Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TEX-CAL LAND MANAGEMENT, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 80-CE-119-D 7 ALRB No.

DECISION AND ORDER

On October 23, 1980, Administrative Law Officer (ALO) Michael H. Weiss issued the attached Decision in this matter. Thereafter, the Respondent timely filed exceptions and a supporting brief.

The ALO concluded that Respondent violated section 1153(e) and (a) by refusing to sign the final typed copy of a collective bargaining contract it had previously agreed to and initialed.[1] A refusal to sign a valid collective bargaining contract embodying terms on which the parties have reached agreement is deemed a per se violation of the duty to bargain in good faith since experience has shown that such conduct tends to be especially disruptive of the collective bargaining process. See H.J. Heinz v. NLRB (1941) 311 U.S. 514 [7 LRRM 291]; NLRB v. Strong (1960) 393 U.S. 357 [70 LRRM 2100].

[1] Respondent's conduct during negotiations was not alleged to constitute bad-faith bargaining. The charge and the complaint were narrowly drawn to allege only that Respondent and the United Farm Workers of America, AFL-CIO(UFW) reached a fully negotiated agreement and that Respondent thereafter acted in bad faith by its refusal to sign the agreement when it was reduced to writing.

We reject the ALO's statement that section 8(d) of the National Labor Relations Act (NLRA) is the analog to section 1153 (e) of the Agricultural Labor Relations Act. The correct NLRA analog is section 8(a)(5).

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

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Tex-Cal Land Management, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to bargain with the United Farm Workers of America, AFL-CIO (UFW) as the certified collective bargaining representative of its agricultural employees, by refusing, at the UFW's request, to sign a labor agreement which has been reached by Respondent and the UFW.

(b) In any like or related manner refusing to bargain with the UFW or otherwise interfering with, restraining or coercing any agricultural employee(s) 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) Sign the collective bargaining agreement it reached with the UFW on June 11, 1930, giving retroactive effect to

all terms and provisions of that agreement for the period from June 11, 1980, and make whole all bargaining unit employees for any loss of pay and other losses they have suffered as a result of Respondent's failure and refusal heretofore to sign the aforesaid agreement.

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

(c) 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 between June 11, 1980, and the time such Notice is mailed.

(d) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days, in conspicuous places on its property, the period and place (s) 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 be altered, defaced, covered, or removed.

(e) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its agricultural employees on company time and property, at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management representatives, to answer any questions the employees may have concerning the Notice or employees' rights under the Act.

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

(f) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with the terms hereof, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: May 15, 1981

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After a hearing at which each side had an opportunity to present testimony and other evidence, the Agricultural Labor Relations Board has found that we have interfered with the rights of our agricultural workers by refusing to sign the collective bargaining agreement we entered into on June 11, 1980, with the United Farm Workers of America, AFL-CIO. The Board has ordered us to distribute 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 you and all farm workers these rights:

1. To organize yourselves;
2. To form, join or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to try to get a contract or to help or protect one another; and
6. 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 fail or refuse to bargain in good faith with the UFW by refusing to sign a collective bargaining agreement which we have reached with the UFW.

WE WILL NOT in any like or related manner unlawfully refuse to bargain with the UFW or otherwise interfere with, or restrain, or coerce any agricultural employee in the exercise of the rights described above.

WE WILL sign the collective bargaining agreement we reached with the UFW on June 11, 1980, giving retroactive effect to all the terms and conditions thereof, and make whole our employees for any loss of pay or other losses which they have suffered as a result of our refusal heretofore to sign the said agreement.

Dated: TEX-CAL LAND MANAGEMENT, INC.

By: ______________________________

Representative Title

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 93215. The telephone number is (305) 725-5770.

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

Tex-Cal Land Management, Inc. (UFW)

7 ALRB No. 11
Case No. 80-CE-119-D

ALO DECISION

The ALO found that Respondent violated section 1153 (e) and (a) of the Act by refusing, at the UFW's request, to sign a final typed copy of a collective bargaining agreement it had previously agreed to and initialed. Respondent claimed that mutual or unilateral mistake as to the subcontracting provision of the contract at issue prevented the formation of a binding collective bargaining agreement with the United Farm Workers. The ALO found the agreement to be valid under the NLRB as well as the common law tests and characterized the dispute as one of contract interpretation, appropriate for resolution under the arbitration clause of the agreement.

BOARD DECISION

The Board affirmed the rulings, findings, and conclusions of the ALO, holding that Respondent's refusal to sign the contract constituted a per se violation of the Act. The Board ordered Respondent to sign the collective bargaining agreement, giving retroactive effect to all terms and provisions of the agreement, and to make whole all bargaining unit employees for any loss of pay and other losses they have suffered as a result of Respondent's failure and refusal heretofore to sign the agreement. The Board also ordered the posting, reading, and mailing of a remedial Notice to Employees.

* * *

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TEX-CAL LAND MANAGEMENT, INC., Respondent, and UNITED FARM WORKERS OF AMERICA AFL-CIO, Charging party,	Case No. 80-CE-119-D DECISION

APPEARANCES:

For the General Counsel	Judy Weissberg Fresno, California
For the Respondent:	Werdel & Chapin By Sidney P. Chapin Bakersfield, California

STATEMENT OF THE CASE

MICHAEL H. WEISS, Administrative Law Officer: This proceeding arises from an Unfair Labor Practice (ULP) filed by the United Farm Workers of America, AFL-CIO (UFW) against Tex-Cal Land Management, Inc. (Tex-Cal or Respondent) on August 5, 1930.[1/] Thereafter, a complaint, alleging that Respondent had failed to execute the negotiated collective bar gaining agreement between the parties, was filed en August 14. The complaint alleges that Respondent's refusal to execute the contract interferes with the rights of Respondent's workers guaranteed in Section 1152 of the Act.[2/] and constitutes a violation of Sections 1153 (a) and (e) of the act.

[1/] All dates refer to 1930 unless otherwise indicated.

[2/] The act refers to the agricultural labor relation act. All statutory are to the California labor code unless otherwise indicated.

Respondent admits the jurisdictional and agency allegations but denies the substantive ones in the complaint.

All parties were given full opportunity to participate; in the hearing[3] and after the close of the hearing the General Counsel and Respondent each filed a brief in support of its respective position.

Upon the entire record,[4] including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent admits in its answer that it is an agricultural! employer within the meaning of Section 1140.4 (c) of the Act and that the UFW is a labor organization within the meaning of Section 1140.4 (f) of the Act; and on the basis of the pleadings and undisputed evidence I so find.

II. The Unfair Labor Practice Allegations

The complaint alleges that Respondent violated Sections 1153 (a) and (e) of the Act when it refused, through owner Randy Steele, to execute the negotiated collective bargaining agreement agreed to by the parties on June 11, 1980. Respondent, by its

[3] The hearing was originally set for September 4 but was continued until September 10 at the parties' request while they sought unsuccessfully to resolve the dispute and settle the complaint through negotiations.

[4] The record [17 Exhibits] consists essentially of the prior and current negotiated collective bargaining agreements along with tapes and transcripts of the bargaining sessions supplemented by the testimony of the two principal negotiators, Emilio Huerta and Randy Steele.

conduct is thereby alleged to have refused to bargain collectively in good faith.

Respondent denies it has failed to bargain in good faith and asserts in defense of its conduct, that the parties* had failed to have a meeting of the minds regarding one of the provisions, Article 17, covering sub-contracting, which was the basis for Steel's refusal to sign the agreement.

III. Background Facts

The essential facts are not in dispute and were stipulated to as follows by the parties, and I so find:

1. The UFW was certified as the exclusive collective bargaining representative of all of Respondent's agricultural employees on June 1, 1977 pursuant to Labor Code Section 1156.3.

2. A one year collective bargaining agreement was in existence between the parties from approximately June 1, 1979 until May 10, 1980.

3. On or about March 24, 1980 the parties commenced negotiations for a new agreement, meeting 19 times between March 24 and June 11.

4. The parties extended the terms of the previous contract day-to-day into August during negotiations. However, or. August 5 the Respondent chose to no longer extend the terms [see General Counsel Exhibit No. 6].

5. Respondent's principal negotiator was Sidney Chap in, its attorney and bargaining representative, who was present at all but 2 or 3 of the negotiating sessions.

6. Randy Steele, president of the company, who was present at all of the bargaining sessions, had authority to speak for and bind the company to the agreement.

7. Emilio Huerta had authority to negotiate on behalf, of and bind the UFW to the agreement.

8. At the first session on March 24 ground rules for the negotiations were agreed to. The initials of Randy Steele and/or Sidney Chapin on behalf of Respondent and Emilio Huerta on behalf of the UFW next to an article signified agreement to and intent to be bound by its language.

9. The Respondent and the UFW reached agreement on the language of all the provisions on June 11 which was signified by the appropriate initials next to each article[5/] and further signified by the parties' hand shakes and verbal assent.[6/] The UFW at that time agreed to prepare the final typed version for execution. However, on August 1, Steele refused to sign the I contract and after a short discussion with Huerta about the meaning of the language of Article 17, abruptly left the meeting.

The only provision in question is Article 17, sub contracting.[7/] The parties negotiated the contract provision by

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[5/] See General Counsel's Exhibit No. 3.

[6/] See General Counsel's Exhibits 11 and 13, page 16.

[7/] In particular, that portion of General Counsel's Exhibit 5, Article 17, which says "...[P]rovided, however, that the operations ;to be subcontracted shall be limited to the amount of acreage and man hours of which has been subcontracted in the past...".

provision.[8] Article 17 had been discussed, at least a dozen tines during the course of the negotiations. Initially, Respondent proposed retaining the language from the previous contract. On May 9 the UFW presented a written proposal that was discussed by Steele and Huerta.[9] The following day, May 10, the UFW presented new language for Article 17, which took into account the discussions between the parties on May 9. Steele and Huerta reviewed the language and discussed its implications using several examples and then tentatively agreed to its language. [10] Steele, however, wanted the language reviewed by his counsel. [11] The negotiations were recessed until Monday, May 14, when Steele and Huerta met again and initialed Article 17 [as well as others], signifying agreement to its language.

On July 9 Huerta sent to Chapin the typed, completed contract previously agreed to by the parties on June 11. Between July 9 and August 1 there were a number of contacts between the UFW and I Chapin or Steele. No question was raised during this period by

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[8] At the outset the UFW agreed to retain the language utilized in provisions of the current contract and sought to change the language in the others, including Article 17.

[9] See Respondent's Exhibit B [bottom p. 10 to top of p. 15] . I Essentially, the negotiations revolved around the UFW wanting to project as much work as possible for the bargaining unit worker while the company sought to maintain the right to sub-contract work it had |traditionally done in the past [certain types of work and crops were I exempted from the terms of the contract] as well as maintain a management prerogative flexibility.

[10] See Exhibit 12, p. 2-4 and p. 10-11.

[11] Steele had discussed the language of Article 1" with Chapin and had considered aspects of the issue that had occurred to him. See I Tr p. 89-90.

Respondent that would indicate there was any problem with the language of Article 17.

On August 1 the parties were to meet and execute the agreement. They met at the company's office in Delano in the morning. Chapin asked Huerta whether he had brought the copy of the contract with the provisions initialed. Huerta responded he hadn't. Chapin, for the first time, indicated there was some question about one of the initialed articles and couldn't find his copy and asked Huerta if he could get the UFW's copy. Huerta left and went to the UFW office but couldn't find his copy as well and returned with his negotiating session notes. In the Respondent's office conference room Chapin said the company; had some question about Article 17. Steele then gave an example that, "If the company sub-contracted 200 acres of raisins last year and 1,000 acres this year, would that be covered by the contract?" Huerta responded, "Yes." Steele got up and said, "I'm not signing any contract" and left. Huerta and Chapin [1] remained and talked further in which Chapin said he would talk I to Steele again and the meeting ended. Steele continued to refuse to sign the contract, which led to the filing of the charge and complaint herein and this proceeding.

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ANALYSIS AND CONCLUSION OF LAW

Section 1155.2 (a) of the Act imposes an obligation on agricultural employers and certified bargaining representatives to:

> "...meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party..."

It is a violation of Labor Code Sections 1153(e) and (a) for an employer to fail to comply with the obligations imposed by Section 1155.2(a). Section 1153(e) is identical to § 8(d) of the National Labor Relations Act (NLRA). Since Section 1148 of the Act mandates following applicable decisions under the NLRA, such decisions are appropriately examined to ascertain whether Respondent has violated Sections 1153 (e) and (a) of the Act.

Under well settled NLRB precedent, traditional concepts of contract law govern offer and acceptance of labor agreements. However, reliance on these technical rules of contract law do net control the issue of whether a party has bargained in good faith. See, e.g., NLRB v. Donkin's Inn, Inc., 532 F. 2d 138, 91 LRRM 3015 (9th Cir., 1976), cert. den. 93 LRRM 2512; Lozano Enterprises NLRB, 327 F. 2d 814 (9th Cir., 1964). Thus, it's a viola-ion c f Section 3 (d) [the analog to Section 1153 (e) for a party refuse, upon request, to execute the written agreement embodying the terms upon which the parties have agreed in collective bargaining. See

e.g., H. J. Heinz Co. v. NLRB, 311 U.S. 514, 7 LRRM 291 (1941); NLRB v. Strong, 393 U.S. 357, 70 LRRM 2100 (1969); NLRB v. H. Koch & Sons, 578 F. 2d 12'S7, 98 LRRM 2977 (9th Cir., 1973); NLRB v Donkin's Inn, Inc., 532 F. 2d 138, 91 LRRM 3015 (9th Cir., 1976), cert, den. 93 LRRM 2512; Lozano Enterprises v. NLRB, supra; San | Antonio Machine Corp. v. NLRB, 363 F. 2d 633, 62 LRRM 267 (5th Cir;., ; 1966); NLRB v. Coletti Color Prints, Inc., 387 F. 2d 298, 66 LRRM 2776 (2nd Cir., 1967).

The Ninth Circuit recently stated the appropriate standard applicable in the context of labor disputes in the Donkin's Inn case:

> "[T]he technical question of whether a contract was accepted in the traditional sense is perhaps less vital than it otherwise would be. Rather, a more crucial inquiry is whether the two sides have reached an 'agreement', even though the agreement' might fall short of the technical requirements of an accepted contract."
> 532 F. 2d at 141

It has long been the law under the NLRB that execution of a written contract embodying the terms of the negotiated agreement is the final step in the collective bargaining process, H. J. Heinz v. NLRB, 311 U.S. 514 (1941); nevertheless, the failure of a party to execute such document does not affect the validity of the terms of the already existing agreement. See, e.g., Roadway Express, Inc. v. General Teamsters Local 249, 330 F. 2d 859 (3rd Cir., 1964); Rabouin v. NLRB, 195 F. 2d 906, 910 (2nd Cir.,. 1952)

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Respondent does not dispute that its duly authorized agent reached final agreement on all of the contract provisions on June 11 and thereafter on August 1 refused to sign the completed agreement upon request by the UFW. Rather, Respondent claims -hail its refusal to execute the contract was based on and excused by the absence of mutual assent on Article 17, the sub-contracting provisions. [12/]

Under applicable NLRB precedent mutual assent binding the parties to a collective bargaining agreement is determined by objective or external facts gleaned at the time the parties express agreement to the contract. Thus, verbal assent, hand shakes and unambiguous acceptance after discussion of the issues manifests an objective intent to be bound by the agreement. See, e.g., NLRB v. H. Koch & Sons, 578 F. 2d 1287, 98 LRRM 2977 (9th Cir., 1978); Lozano Enterprises v. NLRB, 327 F. 2d 814, 55 LRRM 2510 (9th Cir., 1964); NLRB v. Coletti Color Prints, Inc., 387 F. 2d 298, 66 LRRM 2776 (2nd Cir., 1967); NLRB v. Marcus Trucking Co., 286 F. 2d 583, 47 LRRM 2524 (2nd Cir., 1961); Maury' s Flourescert and Appliance Service, 226 NLRB No. 206, 94 LRRM 1175 (1976); Pacific Redwood Casket Co., Inc., 17 NLRB No. 105, 39 LRRM 1136 (1975); Aptos Seascape Corp., 194 NLRB Mo. 94, 79 LRRM 1110 :1971,K Mart Corp., 238 NLRB Mo. 166, 99 LRRM 1644 (1978); and J. W. Fraught Co., 212 NLRB Mo. 73, 87 LRRM 1507 (1974).

[12/] Respondent apparently contends that the lack of assent was either mutual [in that each side had a different intent regarding I the interpretation of the language] or unilateral [Lr. that the company agreed to language under a mistake of fact as to the I union intent]. Respondent's Brief, p. 4.

Even under traditional common law rules of contract formation, mutual assent is determined objectively. Absent mistake or fraud, "the outward manifestation or expression of mutual assent is controlling". Mutual assent is gathered from the reasonable meaning of the words and acts of the parties and not from their unexpressed intentions or understanding. Thus, a party is bound although it misunderstood the terms of the proposed contract and actually had a different, undisclosed, incention. See, e.g., Blumenfeld v. R. H. Macy & Co., 92 C.A. 3d 38, 154 Cal. Rptr. 652 (1979); Witkin, 1 Summary of California Law, Section 88, 8th Edition (1973); Restatement of Contracts §§ 70, 71

Moreover, the record is devoid of even a scintilla of evidence that a mutual mistake had been made by both parties or a unilateral mistake had been made by Tex-Cal. The record, in fact, indicates, just the contrary.

Respondent's concerns with the language of Section A of Article 17 [13/] were stated by owner Randy Steele to the UFW at the May 9 and 10 bargaining sessions.

(1) The company wanted to be able to continue to subcontract the same types of work it had been subcontracting in the past [14/]

In fact, the list of jobs which the company could subcontract under the new contract is the same as the list in the 1979-1980 contract. [15/]

[13/] See footnote 7, supra.

[14/] See Respondent's Exhibit. 3, page 11.

[15/] Cf. General Counsel's Exhibits 5 and 3.

(2) The company wanted to preserve its "management right" to decide which jobs required special skills not found in the bargaining unit, which would therefore have to be subcontracted. [16/] The unambigous language of Article 17, Section 3, enumerates exactly which types of work the company can subcontract. Language in Section A further provides that the company cannot subcontract work done by bargaining unit employees in the past.

(3) In Section B, the company wanted it understood that the transportation of the enumerated sub-contracted crops would be from field to buyer. [17/] Language to that effect was include in the contract on May 10.

(4) The company wanted to be able to expand the acreage of crops enumerated in the sub-contracting list in Section B, if it desired to lease additional land or to pull out a crop and replant the land with a crop, or crops, from that list. [18/]

Section B, in fact, limits the permissible subcontracting work to particular operations on particular crops, and not the company's right to increase its acreage of those crops. That point was made clear to Randy Steele by Emilio Huerta during the .May 13 meeting when Huerta stated that management rights governs what the

[16/] See Respondent's Exhibit B, p. 12.

[17/] See General Counsel's Exhibit 12, p. 10.

[18/] Ibid., p. 10-11.

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company plants. [19] Huerta also said that the language of limitation in Section A was only meant to be a guideline to protect the amount of bargaining unit work that had been done in the past; it was not a strict limitation on the company. [20] From the conversations between Steele and Huerta on May 9 and May 10, it is clear that the parties were in agreement that:

a) The company could not subcontract any types of work done in the past by the bargaining unit employees.

b) The company could increase the work it subcontracts by leasing additional land, or replanting land, with crops that involve work which can be subcontracted.

Nothing said by the UFW altered those facts. Respondent's expressed concerns and interests were covered by the language in Article 17. In agreeing to the language, the company did not, thereby, make any mistake. [21]

Apparently, Respondent became concerned at some point after June 11 that there could be a circumstance that might be covered by Article 17 that it had not contemplated or considered during the course of the negotiations.

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[19] See General Counsel's Exhibit 12, page 11.

[20] Ibid., p. 11.

[21] Under contract law where there is no ambiguity in the language, a unilateral mistake will not prevent formation of the contract ; where neither party is at fault, unless the ether party has intentionally or negligently induced the mistake. See Witkin, Summary of California Law, § 291 and cases cited "herein. No such evidence exists in this case.

But the possible or potential concern contemplated by Respondent represents a typical example of a dispute over contract interpretation that is submitted to an arbitrator for resolution. [22/]

The Supreme Court has recognized chat a collective bargaining agreement is:

> "...more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate [citation omitted]. The collective agreement covers the whole employment relationship. It calls into being a new common law — the common law of a particular industry or of a particular plant. As one observer has put it:
>
> > ...it is not unqualifiedly true that a collective bargaining agreement is simply a document by which the union and employees have imposed upon management express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforseeable contingencies to make the words of the contract the exclusive source of rights and duties."
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> United Steelworkers v. Warrior s. Gulf Naviation Co., 363 U.S. 574, 578-579 (1960) (quoting Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1432 (1959;

The Court went on to note that "contracting cue work is the basis of many grievances; and that type of claim is grist in the mills of the arbitrator" (footnote omitted), 262 ".S. ac 534.

To summarize, I find that the General Counsel has established by clear, convincing and substantial evidence that Respondent

[22/] Article 5 in both the prior and newly negotiated contract established an arbitration procedure to sattle disputes arising out of the interpretation of the agreement.

has refused and continues to refuse to execute a negotiated contract entered into by its duly authorized agent, thereby violating Sections 115'3 (e) and (a) of the Act. Moreover, there is no evidence in the record that Respondent's assent to Article 17 of the contract was the result of either a mutual or unilateral mistake.

REMEDY

General Counsel seeks the following order to remedy Respondent's violation of its duty to bargain in good faith with the UFW:

1. An order requiring Respondent, upon request by the UFW, to sign the collective bargaining agreement reached with : the UFW and, upon signing, to give retroactive effect to the terms; of that agreement to the date of agreement, June 11, 1980. In addition, if the UFW does not request Respondent to sign the agreement, an order that Respondent, upon request by the UFW, bargain in good faith with the UFW with respect to the terms and conditions of a contract, and, if an agreement is reached, embody it in a signed agreement.

2. An order requiring Respondent to make employees whole for any loss of pay and other benefits to all employees resulting from Respondent's refusal to bargain.

3. An order requiring Respondent to post a notice containing the terms of the Board's order in writing in Spanish and English in conspicuous places on Respondent's property for one year at locations to be decided by Board agents.

4. An order requiring a representative of Respondent or a Board agent to read and explain the notice to Respondent's agricultural employees during working hours, at a time to be determined by the Fresno Regional Director, and to allow a Board agent to answer questions of employees outside the presence of the employer or its representative.

5. An order requiring Respondent to deliver copies of the notice in Spanish and English to its agricultural employees during the next peak season.

6. An order requiring Respondent to make periodic reports in writing, under penalty of perjury, to the designated agents of the Board, demonstrating compliance with the Board's order.

7. An order requiring Respondent to cease and desist from violation of the Agricultural Labor Relations Act, and such other relief as the Board deems just, to effectuate the policies of the Act.

Having found that Respondent has engaged in an unfair labor practice within the meaning of Section 1153 (e) and (a) of the Act, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act as sought by the General Counsel.

Each of the remedies sought are typically granted under applicable NLRB precedents where an employer and union reach a contract agreement and the employer subsequently repudiates and

refuses to sign the agreement. See, e.g., H. J. Heinz Co. v. NLRB, ! 311 U.S. 514; NLRB v. Strong, 393 U.S. 357, 70 LRRM 2100 (1969) ; NLRB v. Donkin's Inn, Inc., 532 F. 2d 138, 91 LRRM 3015 (9th Cir., 1976); NLRB v. Raven Industries, 508 F. 2d 1289 (8th Cir., 1974); Gollin Block & Supply Co., 243 NLRB No. 50 (1979) ; Worrell Newspapers, 232 NLRB No. 65, 97 LRRM 1029 (1977); Florida Steel Corp., 231 NLRB No. 117, 96 LRRM 1070 (1977); Singalong, Inc., 239 NLRB No. 170 (1979); NLRB v. Coletti Color Prints, Inc., 387 F. 2d 298, 66 LRRM 2776 (2nd Cir., 1967); NLRB v. Dale Protection Service, 375 F. 2d 497, 64 LRRM 2792 (6th Cir., 1967). The remedy described above promotes the compensatory objective of the remedial provisions of the ALRA. They are designed to return the employees to the position they would have been in had the employer fulfilled its Obligation to execute the contract reached with the employees collective bargaining representative. See Labor Code Section 1160.3; Butte View Farms, 95 C.A. 3d 961 (1979).

ORDER

Upon the basis of the entire record, the findings of fact, and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended order:

Respondent, TEX-CAL LAND MANAGEMENT, 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) In any other like or related 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) Sign the collective bargaining agreement agreed to on June 11, 1980, but not signed, upon request by the UFW.

(b) Upon signing, give retroactive effect to the terms of that agreement to June 11, 1980.

(c) If the UFW does not request Respondent to sign the agreement, to bargain in good faith with the UFW, upon request by the UFW and if an agreement is reached, to sign and honor the agreement.

(d) Make whole ail bargaining unit employees for any loss of pay and other benefits resulting from Respondent's refusal to bargain by failing to sign the agreement.

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

(f) Mail and/or deliver 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 between June 11, 1980, and the time such Notice is mailed.

(g) Post copies of the attached Notice, in all appropriate languages, for 12 consecutive months in conspicuous places on its property, the period and place[s] 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 be-altered, defaced, covered, or removed.

(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees on company time and property, at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: October 23, 1980

AGRICULTURAL LABOR RELATIONS BOARD

MICHAEL H. WEISS
Administrative Law Judge

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 ail 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 in any related manner, or at any time, interfere with, or restrain, or coerce any employee in the exercise of the rights described above.

TEX-CAL LAND MANAGEMENT CO., INC.

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This is an official Notice of the Agricultural labor Relation Board, an agency of the State of California.

DO NOT REMOVE OR MULTILATE