

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SIGNAL PRODUCE COMPANY,)	
)	
Respondent,)	Case Nos. 78-CE-16-E
)	78-CE-18-1-E
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	7 ALRB No. 4
)	(6 ALRB NO. 47)
Charging Party.)	
)	

SUPPLEMENTARY DECISION AND REVISED ORDER

In accordance with the remand order of the Court of Appeal for the Fourth Appellate District, dated January 2, 1981, in Case 4 Civil No. 24046, (1980) 6 ALRB No. 47, we have reviewed and reconsidered the portion of our Decision designated for review on remand and hereby make the following findings and modifications in our original Decision and remedial Order.

In Signal Produce Company (Aug. 22, 1980) 6 ALRB No. 47, we concluded that Respondent violated section 1153 (e) of the Act by raising the 24-hour irrigator wage rate without notifying the United Farm Workers of America, AFL-CIO (UFW) or giving the UFW an opportunity to bargain about the increase. The Court of Appeal remanded the case to the Board for consideration of whether the grant of the wage increase by Respondent was fully litigated at the unfair labor practice hearing. Based on our review of the record of that hearing, we have concluded that the issue of the wage increase was not fully litigated.

At the hearing, the UFW representative posed a question

concerning the unilateral wage increase to Mr. Don Brock, Respondent's managing partner. Respondent's attorney objected to the question on the ground that there was no allegation in the complaint relating to any unilateral change in working conditions. The Administrative Law Officer (ALO) received the testimony, ruling that it was admissible with respect to the bargaining violations alleged in the complaint. (Transcript Volume III, pages 37-38).

The fact that a party objects at hearing to the introduction of testimony or evidence as to a particular issue is relevant to a determination of whether the issue has been fully and fairly litigated. See Monroe Feed Store (1955) 112 NLRB 1336, 1338 [36 LRRM 1188]; Phillips Industries, Inc. (1968) 172 NLRB 2119 [69 LRRM 1194]; Rochester Cadet Cleaners, Inc. (1973) 205 NLRB 773 [84 LRRM 1177]; NLRB v. International Ass'n of Bridge, Etc. (9th Cir. 1979) 600 F.2d 770, 776.

We find that the testimony relating to the unilateral wage increase was received for the limited purpose of background information as to the surface bargaining allegation and that the wage increase was not fully litigated as a possible separate violation of section 1153 (e) of the Act. Accordingly, we shall delete sections 1(a) and 2(a) of our original remedial Order, the sections which related to the finding of a unilateral change in working conditions.

REVISED ORDER

Pursuant to Labor Code section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that Respondent, Signal Produce Company, its officers,

agents, representatives, successors and assigns, shall:

1. Cease and desist from:

(a) Threatening any employee with discharge or loss of reinstatement rights because of the employee's union membership, union activity, or other exercise of rights guaranteed by Labor Code section 1152.

(b) Retaining in any employee's personnel file, or elsewhere in Respondent's records, any copy or other record of a letter which threatens that an employee will be discharged for participating in any union activity or other protected concerted activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Labor Code section 1152.

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

(a) Expunge from Felix Corona's personnel file and from Respondent's business records any copy or other record of the March 17, 1978, letter signed by Donald Brock which threatens that Corona would be terminated if he did not report to his next work assignment.

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

(c) Post copies of the attached Notice in all appropriate languages, for 60 days in conspicuous places on its

premises, the period(s) 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.

(d) 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 at any time during January, February or March 1978.

(e) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees assembled 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 by Respondent to all nonhourly wage employees to compensate them for 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 it has taken to comply therewith, and continue to report thereafter,

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at the Regional Director's request, until full compliance is achieved.

Dated: March 6, 1981

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After a hearing in which each side had an opportunity to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers not to be discriminated against or interfered with because of their union activities or other protected concerted activities.

We will do what the Board has ordered, and also tell you that: The Agricultural Labor Relations Act is a law of the State of California which gives farm workers these rights:

1. To organize themselves;
2. To form, join or help unions;
3. To choose, by secret ballot election, a union to represent them in bargaining with their employer;
4. To act together with other workers to try to get a contract or to help and 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 prevents you from doing, any of the things listed above.

ESPECIALLY: The Board found that we threatened to fire Felix Corona because he participated in a protected union activity when he joined a work stoppage in March 1978. We promise that we will not threaten any employee with firing because of participation in union activities or other protected activity. We also promise that we will remove from Felix Corona's employment records the letter in which we threatened to fire him if he continued to participate in the work stoppage.

If you have a question 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 319 Waterman Avenue, El Centro, California 92243. The telephone number is (714) 353-2130.

Dated:

SIGNAL PRODUCE COMPANY

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

Signal Produce Company (UFW)

7 ALRB No. 4

Case Nos. 78-CE-16-E

78-CE-18-1-E

BOARD DECISION

In Signal Produce Company (Aug. 22, 1980) 6 ALRB No. 47, the Board concluded that Respondent violated section 1153(e) of the Act by raising an irrigator wage rate without notifying the United Farm Workers of America, AFL-CIO (UFW) or giving the UFW an opportunity to bargain about the increase.

On remand from the Court of Appeal for the Fourth Appellate District, the Board reconsidered whether the issue of the unilateral grant of the wage increase by Respondent was fully litigated at the unfair labor practice hearing. The Board concluded that since the Respondent objected at hearing to the introduction of testimony relating to the increase (which had not been alleged as a violation in the complaint), and since the ALO received the testimony solely with respect to a surface bargaining violation which was specifically alleged in the complaint, the unilateral increase issue was not fully litigated.

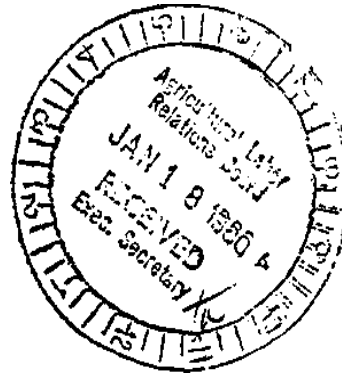
REVISED ORDER

The Board deleted the sections of its original remedial Order relating to the finding of a unilateral change in working conditions.

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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

In the Matter of:)

SIGNAL PRODUCE COMPANY,)

Respondent,)

and)

UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)

Charging Party,)
Intervenor.)

CASE NOS. 78-CE-16-E
78-CE-18-1-E

DECISION

PAT ZAHAROPOULOS, Esq., appearing for General Counsel,
Agricultural Labor Relations Board.

GRAY, GARY, AMES & FRYE by RICHARD A. PAUL, Esq., appearing
for Respondent.

CHRIS SCHNEIDER and TOM DALZELL, Legal Workers, appearing
for Charging Party and Intervenor.

That a contested hearing was commenced October 30, 1979 before BERNARD
S. SANDOW, Administrative Law Officer, and testimony and evidence was taken,
both oral and documentary, October 30 and 31 and November 1, 1979, in El
Centro, California, until conclusion. Witnesses were called, sworn and
testified and an interpreter present, sworn and used when and as needed.

That the following preliminary matters, motions and stipulations, were entertained and ruled upon accordingly:

1. Motion to Intervene, based upon oral motion, by Chris Schneider, legal worker with the United Farm Workers of America, AFL-CIO, and representing said Charging Party; Said Motion is made pursuant to 8 California Administrative Code Section 20268, Upon inquiry, no 'objection was voiced; therefore, said Motion to Intervene was granted, and the pleadings are to reflect United Farm Workers of America, AFL-CIO, Charging Party and Intervenor.

2. Motion by Respondent to revoke the October 12, 1979, issued by General Counsel subpoena duces tecum in the above captioned matter, and directed to respondent, together with General Counsels' opposition to petition to revoke subpoena duces tecum were entertained, discussed and argued, during the prehearing of this case. That it being agreed by all parties hereto, that said subpoena duces decum has been either complied with or satisfied by the information produced, said Motion is withdrawn together with the petition in support thereof.

3. Petition by Charging Party to revoke the subpoena duces tecum issued by Respondent in the above captioned matter, and directed to the Charging Party, was entertained, discussed and j argued during the prehearing of this case. That it being agreed I by all parties hereto, that said subpoena duces decum has been either complied with or satisfied by the information produced, said Petition to Revoke subpoena duces tecum is withdrawn.

4. Substitution of Attorneys and Withdrawal of Counsel with attached Notice of Appearance having been marked as General Counsel l(m), copies having been duly served, Gray, Gary, Ames &

Frye by Richard A. Paul, are attorneys of record for Respondent.

5. Stipulations and/or amendments to Pleadings:

(a) Amendments to Answer proposed by Respondent-

1. Strikes number 1, of their answer and in its place and stead admits the allegations setforth in paragraph 1. of the complaint; and the allegations in paragraph 2. of the complaint.

2. Strikes number 3. of their answer as it pertains to the denial of paragraph 5. of the complaint and in its place and stead admits the allegations setforth in paragraph 5. of the complaint.

3. Strikes number 3. of their answer as it pertains to the denial of paragraph 6. of the complaint and in its place and stead admits the allegations setforth in paragraph 6. of the complaint.

4. Strikes number 3. of their answer as it pertains to the denial of paragraph 7. of the complaint and in its place and stead admits the allegations setforth in paragraph 7. of the complaint.

(b) No further amendments or stipulations.

6. That General Counsel offered their formal papers, with no objections thereto, and cross examination thereon being reserved, into evidence, and they and each of them were so admitted into evidence and marked 1a through 1L inclusive and each of them, and 1m, 1n and 1o.

7. That Respondent offered their formal papers, with cross-examination thereon being reserved, into evidence, as follows:

(a) For judicial notice, marked A and B, hearing no objections thereto, and they and each of them were so admitted into

evidence;

(b) Order of the ALHB denying extension for certification marked respondent C, properly objected to and which objection was sustained, therefore marked for identification only;

(c) Copy of certification marked respondent D, no objections thereto, properly admitted into evidence;

(d) Exhibits marked respondents' E, F and G, objected to which objection was overruled, and they and each of them were so admitted into evidence.

All parties were given full opportunity to participate in the Hearing. After the close thereof, oral argument having been waived, written briefs were filed by each and every of the parties in support of their positions timely, after the United Farm Workers of America, AFL-CIO, requested a five (5) day extension, which was unopposed by the remaining parties, in which to file their written brief, and which were read and considered by myself.

That based upon the demeanor and testimony of the witnesses, exhibits, matters of record and moving papers, stipulations of counsels and the entire record, including pertinent Code and Act sections and regulations alluded to, and including the weight given to certain elements and including my observations during said Hearing, I make the following findings, conclusions and recommended decision:

PLEADINGS: ADMISSIONS

1. That on March 20, 1973, a true and correct copy of charge number 75-CE-16-E was filed by the United Farm Workers of America, AFL-CIO, and was duly served on respondent Signal Produce Company, on March 22, 1978.

2. That on March 20, 1978, a true and correct copy of charge number 78-CE-18-E was filed by the United Farm Workers of America, AFL-CIO, and was duly served on respondent Signal Produce Company on March 20, 1978; further, that this amended charge numbered 78-CE-18-1-E was filed and served upon Signal Produce Company by the United Farm Workers of America, AFL-CIO on April 27, 1978.

3. That the United Farm Workers of America, AFL-CIO is now and has been at all material times herein a labor organization within the meaning of section 1140.4 (f) of the Agricultural Labor Relations Act.

4. That Signal Produce Company is now and has been at all material times herein an agricultural employer within the meaning of section 1140.4 (c) of the Act.

5. That at all times material herein DONALD E. 3RCK agent; TOM NASSIF agent and ERNES TO COLLIM supervisor, were acting as agents and/or as supervisors of Signal Produce Company, within the meaning of section 1140.4 (j) of the Act.

6. That at all times material herein, FELLX CORONA was an agricultural employee within the meaning of section 1140.4 (b) of the Act.

7. That on January 27, 1978, the United Farm Workers of America, AFL-CIO, was certified as the exclusive representative of all agricultural employees of Signal Produce Company.

PLEADINGS: ALLEGATIONS, DENIALS, DEFENSES

The complaint alleges that respondent has violated sections of the Act, and is charged with the following:

1. Threatening and coercing agricultural employees in the exercise of the rights guaranteed in section 1152 of the Act in

violation of section 1153 (a) of the act, by:

(a) On or about March 19, 1978, Don Brock and Ernesto Collin threatening, coercing and discriminating against Felix Corona for engaging in protected union and concerted activities.

(b) On or about March 19, 1978, instituting a new warning system for employees without prior notice to and negotiations with the United Farm Workers of America, AFL-CIO.

(c) Beginning on or about January 31, 1978 and continuing to the present, engaging in surface bargaining *(through its delays and inflexible position on mandatory subjects of bargaining)*

2. Engaging in unilateral acts which discriminated against union activists in violation of section 1153 (c) of the Act, by:

(a) On or about March 19, 1978, Don Brock and Ernesto Collin threatening, coercing and discriminating against Felix Corona for engaging in protected union and concerted activities.

(b) On or about March 19, 1978, instituting a new warning system for employees without prior notice to and negotiations with the United Farm Workers of America, AFL-CIO.

3. Engaging In bad faith bargaining with a certified labor organization in violation of section 1153 (a) of the Act, by:

(a) On or about March 19, 1978, instituting a new warning system for employees without prior notice to and negotiations with the United Farm Workers of America, AFL-CIO.

(b) Beginning on or about January 31, 1978 and continuing to the present, engaging in surface bargaining (through its delays and inflexible position on mandatory subjects of bargaining)

* That on June 4, 1979, through discovery procedures, by means a Bill of Particulars duly served by respondent upon the General Counsel, and requesting the drafting of this paragraph with

The Answer denies that Respondent has violated the Act and/or any sections thereunder

SECTIONS OF THE ACT

LABOR CODE SECTION 1152 - RIGHTS OF AGRICULTURAL EMPLOYEES

"Employees shall have 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"

LABOR CODE SECTION 1153 - UNFAIR LABOR PRACTICES

"It shall be an unfair labor practice for an agricultural employer to do any of the following:

- (a) To interfere with, restrain or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.
- (c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor-organization.
- (e) To refuse to bargain collectively in good faith with labor organizations certified pursuant to the provisions of Chapter 5 (commencing with Section 1156) of this part.

THE EVIDENCE

I - EXHIBITS IN EVIDENCE

General Counsel 1a through 1L : Designated Formal Papers General Counsel 1m, 1n, 1o : Consisting of respondent substitution

particularity, General Counsel responded, to the same, under date of 8-15-79, and duly a part of this record, and amended this paragraph which is identified in General Counsel's complaint as paragraph number 10 and to read as follows: "10. Beginning, on or about January 31, 1978 and continuing to the present, Signal has engaged in surface bargaining without intending to reach a collective bargaining agreement; knowing its final position on the pay rate of irrigators would, be unacceptable to the union due to ramifications for other union, members under contracts containing most favored nations clauses."

of attorneys, three (8) subpoena duces tecums and motion to revoke said subpoena duces tecums

General Counsel 2, 3(a), (b), (c), 4, 5 and 6 : Offered during the progress of this Hearing

Respondent A, B, D, E, F and G : Designated Formal Papers Respondent H through Q : Offered during the progress of this Hearing

Each and every Exhibit, as beforementioned, is attached to the Exhibit Worksheet and made a part of this record as though fully set forth hereon, and as fully described.

II - TESTIMONY OF WITNESSES

For the General Counsel

1. Jerry Breshears - He has been a labor union representative employed by the Fresh Fruit and Vegetable Workers, Local P-78-B, since 1958. He knows Don Brock and first met him at a bargaining meeting in December, 1975, with other asparagus companies representatives presence whose collective bargaining agreements had expired . A Mr. Don Dressier represented employers Abatti Produce and Gourmet Farms. Don Brock was present and sat in on other employers caucases Don Brock sat in on the other meetings also, January 14 and 23, 1978. An agreement was reached through these sessions and Gourmet Farms and a Desert Asparagus signed the agreement.

Under cross-examination- This union never filed any unfair labor practice against Signal Produce; this union was never under cont with Signal Produce; this union was never certified as the collective bargaining representative of the employees of Signal Produce. That Don Brock was present at the meetings as an observer only and his notes of the meetings reflect this.

2. Felix Corona - He works as an irrigator for Signal Produce, and for seven (7) years. In February, 1978 he worked at Signal and attended 2 negotiating sessions. During the harvest of 1978, there was a work stoppage, and which commenced March 17, 1978. He went to the fields on March 17, 1978, and he saw his supervisor, Ernesto Collin, who spoke only to him and asked him if he was going to block the road there, I didn't respond and went over to where the work stoppage crew was. I didn't work March 17 and I didn't go to the field on March 18, 1978. I reported to work March 19, 1978, and worked that day. At 8:00PM on March 19, 1978, my foreman gave me this letter, and he never previously in seven (7) years received a warning letter and he knows of no other employees having received such a letter in the past, March 17, 1978 dated warning letter offerrred into evidence as General Counsel #2. He was a representative on the-negotiating committee" when Don Brock was present at these negotiating meetings.

Under cross-examination- He doesn't knew if other company workers on the negotiating committee received this letter; he never received this letter before; he never struck the company before.

3. Ann Smith - she is a full tine volunteer for the Unite Farm Workers Union and assigned as a staff negotiator of contract.

Since February, 1976. She has negotiated some 40 to 50 contracts of which 10 or 11 are Imperial Valley based companies. She was involved in the negotiations with Vessey Company in Imperial Valley who was represented by Mr. Tom Nassif. Mr. Nassif had proposed there most favored nations clauses for irrigators as to their shift rates in early April, 1977. The substance of this was that irrigators were working on a 24 hour shift basis. General Counsel offers at this point 3 contracts marked Exhibits 3a, 3b, 3c, In evidence, as to language of most favored nations clause. The said language for Vessey Company as proposed by Tom. Nassif, as to the shift rate for irrigators only. Examples of other such contract were with Joe Maggio settled in May, 1977, proposed by Tom Nassif and Mario Saikon contract negotiated thereafter and signed on February 9, 1978, in which Charley Stoll represented the employer. These three were all Imperial Valley companies. As to Vessey, Tom Massif requested the same language as in Sun Harvest/Inter Harvest contract as to duration most favored nations clause; the duration clause was also included in Joe Maggio and Mario Saikon contracts.

In February, 1978, she first became involved with Signal Produce after certification. First meeting was February 14, 1978, with Ann Smith, Marshall Ganz and the bargaining committee present for the asparagus crews and Tom Nassif and Don Brock for the company. The union made 2 alternative proposals, either bargain from their pre-forms article by article or look to agreements previously arrived at. At the meeting we discussed, information requests, how to proceed, made bargaining "and settlement proposals, discussed rates, bargaining unit members, benefits plans. The contract proposal was marked as General Counsel 4 and in evidence and the economic proposal marked General Counsel 5 and in evidence; (they were off erred after the bargaining session. A field trip was set and taken by Ann Smith, consisted of weighing boxes of asparagus to establish a standard, of weight and full box (25 pounds), and Brock and field representative. On February 27, 1978, I called Nassif, following up on the meeting and the two alternatives and Nassif said the company would go the \$2.00 per box rate, same as Maggio-Tostado contract. Next meeting was the 3rd of March, 1978, with Ann Smith and bargaining committee for the asparagus cutters and Felix Corona for the irrigators and Tom Nassif and Don Brock for the company. The contract settlement proposal was discussed, including specific elements, work crews, problems in some field areas etc. Tom Nassif asked questions about the vacation plan, medical plans, Martin Luther King Plan and others. Comparisons of contracts, i.e. Vessey contract, and the Maggio-Tostado supplement and the difficulty to compare to the supplement as mentioned by Nassif since in fact its terms were as yet not finalized. Also discussed the fact that they were paying then \$2.00 per box and whether that worked out more this, the minimum hourly rate.

Next meeting was March 15, 1978, and she was not present. At the 2 sessions she was at there had seen no discussions of mechanical harvesting or a soup contract. There were contracts in Imperial Valley that she negotiated which had durations for less than 1 year of which Gourmet and Abatti Farms grow asparagus plus 5-6 others that are non asparagus, Except for a talk with Nassif and Ann

Smith and Marshall Ganz about Signal, but at a lunch break at another hearing, on March 10, 1978, her last discussions on this matter was at the March 3, 1978 meeting; but she knows that Marshall Ganz talked subsequently to Mr. Nassif about the Signal Negotiations. On March 10, 1978, we informed Mr. Nassif that the asparagus season was ticking by (from January through March basically) and they may be getting finessed out of a contract and Nassif indicated that he would speak to Brock that weekend and he would get back to them.

In the two (2) sessions that she was present, there was a union demand on wages- that they be made retroactive to the date of certification or the first day of the season, I don't remember which and I don't remember the terms. If I wasn't in contact with Signal then Marshall Ganz was, and we worked as a team, and continuously discussed the proceedings. Since there were the most favored nations clauses in the Joe Maggio and Vessey and Saikon agreements, as to the shift rate to be paid irrigators, then if there was an agreement with Signal to a lower rate, then the said 3 companies were entitled to lower their shift rates to the Signal rate. She did not personally discuss this though with Mr. Brock or Nassif. If this occurred, it would, have effected, at the 3 companies, a total of 50-60 irrigators, by lower rates and which is not the purpose of a union. Only irrigators would be effected. The 24 hour shift rate proposed by Signal was \$72.00, while the said 3 other companies were paying \$86.40. As to the effect of a contract duration past January 1, 1979, it was the unions opinion and Ann Smith's opinion that the companies that had a most favored nations clause as to duration could have argued that if a longer date after January 1, 1979, be given to Signal Produce, this could trigger their duration to therefore be extended to the Signal date. If that happened it would have an impact on thousands of members in the vegetable industry.

Under cross-examination- She has testified, at Hearings before; she has testified in the Superior Court of El Centro as to the most favored nations clauses. She has been a negotiator for the UFW for over four years. Examples of bargaining sessions with Joe Maggio commenced in January 27, 1977, and had a 14 day strike in May, not many bargaining sessions, and we reached agreement in May; Vessey and Hubbard started same times and Vessey agreement was in April, 1977; Saikon was certified in August, 1977, and agreement was reached in February, 1978; Brace Church was certified December of 1977, and agreement signed May, 1978. She doesn't know if there were work stoppages at Brace Church, but there were at Saikon and Vessey and Hubbard Joe Maggio and Gourmet and Abatti. They don't sign agreements any other way around here. The proposals made by the UFW on the February 14 meeting with Signal were from "boiler plate" forms and it anticipates bargaining from them. You could go over these one article at a time. The Sun Harvest most favorite nations clause was used. Discussions were had as to the said clause as to its meaning as to (1) duration and (2) irrigator shift rates. And, whether it pertains so vegetable growers, which includes "asparagus" or not and as to what locale would be effected by the most favored nations clauses.

March 3, 1978, was the last meeting she had with Nassif regarding Signal Produce; and, she finalized the Maggio-Tostado supplement

also with Mr. Nassif, March 6 or 7, 1978. Other than Maggio-Tostado the UFW had no other asparagus growers under contract in the Imperial Valley as of March 17, 1978. The Maggio-Tostado basic contract has a termination date of February 14, 1960, and this was explained as because although they harvest in Imperial Valley they are a based Coachella Valley company. And, it contains a no strike clause, in that if there be disagreements to terms, conditions etc., it would be submitted to arbitration, during the full term of the contract. The Klein Ranch in Stockton was discussed and they are asparagus growers and their agreement duration is 11/9/77 to 11/9/80. Her proposal with Nassif as to duration with Signal Produce was till 1/1/79.

The alternate proposal for bargaining with Signal Produce on February 14, 1978, other than the "boiler plate" forms, was a combination of a portion of Vessey contract and a portion of the Maggio-Tostado contract and the Maggio-Tostado supplement. (Exhibits I,J,K). The "boiler plates" are Exhibits 4,5. As of March 17, 1978, the only Imperial Valley growers with a most favored nations clause as to the 24 hour irrigator were Vessey, Joe Maggie and Saikon and they were also the only ones with the most favored nations clause as to duration, and none of the three grow asparagus. While the Sun Harvest clauses of most favored nations pertain to growers of lettuce in Salinas and Imperial Valley. And, in the Sun Harvest contract the most favored nations language pertained to lettuce growers; but the same language as it pertains though to the 24 hour shift irrigator, not duration clause, fresh vegetables growers language meant something different, and not Just lettuce growers as it does in the duration clause. That as to duration, even though it pertains to lettuce growers, i.e. the most favored nations clause, in her opinion a duration date past 1/1/79 given to Signal Produce, a asparagus grower, could trigger other companies most favored nations clause.

Redirect- The Maggio-Tostado basic contract expired in 1980, but the supplement was only for the 1978 season. There was a different meaning to "fresh vegetables as to duration and Irrigator shifts because only Imperial Valley, except for Blythe, in California hast 24 hour irrigator shifts. Further, the UFW reason for not extending to Signal, in their negotiations, longer than a January, 1979 contract duration was because (1) it might trigger the other companies contracts, and (2) Signal is a comparatively smaller company and it is not our practice to set industry wide standards through negotiations with the smaller of the companies.

4. Marshall Ganz - he has been an organizer for the UFW for 14 years and in January, February and March of 1978, as so employed he was involved in the Signal Produce negotiations and coordinating the operation after certification. He was at the first session on February 14, 1978 with Ann Smith and that "bargaining committee, and Brock and Nassif for the company. Next session was March 3, 1978 and next was March 15, 1978. On March 15, 1978, he contacted Brock by telephone and asked Brock if he was serious about negotiating this contract or is he stalling till after the harvesting season and he said he would have to take the 5th on that. On March 15, 1978, the company made a responding proposal through Nassif to the union- that the language of the, Vessey agreement on

non wage economics and on wages they proposed the Maggio-Tostado I rate, but a different rate on irrigators and rejected retroactivity. On duration, they wanted to negotiate a 1979 rate, and they wanted the Maggio-Tostado supplement. And, they rejected the minimum hourly guarantees. Non wage areas were vacations, holidays, hours, overtime, medical plans, pension plans, etc. The issue of whether truckers and loaders were part of the unit was resolved and a proposal in this first meeting as to their wages was made. The unions response was, as to the language, basic agreement; we were not in agreement on the irrigators, and proposed \$3.70 per hour for truck drivers and loaders, and wanted 15 and ten minute rest periods, not just 10 minute periods and I don't recall our guarantee and retroactivity positions and an issue arose as to Brock: Ranch a part of the unit. The company proposed that 22 of the 24 hours of the irrigator shift be on the shift rate. The Company was to respond to Ganz the next morning.

The next morning at 8:00AM, Nassif contacted Ganz, and there was no change in the company position as to irrigators and the companies desire to negotiate a 1979 rate and they proposed \$3.55 per hour for the truckers and loaders and wanted an agreement that the union would not strike Brock Ranch. The company didn't change its position on the guarantee minimum or retroactivity. Later that day we agreed to the \$3.55 for truckers and loaders and either on this day or the next we withdrew our retroactivity and withdrew our minimum guarantee based on an understanding as to when piece rate would apply and when hourly would apply and we could not agree on the irrigator matter nor on the 1979 duration question. I don't recall any mention of mechanical harvesting and there was no mentioned of a soup contract. March 16 conversation was the first about no strike as to Brock Ranch. There were the 2 telephone conversations on March 16, the 1st proposal in the 1st conversation and the company and union responses in the 2nd.

Under cross-examination- he has participated in 50 to 100 contract negotiations and employers generally ask for a non strike clause as it is important to a grower to get same. Signal Produce season is from 1/15 through early April with February and March as most important in their season. Indirectly, he recalls the issue of Brock Ranch was raised at either the March 3 meeting that he wasn't present or on March 14 meeting when the crew working on the Brock Ranch felt they were in-the Unit. Employees of Signal Produce was in certification but Brock Research or Ranch was not mentioned in the certification, but the UFW felt they were part of the Unit. I didn't feel they were part of the Unit, therefore, I couldn't tell or give the consent to Nassif not to strike them. At the end of the March 10 telephone conversations, left; remaining were (1) the irrigator issue (2) duration (3) non strike as to Brock, Research or Farm. By March 15, the employer agreed basically with the contracts used except for wages of irrigators; then Nassif proposed 22 of the 24 hours for irrigators at the shift rate, which was then rejected by the UFW.

Redirect- A minimum hours guarantee was defined, regardless of piece rate. If on piece rate, there is no hourly guarantee or minimum wage guarantee. The companies position was that if the workers would make mere than they would on the hourly rate, then they would switch to piece rate -*-

-*- NOTE: General Counsel reopens their case for the witness which is carried at page 14.

For the Respondent In Defense on Direct:

1. Marshall Ganz (as an adverse witness under 776)- the most favored nations language in the Interharvest and Vessey contracts as to duration and the Vessey contract as it relates to 24 hour shift irrigators is acknowledged as correct. He was a participant in the Vessey negotiations. He testified in Superior Court that the words, in said most favored nations clause of "produce company" meant primarily lettuce growers and shippers in Imperial and Salinas Valleys. "Produce" is defined as things growing from the ground and. "fresh vegetables" includes asparagus, carrots, brocolli as well as lettuce, although again in the Superior Court proceeding he testified to primarily lettuce. He did- not study draftmanship of language at Harvard, where he went to College. He participated in the Sun Harvest negotiations and assisted in the drafting of this agreement, together with Ann Smith and Gilbert Padilla, and the three (3) are amongst the most experienced negotiators in this State, for the UFW. In the 24 hour irrigator clause of most favored nations "fresh vegetables" means asparagus and not generally so in the duration clause; also, "produce Company" has a different meaning in the 24 hour irrigator clause than it does in the duration clause. This sane language appears in the Vessey and Joe Maggio and in the Saikon agreement. All parties waive further examination of the witness - excused.

2. Evidence by way of stipulation, offered by Respondent, and duly stipulated to by all parties:

(a) That as of 10/78, there were in existence in California 79 UFW collective bargaining agreements; of which 66 had a duration of more than 1 year and those with a duration of more than nine and one-half (9½) months were 69; and those with a terminating date after 1/1/79, was 48. That the median length of said 79 contracts was 2 years and 5 months in duration and with an average length of 24.1 months in duration. That as of 10/78, all companies based or operating in Imperial Valley had termination dates of either 12/1/78 or 1/1/79, excepting Maggio-Tostado.

(b) As to certification history- the original RC petition filed by the UFW named both Signal Produce Company and Brock Research as the appropriate bargaining unit; that Signal Produce was certified as the appropriate unit only; that 4/25/78, the UFW filed a petition to amend the certification to include Brock Research and the Regional Director dismissed the petition and the UFW filed a request for review of said dismissal which is still under submission before the ALRB.

(c) As to the beforementioned Superior Court litigation that on 1/23/79, the Saikon Company filed a suit in El, Centro Superior Court, claiming that their collective bargaining agreements with the UFW had been extended by, virtue of their most favored nations clause on duration due to an Oxnard, California grower (K.K. to and Company) entering an agreement with the UFW to a longer contract; that K.K. Ito grew celery and tomatoes; that the Court issued a temporary restraining order enjoining strike activity at Vessey and Saikon; that the employers' request for a preliminary injunction was denied; that the Fourth District Court of Appeals denied the employers' writ application challenging.

said denial; that the matter is presently on appeal.

-*- continuation of General Course's case from page 12.

5. Don Brock - (called by General Counsel under Section 776)- He farms in El Centro as the managing partner of Signal Produce Company and since Spring, 1975. From 1975 to 1978 they farmed asparagus only. The gross acreage growing asparagus in Spring, 1978 was 320 with one crop or harvest per year and employing 120 to 130 employees. All harvesting people are hired through the El Don Farm Labor Contracting Company. The harvest is from mid January to early April each year. Above what the employees actually receive, the labor contractor used to receive around 24% and the current is 31½. In March, 1978, the managers of Brock Research were his father, Warren Brock and the resident foreman Reuben Garcia. In March, 1978, he didn't care one way or the other whether Brock Research was insulated from work stoppage by the Union. In 1978, hand picking asparagus started in mid January and by the beginning of February, because asparagus grows rapidly, you are picking daily, and its sold in fresh form. When good' harvesting starts, they go to piece rate (1st or 2nd week in February), at \$2.00 per box in 1978 and the season before, the rate was \$1.80 box.

After hand harvesting, on one or two earlier occasions, they went to machine harvesting (recalling Spring, 1976). As to the 1978 machine harvesting, General Counsel offers Exhibit 6 which is the said contract between Signal and Jackson Farm Management and Western Equipment Services. Sometime during the winter of 1977-1978 discussion was started by John Jackson with him as to supplying

asparagus by machine harvest for his "soup contract". This agreement bears the signature date of February 17, 1978, but this did not

refresh his recollection of dates. He was present at all of the negotiation sessions in 1978 and he doesn't recall whether he or anyone on his behalf informed the union of this contract.

There was a work stoppage at Signal Produce March 17, 1978 and it continued into the next day. The fresh harvest was just finished when the stoppage began and in effect the season was finished when the stoppage began, except for limited machine harvesting which began small on the 18th, 19th and 20th and the first volume was reached March 21, 1978. He recognizes and identifies the signature on General Counsel Exhibit #2 as his and directed to employee Feliz Corona and last time he saw letter was March 17, 1978, and this was the first time such a letter issued to an employee and he did not consult the union or notify the union of issuance of this letter.

As to the rate of pay of 24 hour shift irrigators in January, 1978, there was one and they received \$58.00 per shift; they raised to \$60.00 in February and 2/15/78 and 3/1/78 the rate was still \$60.00 they raised to \$66.00 in June or July, 1978. The reason for the raises was a review of wages historically in December or January, Irrigators in 1978 received \$10 to \$12,000 per year each and a total irrigator payroll of \$40 to \$50,000 plus company paid taxes and ether benefit contributions totalling 25 to 35% of the gross. It is stipulated, by and between all parties, that from September 1977 through September, 1978, there were 390-24 hour irrigator shifts at Signal Produce, and the total payroll of the same was \$43,000

-*- continuation of General Counsel's case (witness #5. Don Brock)

Regarding General Counsel Exhibit 6, he participated in the drafting of this agreement and he put the date of February 17, 1978, on the agreement, which is the mechanical harvesting contract, but the meeting with Jackson on this agreement was in fact in March and he signed in March but dated it 2/17/78 to reflect when their negotiations for this agreement first began, in earnest. They have a fall crop for asparagus and did so in 1977 and 1978, but asparagus is considered a perennial crop with a fall and winter or spring harvest. In February, 1978, Signal went to a rate of \$2.00 per box. This was due to a union discussion of rates, when the union went to the Maggio-Tostado fields and somehow Signal was also involved in a field trip and we agreed with the union with the weight per box and the rate per box. I do not recall the \$2.00 rate being discussed in our negotiation sessions. The February date for the mechanical harvesting/soup agreement was the approximate date of the first union negotiations date as well. The raise from \$58 to \$60 for the 24 hour shift irrigators was not a change because of their union negotiations in February, 1978. At peak asparagus season the company produces 12 to 1400 field boxes of asparagus per day. The peak is for 20 days. In the fall harvest, a peak day would be 275-200 field boxes picked, and the peak would last 10 to 12 days. During negotiations, the company offered \$72.00 to the union for the rate for 24 hour shift irrigators, and he doesn't recall what the union proposed. He doesn't recall and has no notes regarding negotiations or inclusion of Brock Research in the sessions.

With the payroll sheet from El Don Company who sends out crews to Signal - on February 27, 1978, Signal was paying \$2.00 per box plus 31½ for overhead to El Don, and the crew of 30 in 4 hours picked 308 boxes. Therefore, the actual cost per box was \$2.62 and during the peak period of 20 days commencing around 3/10/78 when 12 to 1400 boxes would be picked per day, the average cost would be \$3,400 and for the 20 day peak season, a total cost of that harvest would be \$68,000.

General Counsel rests. Intervenor rests.

(continuation - For the Respondent in Defense on Direct):

3. Don Brock - he has worked in the farming business full time since 1966, excepting 1969 through 1975, when he was employed by the United States Department of Agriculture as the Executive Assistant to the Secretary of Agriculture. He has no ownership interest in Brock Research. As to asparagus plant, from the day of planting the seed or shoot it begins bearing 2-3 years later and it produces for a life expectancy for 10-12 years. During the peak of the season, one spear of asparagus grows 4 to 8 inches per day. During the peak, once a day and every day the field is picked. If not picked, at 10 to 12 inches in height it begins to flower and becomes a flowery fern and then no good as asparagus crop. As to competition in the business- from the beginning to the conclusion of the season they are competing with growers in the Imperial Valley and imported Mexican asparagus from Mexicali Valley which is more acreage than all Imperial Valley combined, and in late season around March 10 to 20th Stockton and Salinas Valley areas begin to produce. Mexicali Valley has total acreage of 4 to 5,000 and Stockton has around 20,000 acres. When Stockton crop starts to arrive it beats the price down so that hand picking for fresh marketing is too expensive and we can't compete. This occurs before we have finished our season.

Mechanical harvesting toward the end of March, 1976, we used mechanical harvesters which was a Jackson Farm Management operation to lengthen the season in El Centro to compete with the lower prices coming in from Stockton. The harvester has cycle blades and cuts the spear at varying lengths because of its cutter and by conveyor belt into the bin which holds the equivalent of 10 field boxes. Average yield is 150 pounds per acre cut, but not harvested daily like fresh, but every 2-3 days. The return is not as good as fresh harvest. No mechanical harvest in 1977 because Jackson was in bankruptcy proceedings. In 1978, the return to the field from the mechanical harvest was 18-20,000 dollars, while in 1976, we got less because the price was less. Fresh or hand harvesting return is always more. In 1978, hand harvesting return to the field was 75-100,000 dollars, after picking and packing, as his estimate if he was able to continue hand harvesting after March 17, 1978. He is shown Respondent's Exhibit L, a one page advertisement of Signal Produce taken out March 4, 1978 in the packer newspaper at a cost of about \$2,000,00- he started the efforts of art work and to place the ad around December or January. He felt he was going to have a good late season and to keep the business here and also feeling that Stockton would be coming in late, he wanted to keep the business till April 10, 1978.

The mechanical harvest/soup contract didn't expect deliveries till the end of March, 1978, but because of the work stoppage March 17, 1978, and Jackson's machines weren't greased and ready for another 5 days, some asparagus went to fern and were a lost crop. He had 200 acres committed to Jackson for mechanical harvesting and 40 acres not committed because the asparagus plants were younger and feared their damage by the harvester since it damages and bruises. Job duties of a 24 hour irrigator- this classification has been, at Signal always. In the farm or nonharvesting stage, irrigate a 24 hour basis every 3 to 10 days and it takes 2-3 days per fie-

cycle. On the first day, he reports 6:00am to 6:00am and stands by till the water is turned on and sees it uniformly run and into ditches and uniform distribution. On the 2nd and 3rd days he continues to survey its equal distribution from head to tail ditch and then the water is turned off. Doesn't require much night checking or constant 24 hour and and irrigator can return to town for a meal or change of clothes during the 24 hours. In 1/78 Signal was paying irrigators \$58 for 24 hours. Comparison of irrigators (1) sprinkle: system or brand new vegetable crop being germinated requires a lot of attention day and night, as some companies in the area require; (2) an established crop requires little at night, this is like our crop and irrigators; (3) alfalfa or grain farmers, where a gate is opened and they can leave for 3-4 hours. In Imperial Valley there is a higher pay rate for the 1st category over the 2nd or 3rd. At Signal Produce, the irrigator has no supervision at night and little during the day.

In March, 1978, Felix Corona was doing day irrigating. He saw him on 3/17/78, the first day of work stoppage. Brock drafted and signed the notice letter (General Counsel #2) on 3/17/78 and instructed the irrigator foreman, Ernesto Collin to give the letter to Felix Corona the next time he saw him. He only drew the letter for him. because he was the only irrigator that walked off that he saw. He intended, by the letter, to tell him that if he was going to stay off he was going to be permanently replaced. Irrigators are more dear to him and they were then short handed of irrigators. You can have a disaster situation if an irrigator goes off during the middle of a shift as it could do damage to the field and overflow to a public road and other problems.

He was present at the 3 sessions of negotiations between Signal and the UFW. Signal has never had a bargaining agreement with anyone. From 2/14 to 3/17 he was in constant contact with Nassif. He had a telephone conversation with Marshall Ganz on 3/13/78, in which he called Ganz back because he wasn't in when Ganz first called. He spoke from a telephone in a noisy room, and Ganz said there was going to be another negotiation session that week and he Ganz was stepping in to bring this to some resolution. I felt nervous talking to him and I said I have a attorney/negotiator and prefer keeping our side channeled through him.

He knows a Jerry Breshears and he recalls that in Winter 1975 or early 1976 he sat in as an invited observer to his negotiations with other companies. Dressier of Western Growers Local 78B invited him, but they have never represented Signal nor asked Signal to bargain. Brock packs only for Signal and no other growers. As to Fall asparagus, in 1978 they had 35 acres growing; although all acres are on the basic property you can only harvest spring or fall therefore the fall harvest is of these acres. The fall asparagus are smaller size spears. The Spring asparagus were 200 acres.

Under cross-examination they also have shed employees and they are hired by the shed foreman and not through the labor contractor and during peak season there are 50-60 workers. They have 200 good acres for spring asparagus harvesting. The letter delivered to Felix Corona was drafted by him and signed 3/17/78, same day. As to irrigators work, the 12 hour shift daytime do some shovel work also, and they are during the harvest season. There is no

set standard for 24 hour shift irrigators as to naps or lunches or meals and sometimes they take an hour or more. There is little effort; or skill necessary for the nighttime hours. Irrigators skills should be common sense, a working knowledge of turning water from, a cement ditch to a dirt headline ditch and furrows and to have enthusiasm to work. An irrigator is important. At night he acts as a night watchman and he can sleep for a few hours, but after that he should look for flooding and liability damages. He is shown a time sheet for Felix Corona for 12/21/77 headed Brock Research and this is explained as work on Signal Produce fields only and Signal Produce ran out of time sheets and that is why a headed Brock Research one was used.

He may or may not have said that he would plead the 5th amendment in the telephone conversation with Marshall Ganz. The workers were informed of the ending of a season by the fresh market beginning to fall apart and declines and we tell El Don Company and they tell the foremen and they tell the workers that there are 2-3 days left to the season. It becomes rather evident. In March, 1978, the fresh season was definitely over, and the workers told me, I didn't tell them.

Redirect - In March, 1978, he wanted to continue hand harvesting for another week or ten days, but with half walking out and the other workers walking also and no willingness to come back and the spears began ferning out, it was no longer in marketable condition.

Thomas Nassif - he has been an attorney for over 10 years and specializes in labor law primarily agriculture. There is a stipulation by all parties that this witness is qualified to testify as an expert in the area of labor negotiations. In 1978 he represented Signal Produce in the negotiations with the UFW. Signal was certified around 1/27/78. On 1/31/78 he received the form letter for information from the union. On 2/14/78 was the first negotiations session, with Don Brock and Nassif for the company and Marshall Ganz, Ann Smith and the negotiations committee for the union. Ann Smith requested background information of the company (job classifications, different workers, wage rates, etc.) and these were all answered by me. This took 30 minutes. Next, was an inquiry into the loading and hauling operation and we informed them that it was handled through a subcontractor and it included truck drivers. Next, discussed the number of acreage in the fields. Next, about irrigators as to whether seasonal or year round and the type of crops and I informed them only asparagus. Next, was the bargaining proposal and economic package presented by Ann Smith. She advised that we could approach the negotiations either of 2 ways: (1) from a bargaining proposal in two parts, economic and non economic, item by item, or (2) for a prior negotiated agreements. She then said that the union would propose to accept the Vessey master agreement articles named as to non economic and the Maggio-Tostado agreement articles named as to economics, plus some other economics that they would offer. Nassif was given these documents at the meeting to review later, plus documents related to 3 trust funds (Martin Luther Sins, Wanda LaCruz and Robert F. Kennedy). Approximately 166 pages total of documents. Next, the union requested, (1) retroactivity of back pay to the

beginning of the season, (2) hiring hall method (3) reference to the Maggio-Tostado supplement. Note, this supplement was not in existence at this first session of 2/14/78, as it was negotiated from 12/77 till final agreement and signed 3/28/78 (4) local issue's discussions and the size and weight of the field boxes and arrangements for a field trip was made. I advised them that I was to go to Washington, D.C. on business I would return in 1 week and I returned evening of 2/22. Ann Smith telephoned me 2/23 and she had the field trip and we discussed it and everything was fine. Respondent's M, a memo by Nassif to his file, refreshes his recollection of the 2/23 telephone conversation to discuss with Brock the Maggio-Tostado agreement documents. Next session was 3/3/78, with Brock and Nassif for the company and Ann Smith, the negotiating committee and possibly Karen Flock from the UFW for the union. There was no complaints or protests from anyone of any delays in meetings or meeting dates to date. The topics discussed, first was a request for more company information, as to the Brock family members, the crops, the fields etc. I responded and this took about 1 hour. She also asked for evidence of my answers by way of checks and bills and records and leases. Next discussion was that I said the basics of the Maggio-Tostado supplement would be acceptable and I would recommend the Vessey master agreement to my client rather than the articles only which they had mentioned. The reason for this was that the articles they offered were non economic and the economic ones were from the Maggie Tostado. Both of which were worse to the company. I felt they should offer a Imperial Valley agreement to us and not a Coachella like Maggio-Tostado. Next discussion was about the duration clause and Ann Smith said that that was non negotiable. I asked for a later than 1/1/79 duration date and was told that no company had a date past 1/1/79, even though Klein Ranch in Stockton was after 1/1/80 in fact and Brock told her this. Next was retroactivity discussed and Ann Smith said they wanted it on the hourly rate as well as the piece rate. I requested to know what employees were going to be on the negotiating committee and I was advised of this by letter on 3/9/78. Next topic was how vacation time was earned because with asparagus employer is first paying a hourly rate and as harvest picks up it changes to piece rate. Next topic discussed was our inquiry into the pension and benefit plans and Ann Smith and Marshall Ganz responded (1) Robert Kennedy medical plan is a self insured with the doctors in Mexicali (2) Juan de La Cruz pension plan, we felt was not a qualified plan and they agreed but said the monies went into a savings and loan and more information I was available through their attorney Dennission in Oakland (3) Martin Luther King fund also was not a tax deductible plan and fund Next, we explained our hiring through the independent contractor. then said we couldn't accept their proposal since it hinged on the Maggio-Tostado supplement and that wasn't negotiated or an agreement as yet. Or, March 10, 1973, I was in Holtville on another matter, and during the lunch Ann Smith, Marshall Ganz joined and we discussed Signal and they wanted to know when we would sign a collective bargaining agreement and I indicated I would talk to Brock upon my return to El Centro. Next session was March 15, 1978, with Brock and Nassif for the

company and Ann Smith, Marshall Ganz, Karen Flock and the company committee for the union. Topics discussed were more information that we gave on independent hiring contractor El Don and about our medical plan. Next, I indicated we would accept the Vessey master agreement with some exceptions and the Maggio-Tostado supplement with some exceptions. No one in Imperial Valley had a guarantee minimum and we wanted to be treated the same and not to Maggio-Tostado a Coachella agreement. Other exceptions were only procedure and not substantive, Just particular to our area. As to the vacation earned, we wanted to set it at just 700 hours worked regardless of Vessey requirements of 1,000 hours if on hourly rate and 700 hours if on piece rate.. We proposed \$72 per 24 hour shift irrigators, rather than the \$60 they now received, while the union proposal was \$86.40, plus in July from \$3.60 to \$3.75 per hour, or \$90.00 per shift. Next we proposed the duration to 4/30/79, which would be through the harvest, and a \$2.10 box rate. This duration would protect us through a Spring 1979 strike, rather just to 1/1/79 which they were proposing. Also we didn't want to pay retroactivity if we didn't have a no strike clause. The most important thing to the employer is the no strike clause. Next, they wanted to work out something on seniority, but no specific proposal made. Then Ganz said what about Brock Research being included in the Unit; but I said the certification is for Signal Produce not Brock Researo Next, they wanted the trucking and hauling included but we said that they are subcontracted out and therefore not includable in the bargaining unit. Maggio-Tostado was the only asparagus company with an agreement therefore they couldn't look to the industry bargaining agreements to reach agreement with us. Next, we came to agreement generally on the language of Vessey master agreement and the economics of Maggio-Tostado supplement, even though it was not in effect yet, but they wanted what ever its terms were, and these exceptions, (1) guaranteed minimum or the right to tell us when to pay piece rate and when hourly rate (2) rather than 10 minute rest periods, he wanted 15 in the morning and 10 in the afternoons (3) firm on the \$86.40 irrigator shift rate (4) "citizen's participation day" day off holiday (5) retroactivity on the medical plan and they waived as to wages (6) firm on duration to 1/1/79 (7) wanted Brock Research included (8) if loading and trucking by Signal Produce, then wage should be at \$3.70 per hour (9) and a recall procedure which they would let us know about, but no position as yet. Everything else was resolved. Ganz wanted an immediate reply and I said we would get the family together that night and caucus and I would answer in the morning.

On the morning of March 16, 1978, I gave Ganz our response (1) we would not change from hourly to piece rate earnings unless the piece rate would be more than the hourly rate his response was that he couldn't give¹ me an immediate answer on this (2) we agreed to retroactivity of the medical plan (3) no change in our position on duration (4) no change in our position on irrigator rate. But, as to duration, we said that if they had to hole to a 1/1/79 date because of the most favored nations clauses, we would agree if we could come to an agreement on a rate covering the Spring 1979 harvest and I suggested on the rate that the shift could be cut 22 hour shift and pay the 372 we offered as if it was 24 hour shift.

and therefore no one could say we obtained a more favorable rate (5) we agreed that the truckers and loaders were in the contract and to pay them the \$3.55 rate as was in the Vessey contract (6) as to Brock Research, the union would take their best shot. I called Marshall Ganz back at 9:30 AM, he informed me that the hourly and piece rate arrangement was agreeable, therefore only the duration and irrigator rate issues were left and there was no change in their position on these two items and they would take their own shot at Brock Research. I then spoke to Mr. Brock and discussed this. I then called Ganz back at 10:30AM and told him there was no change in our position on these two items and I felt that there was no most favored nations clause problems and certainly not by keeping the 1/1/79 duration and by then going to 22 hours irrigator shift but payment for a 24 hours shift rate. He said that we were not going to reach agreement on this and therefore we will do what we have to do and you do what you have to do. Also, I mentioned that if the most favored nations clause was such a problem, that was with Vessey, Maggio and Saikon, that we should talk to those companies and see if they would waive their rights from these clauses. Nothing was said in this regard. That's where everything ended.

I didn't really think that the most- favored nations clause was such a problem to them because I knew they already had a contract with Klein Ranch in fresh asparagus running into 1980 and in Imperial Valley the union had only 1 contract with an asparagus grower and that was Maggio T9Stado running till 2/80, As to the irrigator rate we proposed \$70 for 24 hours shift; but work only 22 hours, and this would solve the most favored nations claimed problem, and if still a problem, then to attempt to get the waivers from the companies. But, the real problem, was the duration not the shift rate and therefore we would hold out on the shift rate as a bargaining measure for the duration of no strike guarantee through Spring, 1977" At no time did Ann Smith or Marshall Ganz say that I was delaying negotiations.

As to the mechanical harvester, the agreement was discussed 3/13 or 3/14 and I participated in the drafting and it was in' final form 3/15, after my conferring with Brock and Jackson.

Under cross-examination as to obtaining or inquiring into the other companies for waivers of the effects of the most favored clauses, no one suggested Nassif do this, and there was no further conversation about this after Nassif brought it up. As to the irrigator rates, the Vessey contract called for \$36.40 per 24 hour; shift, while the nonunion rates at the time were running 348-360. Non union might vary their rate as to what their crops were as it effect on irrigator difficulty, while the union contract paid the same rates to irrigators.

Rebuttal by Intervened:

1. Ann Smith - it is stipulated that she is a qualified expert witness in negotiations. She negotiated 40-50 agreements, of which 10 are Imperial Valley. Of the 10, at least 7 have 24 hour shift irrigators and they are all paid the same and there is no classification or differential of & 24 hour shift irrigator.

FINDINGS OF FACT - CONCLUSIONS OF LAW

1. That the respondent -Signal Produce Company is an agricultural employer within the meaning of the Act; that the charging party -UFW- is a labor organization within the meaning of the Act; that Donald E. Brock, Tom Nassif and Ernesto Collin, at all times relevant herein, were supervisors and agents of the -respondent within the meaning of the Act; that Felix Corona is an agricultural employee within the meaning of the Act; that on January 27, 1978, and during all times relevant herein, the UFW was certified as the exclusive representative of all agricultural employees of Signal Produce Company. That the acts of the employer's supervisors and agents are binding upon the employer and the employer/respondent is held responsible for said acts. As regarding the allegations of violations of the Act by the Respondent by their issuance of a warning/termination letter (General Counsel Exhibit #2) to employee and union activist Felix Corona :

2. That on March 19, 1978, at the close of the work day, a warning/termination letter Issued by the respondent to Felix Corona, an irrigator employee of said respondent, stating that he would be terminated if he didn't report to his next assigned job, was received by said employee; that Felix Corona has been employed by respondent for 7 years; that Felix Corona took part in the union activity work stoppage at respondent's fields on March 17 and March 18, 1978, by not working his assigned job; that said employee voluntarily returned to his assigned job the morning of March 19, 1978, and thereafter; that said employee had never received a warning letter in the past and knows of no employees that have

ever received a warning letter in the past 7 years; he knows of no employees active in the work stoppage that received a warning letter, other than himself; that respondent was short of irrigators at or about the time of the work stoppage; that absent an irrigator during a shift, damage to the field and liability damages to property could occur. (It is to be noted that the said letter was received, and the first notice to Mr. Corona of such a letter addressed to him, was in fact after his voluntary return to his work and therefore, it can be fairly stated to have been an ineffectual tool for any violation prior to its receipt).

The effect of said letter as to future events, therefore, as to its effects on the employee(s) as to the exercise of his rights and concerted activities without threats, coercion and discrimination, is the question at hand. The issuance of such a letter as this, without the sustaining testimony or evidence necessary to carry the requisite burden of proof on the issues of its understanding, meaning and effect upon the employee and his exercising of his rights and activities, will not sustain a violation on the part of the respondent, as charged. Further, it is found that the language of termination therein, does not per se reflect an inference of "firing" or "discharge" of this employee anymore than a warning of replacement would have in a like circumstance, and conduct thereafter does not aid any finding to the contrary. Further, there is a lack of evidence to establish, on the part of the moving party, that unilaterally a new system of employee warnings was put into effect, by this letter, or a change of system or whether in fact a system at all. The burden of proof on this issue has not been carried or proved by the preponderance

of the evidence.

It is therefore concluded, that there was not a Section 1153 (a) violation of the Act, by the respondent's issuance of the said warning/termination letter to Its employee(s) Felix Corona, and it is accordingly concluded that there was not a Section 1153 (c) violation of the Act for the same reasons as previously described herein.

As regarding the allegation that respondent has engaged in bad faith bargaining with a certified labor organization (UFW);

3. That on January 27, 1978, the UFW was certified as the representative of the respondent's employees; that thereafter, there were negotiation sessions to further the arriving at of a collective bargaining agreement, during which respondent acted by and through Donald E. Brock and Tom Nassif and the union by and through, mainly, Ann Smith, Marshall Ganz and the presence of the bargaining committee of the crews that the first negotiation session was held February 14, 1978, in which background information of the company, its fields, its harvest, its employees and related information was given to the union; further, a discussion of bargaining proposals and economic package was presented and discussed; further, that the decision was made to negotiate off of prior negotiated agreements with the Vessey Company and Maggio-Tostado Company master agreement and the supplement which was not totally in existence but which some terms respondent was familiar with through Torn Nassif; that these said agreements documents and documents on three trust funds were given to respondent to review preparatory to negotiations a total of some 166 pages; that additionally other requests were made by the union and re-

quired negotiations, such as retroactivity of back pay, a field trip, etc.; a field trip was had by Ann Smith on February 23, 1978; that there were no complaints expressed concerning bargaining, bargaining attitudes or delays by the company;

That the next negotiations session was held March 3, 1978, with further discussions of economic and non economic clauses and recommendations were discussed, further, respondent requested a duration of the agreement to after the January 1, 1979 date offered by the union and was told by the union that the duration was non negotiable; that further, the exact terms of the Maggio-Tostado supplement hadn't been as yet agreed upon and therefore was not available in this negotiation as a model; that vacation time, pension and benefit plans were discussed; that there were no complaints expressed concerning bargaining, bargaining attitudes or delays by the company;

That the next negotiations session was held March 15, 1978, at which time, basically everything was agreed upon between the company and the UFW and basically through the use of the language of the Vessey master agreement and the economics of the Maggio-Tostado supplement, with few exceptions; that the major exceptions were as follows: (1) the union proposal of \$86.40 as the shift rate for irrigators per 24 hour shift, to which the company proposed \$72.00 (the company was then paying \$60.00) as the shift rate for irrigators per 24 hour shift, and (2) as to the term or duration of the agreement, the union proposal was to terminate January 1, 1979 and the company proposed the agreement through April 30, 1979 (which in effect would mean no strike clause through the 1979 harvest season); that the union expressed

that their proposals on duration and irrigator rates were non negotiable because of "most favored, nations clauses"¹ in their bargaining agreements presently in force and effect with Vessey, Maggio and Saikon Companys; that the union felt that the granting of more favorable duration and/or irrigator rates to Signal Produce could act to trigger the "most favored nations clauses" in the beforementioned companys' agreements and therefore their union members in those companies would be comparatively effected to the Signal Produce duration and irrigator rates; that the company was to caucus that evening on these remaining primary issues; that there were no complaints expressed concerning bargaining, bargaining attitudes or delays by the company;

That the next negotiations session was March 16, 1978, by the telephonic communications between Marshall Ganz and Tom Nassif; that all remaining matters were agreed to excepting: (1) the irrigator rate, and (2) duration of the agreement, and that neither side changed their proposal or position on these two matters; that the company then proposed, (1) \$72.00 as the irrigator rate and that the shift could be cut to 22 hours rather than the existing 24 hour shift and that therefore the "most favored nations clause" would not be effected since the rate would not be for 24 hours and therefore Signal Produce would not be obtaining a more favored rate over the beforementioned companies, and (2) the company would accept the January 1, 1979 duration date, presuming what the union had to hold to the "most favored nations clause", on this issue, if the company and the union could come to an agreement on a rate which would cover the Spring, 1979 harvest; that additionally, the company proposed that since the "most favorite

nations clauses" were the problem, that these parties should talk to the said companys possibly affected and to see if they would waive their rights from these clauses; that nothing further was said or accomplished; that there were no complaints expressed concerning bargaining, bargaining attitudes or delays by the company; that thereafter, and still on March 16, 1978, there were two additionally telephone communications between the said parties at 9:30 am and 10:30 am, with nothing further accomplished, and the attitude raised that the parties were not going to be able to reach an agreement.

That the charging party alleges that the effect of the issuance of the beforementioned warning/termination letter to Felix Corona was a unilateral act of a change which was a subject! to be bargained and therefore the company violated its duty to bargain in good faith and could be deemed a refusal to bargain on the part of the company - the subject of this letter and the circumstances surrounding it has been earlier discussed (supra), and accordingly concluded that it has not been proven by the preponderance of the evidence by the party with said burden, that any new warning system was instituted which was a bargaining point or issue and accordingly it is concluded that no Section 1153 (e) violation of the Act occurred, by this activity.

That as regarding the general circumstances of the bargaining sessions themselves - it is concluded, that the evidence is clear, that the parties "made themselves available and did in fact meet and confer at reasonable times; that complaints of delay or accommodations for bargains sessions were never expressed by either side; that great strides were accomplished

in arriving at a collective bargaining agreement during the said bargaining sessions and In fact, by using terms of existing agreements and with certain modifications thereto, all of the terms and general clauses were agreed to excepting for two; that all of this was accomplished between the parties, basically, within one month and consisting of three sitdown sessions and the one morning of telephone communications sessions; that it is further concluded, that the two issues remaining between the parties, was the duration of the agreement (which was of the most importance to the company) and the other being the pay rate shift of the irrigators; that the company felt that they could negotiate on the pay rate shift of the irrigators; that the bargaining sessions had not in fact reached final positions on the two said remaining issues; therefore, it is finally concluded, that the charging party has failed to carry the burden of proof by a preponderance of the evidence to establish that the respondent bargained without intending to reach a collective bargaining agreement, generally or as regards to the pay rate of irrigators.


To "bargain in good faith" is not defined nor do inferences of the same arise based upon the fact of whether or not that written contract has or has not been achieved. But, more so, upon the collectiveness of the performance together with the entire mutual circumstances of the proposals made and the counterproposal with the mutual agreements to confer, to sitdown and openly discuss the issue of wages, hours, duration of contracts and other terms and conditions. Bargaining and negotiating contracts are acknowledged as a profession, a science and sometimes a psychological experience; it can be hard, demanding and sometimes much less in

its ways, but as long as there are avenues of communications left open and as long as there may be ways proposed or offered to arrive at some meeting of the minds, as was found here, one cannot say that either side has or is bargaining in bad faith. Further, failure to accede to one side or the others demands is not, standing by itself, sufficient to carry a burden of proof of "bad faith" or a "knowing intent" to do or not to do something.

It is therefore concluded, that the respondent did not engage in an unfair labor practice affecting agriculture within the meaning of Section 1153 (e) of the Act.

IT IS THE DECISION of the Administrative Law Officer, that he finds for the Respondent, Signal Produce Company, and that the cases and each of them, be and are dismissed.

DATED: January 3, 1980.


BERNARD S. SANDOW
Administrative Law Officer