Oxnard, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BEE & BEE PRODUCE, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 78-CE-32-V 78-CE-35-V 6 ALRB No. 48

DECISION AND ORDER

On November 20, 1979, Administrative Law Officer (ALO) Kenneth Cloke issued the attached Decision in this proceeding. Thereafter, Respondent, the General Counsel, and the United Farm Workers of America, AFL-CIO (UFW) each filed exceptions and a supporting brief.

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

Following an election conducted on September 18, 1975 among Respondent's agricultural employees, the UFW timely filed objections. Thereafter all parties to the election, the UFW, the Western Conference of Teamsters (WCT) and the Respondent, reached a settlement agreement disposing of the objections. The parties agreed among themselves inter alia, that if the Board concurred in their proposal to have the first election set aside and to conduct a new election, no party, during the period preceding the second

election, would make reference to or otherwise utilize any matter which arose in connection with the first election. The Board approved the settlement agreement of the parties, set aside the election, and directed that a re-run election be conducted on February 5, 1976. The results of the second balloting are as follows:

UFW.....39

WCT.....28

No Union..... 7

Challenged Ballots..... 1

Void Ballots..... 1

Total..... 76

On November 18, 1977, following an evidentiary hearing on objections to the second election filed by the Employer, the Board certified the UFW as the exclusive collective bargaining representative of Respondent's agricultural employees. Bee and Bee Produce, Inc. (Nov. 18, 1977) 3 ALRB No, 84.

Thereafter, on or about December 30, 1977, the UFW invited Respondent to commence negotiations. Beginning on February 3, 1978, and continuing thereafter, Respondent refused to bargain with the UFW in order to challenge the validity of the election and certification. Respondent defended its refusal to bargain on the grounds that the UFW had unilaterally breached the settlement agreement which disposed of the objections filed after the first election. Paragraph 7 of that agreement provides that

> ...none of the allegations, issues or charges arising

> out of the petition to set aside the election, or the results of the election, shall be utilized in any manner nor reference made to the same during the rerun election campaign.

During the course of the re-run election, the UFW distributed a leaflet which Respondent contends violated the express terms of the settlement agreement by its reference to alleged conduct relative to the first election and that widespread distribution of the leaflet so tainted the fairness of the second election as to constitute conduct affecting the outcome of the election.

This issue was fully litigated in Bee and Bee Produce, Inc., supra. The Board found therein that distribution of the leaflet did not violate the terms of the agreement and private agreements between the parties cannot transform lawful pre-election conduct into objectionable conduct. We adopt the National Labor Relations Board's proscription against relitigating representation issues in subsequent unfair labor practice proceedings where no newly-discovered or previously-unavailable evidence is presented, and where there is no claim of extraordinary circumstances. Julius Goldman's Egg City (Feb. 2, 1979) 5 ALRB No. 8.

As Respondent has not presented any newly-discovered or previously-unavailable evidence and has claimed no extraordinary circumstances with respect to the said objection, we will not reconsider these representation case issues in this proceeding. Accordingly, we find that Respondent had a duty to bargain with the UFW, based upon our certification of that union on November 18, 1977, and we conclude that Respondent has failed and refused

to meet and bargain collectively with the UFW, in violation of Labor Code section 1153(e) and (a) at all times since February 3, 1978.

Having concluded that Respondent has unlawfully refused to bargain, we must now consider whether the make-whole remedy is appropriate in light of J. R. Norton Co. v. Agricultural Labor Relations Bd. (1980) 26 Cal 3rd 1. In Norton the Court discussed the standard for applying make-whole relief:

> [T]he Board must determine from the totality of the employer's conduct whether it went through the motions of contesting the election results as an elaborate pretense to avoid bargaining or whether it litigated in a reasonable good faith belief that the union would not have been freely selected by the employees as their bargaining representative had the election been properly conducted. [Id. at 39.]

In accordance with the Court's guidelines, we shall impose the make-whole remedy unless we find that, at the time of its refusal to bargain, the employer had a reasonable good-faith belief that the election was conducted in a manner which did not fully protect employees' rights or that misconduct occurred which affected the outcome of the election. J. R. Norton (May 30, 1980) 6 ALRB No. 26.

Applying this standard to the facts of this case, we first consider whether Respondent's litigation posture is reasonable. Respondent argues that the UFW[1]s distribution of the leaflet violated the agreement and that this violation constitutes grounds for overturning the election because of a portion of the leaflet which, in its official translation, reads, "[T]he ALRB had decided to look into all the practical injustices of the

election." The leaflet does not specify what is meant by "injustices", but this reference arguably relates to events which occurred in connection with the first election, and Respondent contends that such references violated the terms of its agreement with the UFW. Although the agreement between the parties contained no provision for any sanction to be imposed in the event of a breach, Respondent maintains that the willful violation of the agreement requires that the election be set aside.

As previously stated, we have held that the UFW's distribution of the leaflet did not violate the terms of the agreement and indicated that even if the UFW's conduct did constitute a breach thereof, it was not objectionable conduct and therefore would not warrant setting aside the election. We also held that pre-election agreements, or the breach thereof, cannot extend or diminish the basis on which elections may set aside, and cannot transform otherwise permissible pre-election conduct into unlawful or objectionable conduct. Moreover, as this Board opposes any limitation of the flow of information from the parties on matters relevant to the voters' making an informed choice in a representation election, we retracted our prior approval of the agreement between the parties.

Notwithstanding the above, we find that Respondent had a reasonable basis for its belief that the UFW's leaflet referred to issues stemming from the first election, and for its belief that the distribution of the leaflet was therefore a violation of the express terms of the settlement agreement. We also find that

Respondent could reasonably have interpreted Board approval of the settlement as an indication that the Board would treat a violation thereof as grounds for setting aside the rerun election. Further, we find that Respondent had a reasonable basis for, in effect, challenging the Board's conduct in retracting its prior approval of the settlement agreement, especially in view of the fact that this Board had not previously considered a post-election objection involving a pre-election agreement formally approved by the Board.[1/]

Therefore, while we affirm our prior certification herein, we find that Respondent's litigation posture is reasonable, and as there is no evidence in the record that Respondent is not acting in good faith in seeking judicial review of the Board's certification, we find that imposition of the make-whole remedy is not warranted in this case.

Polling of Employees

Respondent conducted a poll among its employees on November 20, 1978, three days after the close of the certification year, assertedly for the purpose of determining whether the union had maintained its majority status. The ALO concluded that Respondent violated Labor Code section 1153(a) in polling its employees by failing to follow the guidelines set forth by the NLRB in Struksnes Construction Co., Inc. (1967) 165 NLRB 1062

[1/]Cf. Perez Packing, Inc. (Jan 20, 1976) 2 ALRB No. 13 and Mann Packing Co., Inc. (Jan. 22, 1976) 2 ALRB No. 15 in which the Board discussed the effect of informal pre-election agreements between the parties which had not been approved or endorsed by the Board.

[65 LRRM 1385]. As we find that Respondent had no valid basis for conducting a poll in the first instance, we need not pass on the ALO's conclusion that Respondent did not comply with the Struksnes polling criteria. Jackson Sportswear Corporation (1974) 211 NLRB 981 [87 LRRM 1254].

We follow National Labor Relations Board (NLRB) precedent which holds that a certified union, upon the expiration of the certification year, enjoys a rebuttable presumption that its status as majority representative continues. Kaplan's Fruit & Produce Co., Inc., et al. (April 1, 1977) 3 ALRB No. 28; Terrell Machine Co. (1976) 173 NLRB 1480 [70 LRRM 1049].

An employer may not lawfully refuse to bargain with the representative of its employees solely because the certification year has ended unless it can be shown by objective facts that it has a reasonable basis for believing that the union no longer enjoys majority status. Montgomery Ward & Co. (1974) 210 NLRB 717 [86 LRRM 1273]; Ranch-Way, Inc. (1973) 203 NLRB 911 [83 LRRM 1197], However, the employer's doubt as to the union's majority status must consist of more than its mere assertion thereof and "must come from the employees themselves, not from the employer on their behalf." Montgomery Ward & Co., supra; Laystrom Manufacturing Co. (1965) 151 NLRB 1482 [58 LRRM 1624].

The record herein contains no evidence that Respondent had any objective basis for believing that the UFW had lost its majority status. We therefore conclude that Respondent violated Labor Code section 1153 (a) by polling its employees as to their union sympathies at a time when it did not possess sufficient

objective evidence to have had a reasonable doubt of the UFW's continued majority status. Jackson Sportswear Corporation, supra.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that Respondent, Bee & Bee Produce, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith, as defined in section 1155.2(a) of the Act, with the United Farm Workers of America, AFL-CIO, as the certified exclusive collective bargaining representative of its agricultural employees.

(b) Polling or otherwise interrogating its employees to ascertain their union views in the absence of objective considerations warranting a reasonable doubt of the UFW's continuing status as the collective bargaining representative of the majority of its employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under section 1152 of the Act.

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees and, if an agreement is reached, embody the terms thereof in a signed

contract.

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

(c) Post copies of the attached Notice at conspicuous places on its premises for 60 days, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may become altered, defaced, covered or removed.

(d) Provide a copy of the attached Notice to each employee hired by Respondent during the 12-month period following the date of issuance of this Order.

(e) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the payroll period immediately preceding September 11, 1975, and to all employees employed by Respondent at any time from November 18, 1977, until issuance of this Order.

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the

Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

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

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

Dated: August 25, 1980

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

MEMBER RUIZ, Dissenting in part:

The majority concludes Respondent violated the Act by interrogating its employees about their union sympathies and refusing to bargain with the United Farm Workers of America, AFL-CIO (UFW). However, the majority refuses to award make-whole to remedy Respondent's unlawful refusal to bargain because it considers Respondent's litigation posture "reasonable" under the standards we enunciated in J. R. Norton Company (May 30, 1980) 6 ALRB No. 26. While I concur in the majority's view that Respondent committed the unfair labor practices, I dissent from the position that make-whole is not appropriate in this case.

In Bee & Bee Produce, Inc. (Nov. 18, 1977) 3 ALRB No. 84, we certified the UFW as the collective bargaining representative of Respondent's agricultural employees. We rejected Respondent's argument that the Board should set aside the election because the UFW failed to comply with a pre-election agreement, negotiated between the parties, which limited certain electioneering conduct.

We found the UFW did not violate the agreement. We also concluded that, even if the UFW did violate the agreement, we would nonetheless certify the election results because the UFW[1]'s conduct was not otherwise objectionable and a "breach of such an agreement by any or all of the parties ... cannot be deemed to transform lawful pre-election conduct into unlawful or objectionable conduct." Bee & Bee Produce, Inc., supra, at 8 of slip opinion.

Our standards for applying the make-whole remedy are derived from the California Supreme Court's decision in J. R. Norton Co. v. Agricultural Labor Relations Bd. (1979) 26 Cal. 3d 1. The Court there rejected this Board's rule of automatically imposing make-whole whenever an employer refuses to bargain in order to test a union's certification and instructed us to determine whether an employer:

> ... litigated in a reasonable good faith belief that the union would not have been freely selected by the employees as their bargaining representative had the election been properly conducted. 26 Cal. 3d at 39.

The Court's primary concern was to protect agricultural employees' right to freely select their bargaining representative. In order to foster judicial review of such representation decisions in which the free selection of a representative was at stake, the Court directed this Board to balance this need for review with the competing policy consideration of compensating employees for losses due to an employer's unlawful refusal to bargain.

I find that this case does not present the type of situation with which the Court was concerned. Respondent herein does not argue that the UFW's conduct prevented the employees from

freely selecting their bargaining representative. Respondent cannot argue that position because the UFW's conduct clearly falls within the parameters of acceptable electioneering under the Agricultural Labor Relations Act. Respondent thus is attempting to obtain judicial review of the UFW's certification based not upon objectionable conduct which interfered with employee rights to freely select a bargaining representative, but upon the alleged failure of the Board to maintain the integrity of a pre-election agreement negotiated by the parties.

As there is no question of the free selection of the representative, this is not the kind of case which justifies withholding the make-whole remedy and denying employees compensation for the effects of Respondent's unlawful refusal to bargain.

Furthermore, even after analyzing Respondent's litigation posture in accordance with J. R. Norton Co. (May 30, 1980) 6 ALRB No. 26, I find imposition of the make-whole remedy to be appropriate in this case. Respondent did not have a reasonable belief that a reviewing court would invalidate the Board's certification. In the underlying representation decision, the Board made the finding that the UFW did not in fact breach the agreement negotiated between the parties. Even if the UFW had violated the agreement, ALRA and NLRA precedent persuades me that Respondent's litigation posture is not reasonable. This Board had considered alleged violations of pre-election agreements between the parties prior to our representation decision in this case. The Board held that conduct not objectionable in and of itself may not

provide a basis for overturning an election merely because the conduct violated a pre-election agreement negotiated by the parties. D'Arrigo Bros. of California (May 10, 1977) 3 ALRB No. 37; Perez Packing, Inc. (Jan. 20, 1976) 2 ALRB No. 13. In National Labor Relations Board v. Huntsville Mfg. Co. (5th Cir. 1953) 203 F.2d 430 [31 LRRM 2637], where a union violated a preelection agreement concerning whether certain people would appear at the polls, the Court stated:

> While the election was a consent election as between employer and union, it was after all a board election to be held under the rules and regulations of the board. This being so, the mere fact that one of the parties to the agreement failed in one or more particulars to act as he had agreed to act could not invalidate the election unless the respect in which there was a failure had an unfair, unjust, or otherwise untoward effect upon the election. 203 F.2d at 434.

The majority does not question the principle that conduct not objectionable in itself is not grounds for setting aside an election merely because that conduct also violated a pre-election agreement between the parties. Had there not been Board approval of this pre-election agreement, the majority would presumably find that the Respondent did not have a reasonable, good faith basis for its contention that the election should be set aside. The majority refers to our decision in J. R. Norton Company (May 30, 1980) 6 ALRB No. 26, wherein we said that make-whole was appropriate unless the employer had a reasonable good faith belief (1) that the election was conducted in a manner that did not fully protect employees' rights or (2) that misconduct occurred which affected the outcome of the election. The majority does not assert that the

election was conducted in a manner that did not fully protect employees' rights, nor does it assert that misconduct occurred which affected the outcome of the election. Instead it finds that the Respondent had a good faith belief that the election would be set aside because the Board formally approved the pre-election agreement. This not only ignores ALRA and NLRA precedent, but it simply fails to deal with the test we so recently set down in J. R. Norton, supra.

For the above reasons, I find that imposition of the make-whole remedy in this case is appropriate.

Dated: August 25, 1980

RONALD L. RUIZ, Member

NOTICE TO EMPLOYEES

A representation election was conducted by the Agricultural Labor Relations Board among our employees on February 5, 1976. The majority of the voters chose the United Farm Workers of America, AFL-CIO to be their union representative. The Board found that the election was proper and officially certified the UFW as the exclusive collective bargaining representative of our employees on November 18, 1977. When the UFW then asked us to begin to negotiate a contract, we refused to bargain so that we could ask the court to review the election.

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

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

1. To organize themselves;

2. To form, join or help any union;

3. To bargain as a group and to choose anyone they want to speak for them;

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

5. To decide not to do any of these things.

WE WILL NOT conduct unlawful employee polls or otherwise question employees regarding their union sentiment.

WE WILL, on request, meet and bargain in good faith with the UFW about a contract because it is the representative chosen by our employees.

Dated:

BEE & BEE PRODUCE, INC.

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Bee & Bee Produce, Inc.

6 ALRB No. 48
Case Nos. 78-CE-32-V
78-CE-35-V

ALO DECISION

A representation election was held among the agricultural employees of Bee & Bee Produce, Inc., on September 18, 1975. Thereafter the parties reached a settlement agreement disposing of the objections. The Board approved the agreement, set aside the election, and directed that a rerun election be conducted on February 5, 1976.

Following an evidentiary hearing on objections, the Board certified the UFW as the exclusive bargaining representative of Respondent's agricultural employees, on November 18, 1977. Respondent refused to bargain on February 3, 1978, in order to obtain judicial review of the Board's certification. Shortly after the end of the certification year, Respondent conducted a poll of its employees to determine whether the UFW still enjoyed majority status among its employees.

In his decision, the ALO found that Respondent violated section 1153(c) and (a) by refusing to bargain with the UFW and interrogating its employees as to their union sympathy through the use of the poll.

BOARD DECISION

The Board affirmed the ALO's conclusions, but as it found that Respondent's litigation posture was reasonable and in good faith, under the standards set forth in J. R. Norton Co. v. Agricultural Labor Relations Bd. (1979) 26 Cal. 3d 1, it declined to impose the make-whole remedy.

* * *

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
BEE & BEE PRODUCE, INC.,	)	Case Nos. 78-CE-32-V
	)	78-CE-35-V
Respondent,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	

ERRATA

On November 27, 1979, I issued my Decision in the above-captioned matter. Since that time, an error in the Decision has come to my attention, necessitating the following correction in the text of the Decision:

Page 24, between paragraph 2b and 2c insert the following: "Make whole those employees employed by Respondent in the appropriate bargaining unit at any time between the date of Respondent's first refusal to bargain on or about February 3, 1978, to the date on which Respondent commences collective bargaining in good faith and thereafter bargains to contract or impasse, for any losses they have suffered as a result of their refusal to bargain in good faith, as those losses have been defined in Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1978)."

DATED: January 28, 1980

KENNETH CLOKE
Administrative Law Officer

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case No. 78-CE-32-V
	)	78-CE-35-V
BEE & BEE PRODUCE, INC.,	)	
Respondent,	)	
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
Charging Party.	)	

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DECISION

KENNETH CLOKE, Administrative Law Officer:

STATEMENT OF THE CASE

This case was heard before me in Oxnard on January 29 and 30, 1979. True copies of the charges which form the basis for this Complaint were filed and served on October 2, 1978, and November 28, 1978. A true copy of the complaint

was filed and served October 30, 1978, and an Amended complaint was filed and served on January 3, 1979, alleging violations of Sections 1153(a) and (e) of the Agricultural Labor Relations Act (hereinafter referred to as the "Act"),

The Complaint charges Respondent with "interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 1152 of the Act" by refusing to "bargain collectively in good faith with the United Farm Workers of America, AFL-CIO, the labor organization certified as the collective bargaining representative of Respondent's agricultural employees", and also charges Respondent "interrogated its agricultural employees regarding their desire to be represented by the UFW", in violation of Section 1153(a) of the Act.

On November 13, 1978, Respondent's duly filed Answer admitted it was an agricultural employer within the meaning of Section 1140.4(c) of the Act, and that the United Farm Workers of America, AFL-CIO (hereinafter referred to as the "UFW") was a labor organization within the meaning of Section 1140.4(f) of the Act. With respect to charge 78-CE-32-V, Respondent concurrently filed a Motion to Dismiss the Complaint pursuant to Section 20240 of the Regulations, and alleging a violation of Section 1160.2 of the California Labor Code. The parties, upon denial of Respondent's Motion, filed on March 2, 1979, a Request for Review of (Exceptions to) the Decision

of the Administrative Law Officer, which was denied without prejudice to renew in further exceptions, and remanded for further findings of fact. The parties at hearing called two witnesses, and submitted a stipulated set of facts. On June 14, 1979, General Counsel and Respondent submitted post-hearing briefs. As a further affirmative defense, Respondent asserted for the first time the legality of its refusal to bargain with the UFW in order to obtain appellate review of the Agricultural Labor Relations Board (hereinafter referred to as the "Board")representation election and subsequent certification of the UFW as collective bargaining representative for its agricultural employees.

All parties were given full opportunity to conduct a hearing, call and examine witnesses, examine and present documentary evidence, and orally argue their positions. Upon the record as a whole, including judicial notice and independent research and reflection, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The following facts were presented by stipulation of the parties, and corroborated by direct or documentary evidence:

1. Refusal to Bargain:

1. On September 11, 1975, a Petition for Certification was filed.

2. On September 18, 1975, a representation election was conducted for the agricultural employees employed

by Respondent. Timely objections to the election were filed by the UFW and Respondent.

3. The parties subsequently reached a settlement agreement whereby a re-run election was to be held. The Board approved this settlement and ordered a re-run election on February 5, 1976.

4. On November 18, 1977, the UFW was certified by the Board as the exclusive representative for all of the agricultural employees employed by Respondent for the purpose of collective bargaining, as defined in Labor Code Section 1155.2 (a), concerning wages, hours and other terms and conditions of employment.

5. On December 30, 1977, through a letter from Cesar Chavez, the UFW requested a negotiations meeting with Respondent and requested certain information. Respondent acknowledged timely receipt of this letter.

6. On February 3, 1978, Respondent through its legal counsel advised the UFW that it was refusing to bargain in order to challenge the validity of the aforementioned certification and underlying election. The UFW acknowledged timely receipt of this letter.

7. On February 22, 1978, the UFW sent a letter to Respondent urging it to reconsider its position of February 3, 1978.

8. The UFW made no further request to bargain until December 30, 1978.

9. The UFW filed a charge upon which this complaint is based on October 2, 1978, eight months after its last request to bargain, and six weeks prior to the termination of its "certification year."

While the parties stipulated that the UFW's only request to bargain occurred on December 30, 1977, this request was plainly repeated in its letter to Respondent on February 22, 1978, which was a second request to bargain, and by the filing of an unfair labor practice charge on October 2, 1978, which was a third request.

2. Interrogation:

1. After Respondent's refusal to bargain with the UFW, the parties failed to reach a collective bargaining agreement, and the UFW did not file for an extension of the certification year. A Complaint for refusal to bargain in good faith was, however, issued by the Board before the close of that year.

2. Three days after close of the certification year, on November 20, 1978, Respondent conducted a poll among its agricultural employees. The poll was conducted on its own initiative, and not at workers request. The letter of introduction and questionnaire were drafted by Respondent's attorney, translated accurately into Spanish, and printed on Respondent's letterhead.

3. The poll was handed out to all crews working on November 20th by Chiye Takeuchi, Respondent's payroll clerk, and signed by her as Office Manager. Instructions were given in Spanish to the crews by Respondent's foreman and labor contractor, Mr. Reyes, as follows:

> "Read the paper. Mark it if you want to. Fold it and put it in the pouch. I will leave the pouch here and will be back to pick it up."

4. Pens and pencils were left with the workers, and both Mrs. Takeuchi and Mr. Reyes left the area. Sometime later Mrs. Takeuchi returned to the crew and seeing that a couple of workers had not yet finished, she again left the area, waited for a few more minutes, returned and picked up the pouch. She said nothing to the workers and in return, no questions were asked by the workers. She left and returned to her office whereupon she removed the leaflets from the pouch.

5. This same procedure was performed under the same conditions later by Jess Espinosa, an office clerk for Larry Martinez, a labor contractor employed by Respondent at all times material herein.

6. Two worker witnesses testified they did not see any of the workers sign more than one sheet of paper, they did not see how anyone marked their papers, or anyone talking during the period when workers were marking or reading their papers. The witnesses inferred that they had been instructed to mark the form as they pleased, rather than marking it if they wanted.

7. The results of the poll were as follows:

2 - no marking;

5 - I want the UFW to continue to represent me;

45 - I do not want the UFW to continue to represent me.

8. The sole use of these results was a reference by Respondent to its possession of "objective evidence" supporting a "good faith doubt as to the UFW's continued majority status" (see GC Exhibit IV) in a letter to the union refusing to bargain with it on that basis.

Neither at the hearing nor in its Answer did Respondent dispute the facts alleged or the unfair labor practices in question. It admitted both its refusal to bargain with the UFW and its conduct of the poll, but filed a Motion to Dismiss the Complaint alleging a violation of Section 1160.2 of the Act, in that the charge was not brought within six months of the union's last request to bargain, and alleged that its poll was non-coercive.

On these facts I reach the following conclusions of law.

CONCLUSIONS OF LAW

1. Refusal to Bargain:

Counsel for Respondent contends the ALO erred at hearing by holding that a charging party may file an unfair labor practice charge alleging a violation of Labor Code Section 1153(e) at any time during a certification year under Labor Code Section 1160.2.

Reviewing the cases cited by Respondent, the basis for its argument may be found in Grain Millers v. NLRB, 197 F.2d 451; 30 LRRM 2290 (CA 5, 1952), where it was held that refusal occurring outside the six-month period did not create a continuing violation where no further request to bargain was made by the employees or their union. There could be no inference of continuing violation in Grain Millers, however, because the employer's duty to bargain had ceased to exist. There, unfair labor practice strikers had been replaced pursuant to a NLRB holding that the company had a right to employ new workers, and on June 20, 1948, when the union began to request reinstatement, they no longer held a majority and possessed no bargaining rights.

Here, however, the UFW was the exclusive Board certified bargaining agent of Respondent's employees at the time of its first request and continuing to the time its unfair labor practice charge was filed. If there had been no request, obviously there would have been no duty to bargain. Outside the certification year, there is likewise no duty to bargain of a continuing nature. Yet the only way to

safeguard the certification year and maintain the irrebuttable presumption of majority status which forms its basis is to permit the General Counsel to file a complaint at any time during that period. The circumstances surrounding Respondent's refusal to bargain, i.e. its intent to challenge the union's certification, existed not only at the time of its first refusal, but throughout the six-month period and up to the date of this Decision. As admitted in its Answer, Respondent refused and has continued to refuse to bargain with the UFW. The fact that its Answer post-dated the refusal to bargain letter of February 3, 1978, does not diminish the effect of this admission.

Respondent cites several cases holding that a charge based on refusal to bargain is not barred by Labor Code Section 1160.2, where the union makes a second request to bargain within the statutory period. J. Ray McDermott & Co., Inc. v. NLRB, 98 LRRM 2193; NLRB v. White Construction Co., 204 F.2d 950, 32 LRRM 2199; NLRB v. Louisiana Bunkers, Inc., 409 F.2d 1295, 70 LRRM 3363. These cases, however, do not limit the employer's duty to bargain throughout the certification year to cases in which a second request is made after the first six months have elapsed, nor to the general principle that the duty to bargain runs throughout the certification year.

To do so in this instance would undermine the purpose of the one year certification rule, as elucidated in Brooks v. NLRB, 395 US 575, 71 LRRM 2481 (1954), where the Supreme Court stated:

> "The derlying purpose of this: tute is industrial peace. To allow employers to rely on employee's rignts in refusing to bargain with the formally designated union is not conducive to that end, it is inimical to it. Congress has devised a formal mode for selection and rejection of bargaining agents and has fixed the spacing of elections, with a view of furthering industrial stability and with due regard to administrative prudence."

The Supreme Court upheld the employer's duty to bargain for "a reasonable period, generally a year," with a newly certified union. While the Supreme Court did not address itself to the issue of the statute of limitations, it would be logical to assume that if the duty lasts a year, the ability to breach it must do likewise.

Respondent has failed to present evidence or argue that any "unusual circumstances" justified its refusal, other than disagreement with the Board's action certifying the UFW as collective bargaining agent for its employees, which is clearly insufficient to absolve it of a duty to bargain in good faith. A unions' pre-certification misconduct may not be collaterally attacked in this fashion. See, e.g., Moritz, Edward Bryan dba E.B. Moritz Foundry, 220 NLRB No. 186, 90 LRRM 1540 (1975). See also, NLRB v. Sharon Hats, Inc., 48 LRRM 2098 (CA 5, 1961).

The majority status of a union is generally regarded as conclusively presumed during the certification year. After that year, a rebuttable presumption continues, together with an obligation to bargain, although good faith doubt may then be used as a defense to an unfair labor practice charge. See, e.g., Rohlik, Inc., 145 NLRB 1236, 55 LRRM 1130 (1964); Teleservice Co. of Wyoming Valley, 149 NLRB 1053, 57 LRRM 1413 (1964).

In Skelly Oil Co., 192 NLRB 741, 78 LRRM 1048 (1971), the Board stated:

> "As the Union's request and its subsequent charges all occurred during the one year certification period, which carries an almost irrebuttable presumption of majority representation, we find no merit in the Respondent's position." (Emphasis added). See also, e.g., Kenneth B. McLean, dba Ken's Building Supplies, 142 NLRB 235, 53 LRRM 1021 (1963).

In NLRB v. Basic Wire Products, Inc., 89 LRRM 2257 (CA 6, 1975), a union charge of refusal to bargain was filed on February 22, 1973,and withdrawn at its request on July 26. A second charge of refusal to bargain was filed on October 25, 1973, based on identical underlying facts, occurring more than six months before. The fact that they occurred during the certification year, however, led the Sixth Circuit to hold that the employer's duty to bargain in good faith continued throughout the year;

> "Since Respondent was under a continuing obligation to bargain "for a 'reasonable' period, ordinarily one year" from the date of the Union's certification (January 18,) Brooks v. NLRB, 348 U.S. 96, 98, 35 LRRM 2158 (1954), Respondent was obliged to honor the Union's bargaining demand of September 19. Its September 27 refusal constituted an independent unfair labor practice to bring the October 25 charge within the six-month rule of section 10 (b)." Id. at 2261, ft. omitted.

While the Court cited special circumstances which existed in that case (ft. 8), it went on to comment at length on its reasoning process:

> "The analysis of whether Section 10(b) bars reliance on the Union's October 25 unfair labor charge must "focus on the purpose of section 10(b) and on the needs of the defense." NLRB v. McCready and Sons, Inc., 482 F.2d 872, 875, 83 LRRM 2674 (6th Cir. 1973). As we stated in

> McCready, section 10(b) was intended to "give alleged violators opportunity to prepare defenses and to protect them against stale claims," 482 F.2d at 875, quoting from NLRB v. Waterfront Employers, 211 F.2d 946, 955, 34 LRRM 2049 (9th Cir. 1954). Thus, in McCready we held a claim barred by section 10(b) where its validity depended on whether the company had legitimate reasons for refusing to execute a labor contract more than six months before a charge was brought attacking the refusal. In that circumstance, the "continuing obligation" doctrine did not apply, since allowing revival of a charge on each successive request that the company sign the contract "would clearly jeopardize the employer's opportunity to prepare defenses and would risk subjecting him to a stale claim." 482 F.2d at 872. ..
>
> "Unlike the situation in McCready, where we were without precedent on the interrelationship between section 10 (b) and a charge of refusal to execute a contract, we have guidance on the applicability of the "continuing obligation" doctrine in the refusal to bargain context. In Brooks v. NLRB 348 U.S. 96, 35 LRRM 2158 (1954); the Supreme Court expressly approved the Board's rule that "certification, if based on a Board-conducted-election, must be honored for a 'reasonable' period, ordinarily one year, in the absence of 'unusual circumstances.'" 348 U.S. at 98. Thus, Respondent was under a continuing obligation to bargain with the Union for at least a' year from the date of certification, January 18, 1973. Id. at 2262-3.

While the Court went on to find that an additional refusal had occurred during the six month period, this fact was not essential to its reasoning, particularly where a further demand might reasonably appear to be futile.

Although there is some authority for the proposition that refusal to bargain is not a continuing violation, see, e.g., Memorial Hospital of Roxborough, 220 NLRB 402, 403 (1975); none of the cases cited by Respondent presents the question with respect to a union during its certification year where at least two requests to bargain and an unconditional refusal have taken place.

Furthermore, in Sewanee Coal Operators Assn., 167 NLRB 172, 66 LRRM 1022 (1968), rev.d on other grounds, 73 LRRM 2725, former members of an employers association were properly served with charges that they had refused to bargain with a certified union, even though they were served more than six month's after the union's original request for bargaining. The Board there held the original request was continuing, at least during the certification year when the employer was required to bargain. The Board also found additional requests would have been futile, and that the filing of a charge was itself a renewed request to bargain. See also, e.g., Roberts Electric Co., 227 NLRB 1312, at 1318-9 (1977); NLRB v. Basic Wire Products, Inc., supra at 2263.

After Respondent's letter of February 3, 1978, it became apparent that any subsequent request would be futile, and the law does not command performance of a futile act. See, e.g., Valencia Baxt Express, Inc., 143 NLRB 211 53 LRRM 1304 (1963); Williams Energy Co., 218 NLRB 1080, ft. 4 (1975); NHE Lansing, 219 NLRB 833, 834, ft. 3 (1975). The fact of futility may also be seen in the employer's immediate use of an employee poll, conducted only three days after the close of the certification year, to "test employee sentiment" without any other evidence of good faith doubt as to the union's continued majority status. See, U.S. Gypsum Co., 143 NLRB 1122, 53 LRRM 1454 (1963); J. A. Terteling and Sons, Inc. dba Western Equipment Company, 149 NLRB No. 28, 57 LRRM 1292 (1964).

There must, indeed be a request to bargain before a duty to bargain in good faith can arise. Grain Millers v. NLRB, 30 LRRM 2290 (CA 5, 1952). Yet after a request and subsequent categorical refusal, it would make no sense for the Board to require a recently certified union to continue requesting what has obviously become impossible, and no policy objective can reasonably be said to require what is unreasonable in practice. The only interpretation that can be placed on Respondent's letter of February 3, 1978, is that there was no possibility of good faith bargaining until after the UFW's certification was upheld on appeal, a process that could take years. The UFW's letter of February 22, 1979, was a second request to bargain, a request that Respondent chose not to honor. By doing so, it created the impression that future requests would be futile, and may not now be heard to argue that it did not violate the Act because the UFW failed to request a third time that it bargain in good faith. See International Union, UAW (Aero Corp) v. NLRB, 363 F.2d 702, 706; Local No. 152 v. NLRB, 343 F.2d 307, 310 (1965). The certification year has long been considered an essential part of the national labor policy, and were it this simple for an employer to evade its obligation to bargain in good faith, the policy reasons which compelled creation of this "conclusive" or "irrebuttable" presumption would be too easily overrun.

I therefore conclude, for reasons stated here and in the transcript, that the charge was not barred by the statute of limitations, and that Respondent violated the

Act by its' refusals on February 3, 1978, on February 22, 1978, and continuing thereafter until November 18, 1978, to bargain in good faith with the UFW. Even were the obligation to bargain under these circumstances held not to continue, the certification year must take precedence over the statute of limitations, so as to permit the filing of charges at any time during that year. Otherwise, an important public policy could be defeated by a mere technical failure. It is the purpose of irrebuttable presumptions to remedy precisely this sort of problem, by refusing to permit the parties to resist performance of their legal duties through proforma compliance and reliance on relatively minor administrative errors to defeat major statutory objectives.

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2. Interrogation:

Although the N.L.R.B. initially held any employer interrogation of an employee to be unlawful per se, Standard-Coosa Thatcher, 85 N.L.R.B. 1358 (1949), that rule was overturned in Blue Flash Express, Inc., 109 N.L.R.B. 591 (1954). In Blue Flash, the Board held that "interrogation of employees by an employer as to such matters as their union membership or union activities, which, when viewed in the context in which the interrogation occurred, falls short of interference or coercion, is not unlawful." Id. at 593

The N.L.R.B., in Struksnes Construction Co., Inc., 165 N.L.R.B. 1062 (1967) revised the rule of Blue Flash, setting forth several criteria to be applied to determine whether or not an employer poll violates Section 8(a)(1). Absent unusual circumstances, polling of employees violates Section 8(a)(l) unless:

> "1. The purpose of the poll is to determine the truth of the union's claim to majority;
>
> 2. This purpose is communicated to the employees;
>
> 3. Assurances against reprisals are given;
>
> 4. The employees are polled by secret ballot;
>
> 5. The employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere."
>
> Id. at 1063

The Board nonetheless recognized that:

> "In our view any attempt by an employer to ascertain employee views and sympathies regarding unionism generally tends to cause fear of reprisal in the mind of the employee

> if he replies in favor of unionism and, therefore, tends to impinge on his Section 7 rights. That such employee fear is not without foundation is demonstrated by the innumerable cases in which the prelude to discrimination was the employer's inquiries as to the union sympathies of his employees." Id. at 1062.
>
> More to the point, the Board stated:
>
> On the other hand, a poll taken while a petition for a Board election is pending does not, in our view, serve any legitimate interest of the employer that would not be better served by the forthcoming Board election. In accord with long-established Board policy, therefore, such polls will continue to be found violative of Section 8(a) (1) of the Act. Id. at 1063, footnote omitted.

The same rationale applies to the certification year. While the poll in this case occurred three days following the close of that year, its timing, when considered together with Respondent's refusal to bargain, creates an inference that Respondent was simply continuing its unlawful refusal to bargain with a newly certified union. The "certification year" is not so technical a concept as to permit one day what had been unlawful only three days before. The Supreme Court thus recognized that certification was to be for a "reasonable period, generally a year." Brooks, supra (emphasis added).

General Counsel alleges in his Brief (at p. 4) that Blue Flash and Struksnes involved employers who had been confronted with a recognitional demand, and that no such mechanism exists under the ALRA. Yet the absence of a union request for recognition does not per se convert non-coercive questioning into a violation of Section 8(a)(1). S.H. Kress & Co., v. N.L.R.B., 317 F. 2d 225 (CA 9, 1963), (decided prior

to Struksnes).

In this case, the employer had committed an earlier unfair labor practice by refusing to bargain with the UFW after receiving at least two requests that it do so. While Respondent's poll satisfied all the other Struksnes requirements, it may fairly be said that its refusal to bargain during the certification year was likely to weaken the union in the eyes of its employees. For the employer then to proceed, immediately following termination of the certification year, to poll employee sentiments, was to further weaken the union in the eyes of its members, and support a reasonable conclusion that it was unable to make progress with such an employer. For this reason I find the poll conducted by Respondent, in the context of its earlier unfair labor practice, to have taken place in a coercive atmosphere, regardless of all other precautions taken by Respondent, thereby violating the Act.

General Counsel also argues that Struksnes has no application under the ALRA because it contains no provision for employer initiation either of election or decertification proceedings. Indeed, Sections 1156.3 and 1156.7(c) and (d) of the Act reserve the filing of petitions for election or decertification solely to "employees", or others "acting in their behalf."

While principles of abstention make it unnecessary to decide this issue, there are several cogent reasons why the Struksnes standard should be found inapplicable under the ALRA.

1) The clear intent of the Act is to remedy employee powerlessness by providing the means of self-organization, Employer efforts to discover employee sentiment, in this context, are not neutral, but necessarily an interference.

2) Just as in physics, where the Heisenberg "uncertainty principle" has established that any observation will affect or interfere with the natural process which is being observed; so here employer polls, even when conducted under otherwise neutral conditions, convince employees that their organizational efforts are being monitered.

3) This is especially the case where there are numerous undocumented workers in fear of deportation, large scale labor camp housing, with its psychology of dependency and fear, migrancy, and seasonal employment, all creating an atmosphere of economic insecurity.

4) If employees are genuinely dissatisfied with a union's performance, they may petition for decertification themselves. Since they voted for the union, there is nothing to prevent their voting against it, and the employer need not be involved.

5) The term "interference", in the context of a poll or interrogation, must be taken literally. Black's Law Dictionary defines it as: "to check; hamper; hinder; disturb; intervene; intermeddle; interpose; to enter into, or take part in, the concerns of others." 4th Ed., p. 951. The term thus implies an affirmative involvement in the affairs of others.

A poll or employer interrogation is clearly that, regardless of the conditions under which it is conducted.

6) The reservation of election activity under the Act to employees alone indicates a further intention that they be left free to exercise their electoral rights without interference. An employer may clearly suggest that they poll one another, but a poll is like an election, and ought to be taken under the same conditions.

7) Employer polling and interrogation by their nature invade employee privacy, forcing conclusions without benefit or reflection, information or debate. They take place without union argument or involvement in the wording, timing, or circumstance under which the poll is conducted, in isolation from other employees, and with no opportunity to respond or interpret the results. All aspects of the process are placed in the hands of a single, interested party.

8) We are not here faced with the issue of an employer's right to resolve the question of a labor organization's majority status prior to an election, as under NLRB law. The union has won an election and been certified, and the employer can have no legitimate interest in conducting an inquiry under such circumstances. To permit employer polling after certification is to encourage unfair labor practices, especially refusals to bargain.

9) An employer may pursue other alternatives if its aim is simply to determine the existence of a union majority among its employees. It may request such proof directly from the union, it may suggest that disaffected employees file a

petition for decertification. If it has genuine good faith doubt, it may refuse to bargain and assert loss of majority as a defense, etc.

10) Moreover, it is the policy of the Act to:

> "encourage and protect the right of agricultural employees to full freedom of association, self-organization and designation of representatives of their own choosing, and to be free from the interference, restraint and coercion of employers of labor, or their agents, in...self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Section 1140.2. Emphasis added.

Section 1152 of the Act declares the rights of employees to include the same guarantee of self-organization:

> "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities..." Id. Emphasis added.

These policy considerations can only be hampered where employers are permitted to interrogate or poll their employees regarding their union attitudes.

11) Even at the end of a certification year, there is a rebuttable presumption that majority representation status continues. Terrill Machine Co., 173 NLRB 1480, 70 LRRM 1049 (1969); Kaplan's Fruit & Produce Co., et al., 3 ALRB No. 28. While the employer may certainly rebut this presumption, it may not create the evidence for such rebuttal, particularly by refusing to bargain during the certification year. It must simply assume the union represents its employees until they act to change it. Anything further must be considered inter-

ference in a process that belongs completely and without qualification to employees.

12) Management, in agricultural labor, has almost unilaterally set wages, prices, and working conditions. It controls hire, fire, transfer, lay-off, and in many cases housing, consumption, transportation and other essential aspects of life. It's orders must be obeyed on penalty of discharge, and its power over the lives of its employees is plenary. In such a context, it is necessary to take great precautions to make certain that apparently neutral and non-coercive behavior does not interfere in the one area of employment reserved exclusively to employees: the exercise of their right to self-organization. In such a context, any interrogation or questioning will be seen as an interference, and the purpose of the Act will be frustrated. However, since Respondent's poll failed to meet the Struksnes standard it is not necessary here to reach this question.

3. Validity of Re-Run Election and Certification:

There is no basis in the record for Respondent's argument that the election and certification should be set aside. At no time did it make any effort to introduce into evidence, request judicial notice, or make oral or written argument concerning these points, except in it's post-hearing brief. See, e.g., Phaostron Instrument and Electronic Co., 152 NLRB No. 37, 59 LRRM 1125 (1965). Respondent cites numerous facts and opinions which have little or no relationship to the charges alleged here, and depend for their proof on facts which at no time appeared in evidence. Moreover, Board

precedent here operates as res judicata. Respondent may request that the Board consider its arguments, but there is no basis for doing so on the existing record.

REMEDY

Extension of the certification year is warranted where an employer has refused to bargain with a union during its initial year of certification. See, e.g., NLRB v. Burnett Construction Co., 60 LRRM 2004, enforcing 58 LRRM 1016. See also, Glomac Plastics Inc., v. NLRB, 85 LC 11, 095 (1979) (directing reinstatement of a full year).

The evidence establishes a refusal to bargain since February 3, 1978, and since the purpose of the Act is to return the parties to their original position as though Respondent's unfair labor practice had not occurred, it is necessary to extend the certification year by its period of refusal, or for an additional 41 weeks, commencing with receipt by the UFW of a notice of intent to bargain in good faith from Respondent. It is irrelevant that Respondent may possess evidence that the union lost it's majority status. See, e.g., Carpinteria Lemon Association v. NLRB 39 LRRM 2185 (CA 9, 1956). Since Respondent's refusal to bargain may have affected the union's majority status during the certification year, a Notice to Employees is appropriate as well. I therefore issue the following Order and Notice.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Baord hereby orders that Respondent Bee and Bee Produce, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Unlawfully refusing to bargain with the UFW as the certified representative of its agricultural employees;

(b) Unlawfully polling or interrogating its employees with regard to their attitudes toward the union;

(c) In any other manner interfering with, restraining or coercing any of its employees in the exercise of rights guaranteed by Section 1152 of the Act.

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

(a) Immediately notify the UPW in writing of its intention to begin good faith bargaining as soon as possible;

(b) Continue to bargain in good faith with the UFW throughout the certification year, which shall be extended an additional 41 weeks from the date of receipt by the UFW of its letter in compliance with Section 2(a) of this Order, or until a collective bargaining agreement is reached;

(c) Sign and post on its premises copies of the attached Notice to Employees at times and places to be determined by the Regional Director. The Notices shall remain posted for a period of 12 months. After translation of the Notice by the Regional Director into appropriate languages, copies of the Notice shall be provided by Respondent in sufficient numbers for the purposes set forth herein. Respondent shall exercise due care to replace any posted Notice which has been altered, defaced, covered, or removed.

(d) Mail copies of the attached Notice to Employees in all appropriate languages, within 30 days after

after issuance of this Order, to all employees employed on November 20, 1978.

(e) Arrange for a representative of Respondent or Board Agent to distribute and read the attached Notice to Employees in appropriate languages to the assembled employees of Respondent on company time. The reading (s) shall be at peak season, at such tine(s) and place (s) as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act.

(f) Hand a copy of the attached Notice to Employees to each of its present employees and to each employee hired during the twelve months following issuance of this Order.

(g) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it. Upon request of the Regional Director, Respondent shall notify him/her periodically thereafter in writing further steps taken in compliance with this Order.

DATED: November 20, 1979

KENNETH CLOKE
Administrative Law Officer

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its case, the Agricultural Labor Relations Board has found that we have interfered with the rights of our workers. The Board has told us to send out and post this Notice.

We will do what the Board has ordered and also tell you that:

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

1. To organize themselves;

2. To form, join, or help unions;

3. To bargain as a group and choose whom they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect one another;

5. To decide not to do any of these things.

Because this is true, we promise that:

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

Especially:

WE WILL NOT refuse to bargain in good faith with the UFW.

WE WILL NOT conduct unlawful employee polls or otherwise question employees concerning their attitudes toward the UFW.

WE WILL NOT in any way, or at any time, interfere with, or restrain, or coerce any employee in the exercise of the rights described above.

BEE & BEE PRODUCE, INC.

Dated: _____ _____

(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE