as will effectuate the policies of this part,

I am persuaded that the language of Section 1160.3 calls for the ordering of remedies additional to "make whole" if such an order would, serve to "effectuate the policies" of the Act "to provide for collective bargaining rights for agricultural employees . " (at Section 1140 .2) .

The employer ought therefore be ordered to reimburse all costs incurred by the U.F.W. in negotiating with Respondent over and above what would have been required had employers met their bargaining obligation. This includes costs of attending fruitless meetings, analyzing and responding to employers' dilatory "surface" proposals , meeting with employees to explain why negotiations were taking so long, meeting with employees in an effort to mitigate the damaging effect of employers' actions, drafting and sending

Correspondence documenting the lack of progress in the negotiations, and telephoning employer representatives in repeated unsuccessful efforts to set up meetings. For this and later remedies, the methods of calculation and the specific amount of the award will necessarily be determined in a compliance hearing.

Additionally, it is recommended the employer be ordered to reimburse all costs and value of time lost to U.F.W. negotiators in preparation for and testimony in this unfair labor practice hearing.

Furthermore, it is recommended the employer be ordered to reimburse the employees of the Negotiating Committee for loss of pay incurred by attending fruitless negotiation sessions.

It is further recommended that the Union be reimbursed by the Respondent for Union dues which it would have received had

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Respondent bargained in good faith to contract. This amount should be deducted from the back-pay award made to Respondent's employees. Such an award to the employees' bargaining representative is consistent with the intent and purpose of make whole since Respondent's employees can only be made whole if the resources of the Union, diminished by the Respondent's unfair labor practices, are replenished.

That the award of make whole must encompass the bargaining representative if it is to achieve its purpose of both protecting and encouraging the collective rights of agricultural employees is made clear by the Court of Appeals in Tidee Products, Inc.

> Employee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining. When the company is finally ordered to bargain with the union some years later, the union may find that it represents only a small fraction of the employees .... Thus an employer may reap a second benefit from his original refusal to comply with the law; he may continue to enjoy lower labor expenses after the order to bargain either because the union is gone or because it is too weak to bargain effectively. Tidee Products, Inc. , supra, at 1249.

While the award of make whole in the instant case can be justified upon the basis of the Respondent's record at the bargaining table, I am aware of the difficulty it raises for the A.L.R.B. insofar as the determination of the amount of the award is concerned.

This difficulty, however, does not support a denial of the remedy. To the contention by an employer that it was imposing a contract in a situation similar to that which the A.L.R.B. faces determining compensation nerein, the National Labor Relations Board

said:

> The Board cannot be faulted on the ground that it is imposing contract terms upon an unwilling employer when it is engaged only in a determination of means of calculating a remedy to compensate for injury sustained from an unfair 73 L.R.R.M. 2870, 2874 (1970).

The National Labor Relations Board's position was confirmed on appeal when the Court of Appeals noted "that damages can be awarded on an assessment of the contract terms that would have been in effect if the law had been complied with even though the law-violating employer had not yet entered into the contract." Tidee Products, Inc., supra, at 1253. Evidence received in the compliance hearing of benefits received by the agricultural employees under similar contracts should substantially reduce the difficulty involved in determining the amount of the make whole award.

The General Counsel and Charging Party have requested litigation costs. Precedent for the authority of the A.L.R.B. to fix such costs is found in N.L.R.B. v. Food Store Employees, Local 347, 417 U.S. 1 (1973), and International Union of Electrical, Radio and Machine Workers v. N.L.R.B., 502 F.2d 349 (D.C. Cir. 1974) hereafter Tidee II. In Tidee II osts were awarded to the bargaining representative where the employer's conduct in refusing to bargain was found to constitute a "clear and flagrant : violation of the law." 502 F.2d ac 355. While Tidee II limits litigation expenses to cases wherein the respondent's defenses are frivolous, the A.L.R.B. in Resetar Farms, 3 A.L.R.B. No. 13 (1977)| specifically noted that with respect to litigation expenses it

would "not be regimented by N.L.R.B. precedent in fashioning effecting remedies." 3 A.L.R.B. No. 18 at 3. With the exception of its contention that the bargaining representative failed to provide relevant wage information in a timely fashion, Respondent's] defenses herein have been frivolous and, indeed, in at least one instance perjurious. I shall therefore recommend that an order issue granting litigation expenses to both the Charging Party and the General Counsel.

In addition to the above recommendations I shall also recommend that the Respondent provide the Union access to company bulletin boards and places of notice so that the Union may post information pertinent to the progress of collective bargaining taking place between the Union and the Respondent.

Finally, to insure that all of the Respondent's employees affected by the proposed order receive notice thereof, I shall recommend that copies of the attached Notice to Employees be mailed to each of them.

Upon the basis of the entire record, the findings of facts and conclusions of law, and pursuant to Section 1160.3 of the A.L.R.A., I hereby issue the following recommended:

ORDER

Pursuant to Section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that Respondent, Hemet Wholesale Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with the Union as to meeting at reasonable times and conferring in

good faith with regard to wages , hours , and terms and conditions of emoloyment of its agricultural employees .

(b) Refusing to supply the Union with information necessary to the development of its bargaining proposals with respect to compensation received by its agricultural employees whether it be in the form of wages or other benefits.

(c) Granting wage increases or other changes in the terms and conditions of employment of its agricultural employees without first notifying the Union and giving it a reasonable opportunity to respond.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Make whole in the manner previously described within this decision all agricultural employees employed by Respondent between April 22, 1976, and the date upon which the Respondent commences bargaining in good faith, for any loss of wages incurred by them as a result of Respondent's failure to bargain in good faith.

(b) Make whole in the manner previously described in this decision all losses of dues incurred by the Union between April 22, 1976, and the date upon which the Respondent commences bargaining in good faith as a result of Respondent's failure to bargain in good faith.

(c) Preserve and, upon' request , make available to the Board for examination and copying, all payroll records, social security payment records, time cards, personnel records, and all other records necessary to the making of a determination of the amount of back pay due Respondent's employees.

(d) Make available to the Union upon request all records and information pertaining to wages and other applicable terras and conditions of employment from April 22, 1976 to the time when bargaining for current and future matters is consummated.

(e) Pay the attorney's fees and costs of litigation of the Board and the Charging Party.

(f) Make available for the use of the Union until such time as a contract is signed between the Respondent and the Union, Bulletin Boards placed at the locations upon Respondent's premises where notices to employees are customarily posted.

(g) Mail to each agricultural employee employed by the Respondent from April 22, 1976, to the date when Respondent commenced bargaining in good faith a copy printed in both English and Spanish of the attached "Notice to Employees", and post such Notice immediately for a period of not less than one hundred twenty (120) days at locations at Respondent's place of employment where Notices to Employees are customarily posted, such locations to be determined by the Regional Director.

(h) Notify the Regional Director, in writing, at twenty (20) day intervals for three months from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated: December 2 , 1977

Leonard M. Tillem
Administrative Law Officer

Appendix

NOTICE TO EMPLOYEES

After a trial where each side was given 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 mail this notice in English and in Spanish to each of our employees and post it on our premises as well.

We will do what the Board has ordered, and 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 terms and conditions of employment.

If an agreement is reached as the result of this bargaining, we will put it in writing and sign it.

We will pay all our agricultural employees who have worked for us since April 22, 1976, for any loss of wages which the Board determines is owed by us because of our failure to bargain in good faith.

We will not make any changes in wages, hours of work or other terms and conditions of employment of our agricultural employees without notifying the Union as the certified bargaining representa tive of these employees and giving it a reasonable opportunity to respond.

We will make available for the use of the Union , bulletin

boards placed at the location where Notices to Employees are customarily posted.

Dated :

HEMET WHOLESALE COMPANY

By _____
Representative (title)

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