El Centro, California

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ADMIRAL PACKING COMPANY, ARROW LETTUCE COMPANY, ASSOCIATED PRODUCE DISTRIBUTORS, CALIFORNIA COASTAL FARMS, COLACE BROTHERS, J. J. CROSETTI COMPANY, INC., GONZALES PACKING COMPANY, GOURMET HARVESTING & PACKING COMPANY, GREEN VALLEY PRODUCE COOPERATIVE, GROWERS EXCHANGE, INC., HARDEN FARMS OF CALIFORNIA, THE HUBBARD COMPANY, LU-ETTE FARMS, INC., CARL JOSEPH MAGGIO, INC., JOE MAGGIO, INC,, MANN PACKING COMPANY, INC., MARTORI BROTHERS DISTRIBUTORS, MEYER TOMATOES, 0. P, MURPHY & SONS, OSHITA, INC., MARIO SAIKHON, INC., SALINAS MARKETING COOPERATIVE, SENINI ARIZONA, INC., SUN HARVEST, INC., VALLEY HARVEST DISTRIBUTORS, INC., VEG-PAK, INC., VESSEY & COMPANY, INC., and WEST COAST FARMS, Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos.
	)	79-CE-38-EC 79-CE-116-SAL
	)	79-CE-36-EC 79-CE-117-SAL
	)	79-CE-43-EC 79-CE-120-SAL
	)	79-CE-45-EC 79-CE-129-SAL
	)	79-CE-34-SAL 79-CE-131-SAL
	)	79-CE-35-SAL 79-CE-132-SAL
	)	79-CE-36-SAL 79-CE-144-SAL
	)	79-CE-37-SAL 79-CE-167-SAL
	)	79-CE-46-SAL 79-CE-168-SAL
	)	79-CE-53-SAL 79-CE-183-SAL
	)	79-CE-64-SAL 79-CE-185-SAL
	)	79-CE-64-1-SAL 79-CE-188-SAL
	)	79-CE-70-SAL 79-CE-191-SAL
	)	79-CE-92-SAL 79-CE-202-SAL
	)	79-CE-94-SAL 79-CE-203-SAL
	)	79-CE-95-SAL 79-CE-206-SAL
	)	79-CE-99-SAL 79-CE-248-SAL
	)	79-CE-112-SAL 79-CE-16-OX
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UNITED FARM WORKERS OF AMERICA, AFL-CIO, Respondent, and, ADMIRAL PACKING COMPANY, ARROW LETTUCE COMPANY, ASSOCIATED PRODUCE DISTRIBUTORS, CALIFORNIA COASTAL FARMS, COLACE BROTHERS, J. J. CROSETTI COMPANY, INC., GONZALES PACKING COMPANY, GREEN VALLEY PRODUCE COOPERATIVE, GROWERS EXCHANGE, INC., HARDEN FARMS OF CALIFORNIA, THE HUBBARD COMPANY, LU-ETTE FARMS, INC., CARL JOSEPH MAGGIO, INC., MANN PACKING COMPANY, INC,, MARTORI BROTHERS DISTRIBUTORS, MEYER TOMATOES, O. P. MURPHY & SONS, OSHITA, INC., MARIO SAIKHON, INC., SALINAS MARKETING COOPERATIVE, SENINI ARIZONA, INC., SUN HARVEST, INC., VALLEY HARVEST DISTRIBUTORS, INC., VEG-PAK, INC., and VESSEY & COMPANY, INC., Charging Parties.	)	Case No. 79-CL-6-SAL
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DECISION AND ORDER

On March 4, 1980, Administrative Law Officer (ALO) Jennie Rhine issued the attached Decision in the above-captioned cases,[1/] which were consolidated for hearing, against twenty-eight respondent employers. On September 5, 1980, the ALO issued the attached Supplemental Decision in Case No, 79-CL-6-SAL against Respondent United Farm Workers of America, AFL-CIO (UFW or Union), and simultaneously ordered the two matters consolidated.

The Agricultural Labor Relations Board (ALRB or Board) has considered the record and attached Decisions in light of the exceptions and briefs of the parties and has decided to affirm the ALO's rulings, findings, and conclusions, and to adopt her recommended remedial Order, as modified herein.

Factual and Procedural Background

Collective bargaining agreements between the UFW and many vegetable growers in the Imperial and Salinas Valleys expired in late 1978. The Union and some 26 'growers undertook negotiations on

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[1/]The allegations against Respondent Employers Admiral Packing Company, Arrow Lettuce Company, Associated Produce Distributors, Gonzales Packing Company, Green Valley Produce Cooperative, Growers Exchange, Inc., Harden Farms of California, The Hubbard Company, Mann Packing Company, Inc., Meyer Tomatoes, Oshita, Inc., Salinas Marketing Cooperative, Senini Arizona, Inc., Sun Harvest, Inc., Valley Harvest Distributors, Inc., Veg-Pak, Inc., and West Coast Farms in Cases Nos. 79-CE-38-EC, 79-CE-36-EC, 79-CE-45-EC, 79-CE-34-SAL, 79-CE-35-SAL, 79-CE-36-SAL, 79-CE-37-SAL, 79-CE-46-SAL, 79-CE-53-SAL, 79-CE-64-SAL, 79-CE-64-1-SAL, 79-CE-94-SAL, 79-CE-95-SAL, 79-CE-99-SAL, 79-CE-112-SAL, 79-CE-116-SAL, 79-CE-117-SAL, 79-CE-129-SAL, 79-CE-131-SAL, 79-CE-132-SAL, 79-CE-144-SAL, 79-CE-167-SAL, 79-CE-168-SAL, 79-CE-183-SAL, 79-CE-185-SAL, 79-CE-188-SAL, 79-CE-191-SAL, 79-CE-202-SAL, 79-CE-203-SAL, 79-CE-206-SAL, 79-CE-248-SAL, and 79-CE-16-OX, respectively, were dismissed at or after the hearing, pursuant to a settlement agreement. The names of the same employers were accordingly deleted from the charges in Case No. 79-CL-6-SAL,

November 27, 1978, on a "group bargaining" basis, whereby one lead negotiator and a small number of other designated representatives handled the negotiations for the employers.[2/] Each grower remained free to reject any provisions to which its representative(s) might tentatively agree. The parties envisaged that separate but similar agreements would result from this form of bargaining. Three months later, on February 28, 1979, negotiations broke off No agreements had been reached. Strikes were in effect at the operations of at least nine of the employers. Violent behavior by strikers had occurred on several occasions, property of several employers had been damaged, a number of nonstriking employees had been injured or threatened, and one striker had died after being shot, apparently by a foreman or foremen working at the ranch of one of the employers. During and after the negotiations, each side accused the other of bargaining in bad faith.

A hearing on the refusal-to-bargain complaints against the employers began on September 25, 1979, before the ALO. By then the UFW had reached collective bargaining agreements with 15 of the 28 original respondent employers and, at the request of the Union, the General Counsel withdrew the complaints against them. Collective bargaining agreements were reached with two other respondent employers after the close of the hearing and the charges against them were withdrawn by the UFW. The ALO issued her decision in the remaining CE cases on March 4, 1980. All partaies timely filed

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[2/]The participation of O. P. Murphy & Sons in the negotiations did not become certain until the January 23, 1979, bargaining session, and Gourmet Harvesting and Packing Company did not join the employer group until February 28, 1979.

exceptions to that decision, supporting briefs, and cross-responsive briefs.

A subsequent hearing was set on a complaint issued against the UFW, based on the same events, alleging that the Union violated section 1154(c) of the Act by failing and refusing to bargain in good faith. At a pre-hearing conference with the ALO on April 22, 1980, all parties agreed that they had no evidence to present beyond what had been produced in the earlier hearing, but would instead expect the ALO to decide the case on the basis of the earlier record. The ALO formally ordered both cases consolidated on September 5, 1980, the date she issued her Supplemental Decision on the charges against the UFW.[3/]

In her March 4 Decision, the ALO concluded that the Respondent Employers violated section 1153(e) and (a) of the Act by failing and refusing to bargain with the UFW in good faith. She recommended, inter alia, that the make-whole remedy be imposed against the employers and that the make-whole period begin on December 8, 1978, for each of the employers which did not have a contract with the UFW in effect during 1978, and on January 1, 1979, for each of the employers which had a contract with the UFW in effect in 1978. The ALO recommended dismissal of allegations that two employers, Carl Joseph Maggio, Inc., and Growers Exchange, Inc., violated' section 1153(3) and (a) by unilaterally changing terms and

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[3/]As the parties were allowed to except to and brief the ALO's Supplemental Decision, and since these cases are clearly related both in fact and law, we agree with the ALO that the interests of justice and administrative economy are served by consolidation of these matters for decision.

conditions of employment of their employees.

In her Supplemental Decision, the ALO concluded that although the UFW committed a per se violation of section 1154(c) of the Act by failing to provide requested information to the employers regarding a union benefit plan which was a subject of the negotiations, this did not evidence bad faith in bargaining and was not the cause of the failure of negotiations. She declined to modify in any respect her earlier conclusion regarding the employers' bad-faith bargaining or her recommendation as to application of the make-whole remedy.

Respondent Employers except to several of the factual findings of the ALO's March 4 Decision, to the ALO's conclusion that they bargained in bad faith, and to her recommended remedial order, especially the make-whole provisions thereof. The UFW excepts to the March 4 Decision only insofar as that Decision does not make clear whether striking employees are to be included in the make-whole remedy. The General Counsel asks that the Board find that striking employees are entitled to a form of make-whole relief, and excepts to the ALO's recommended dismissal of allegations that two employers unlawfully changed their employees' terms and conditions of employment. As to the ALO's September 5 Supplemental Decision, the Respondent Employers and General Counsel except to the ALO's failure to modify her recommended make-whole remedy to reflect violations of section 1154(c) of the Act by the UFW.

Bargaining History

We deal first with the issue of whether the Respondent Employers complied with their statutory duty to bargain in good

faith. We find that the record evidence does not support a conclusion that during the first two months of negotiations the employers were not bargaining in good faith. The Union submitted a proposal on non-economic items at the meeting on November 27, 1978, but little actual negotiating took place during December as the Union cancelled four previously-scheduled meetings, and did so again on January 4. On January 5, the Union submitted its economic proposal, which called for large increases in wages and was somewhat incomplete in that it was not accompanied by job descriptions or proposals on "local issues," some of which had economic ramifications.

Despite an earlier agreement not to publicize the course of negotiations, the UFW on January 4 published, in the Mexicali newspaper La Voz, an announcement of the terms of its economic proposal. On the same day it distributed to employees a flyer accusing the employers of "fighting against the workers, as always ...."

The Union agreed to an extension of the collective bargaining contracts to January 15. On January 11, the Employers submitted a counterproposal to the UFW's November 27 proposal on non-economic items. The Employers' proposal called for elimination of many prerogatives the Union had enjoyed under the previous contracts, some of which were clearly of major significance to the Union, such as provisions on hiring and on union security.

At a meeting on January 12, the UFW presented some, but .not all, of the information the employers had requested on Union benefit plans (the Juan de la Cruz Pension Fund, the Robert F. Kennedy Medical Fund, and the Martin Luther King Farmworkers' Fund). The

Union explained why some of this information was not available and why it did not want to provide other information which was available. The Employers continued in subsequent sessions to request information which the UFW had not yet provided.

Having previously agreed to extensions of expiring contracts to January 15, 1979, the UFW would not agree to any further extensions. On January 18, the Employers presented an economic proposal offering a one-year increase of seven percent in wages and benefits, claiming that this was the maximum allowable increase under wage guidelines which were part of an anti-inflation program announced by President Carter in December 1978. The Union protested that the guidelines were not applicable in agriculture and were strictly voluntary, but the Employers maintained that the guidelines were legally binding upon them.

The next day, employees of Respondent California Coastal Farms voted to strike. Strikes began at the operations of other employers on various dates thereafter. Strike-related violence occurred on several occasions between January 25 and February 21. Some record evidence suggests that UFW officials exercised a calming and restraining influence on strikers on at least one occasion when violence seemed about to erupt; other evidence suggests that the UFW leadership did little to preserve order and peaceful conduct among picketing strikers. There is also evidence in the record indicating that the conduct of security guards hired by struck employers was sometimes threatening and provocative.

In the January 19 bargaining session, the Employers criticized the Union for having commenced its strike at one

operation before it had submitted a complete bargaining proposal. They suggested that negotiations go forward with daily meetings, open to the public. The Union at first agreed, but when the Employers indicated that by "open to the public" they had meant that an official of the Federal Mediation and Conciliation Service would be invited to participate, the Union rejected the suggestion. To certain questions raised by the Union about the Employers' economic proposal, the Employers' respresentatives replied that they did not fully understand it themselves and that the questions could best be answered by an official of the federal Council on Wage and Price Stability, whom the parties should invite to the negotiations. The Union at first agreed to join in such an invitation but revoked its agreement the following day.

On January 25, the Employers revised their economic proposal, offering to raise wages and contributions to union benefit plans by seven percent each year for three years. They still maintained that the federal guidelines were a legal obstacle preventing them from offering more than seven percent increases. At the hearing, several employer representatives testified that this position was maintained as a negotiating and public relations tactic and was not actually believed by the Employers.

At some time in late January, the Employers formed a Committee for Fair Negotiations which engaged a public relations firm, the Dolphin Group, to conduct an advertising campign aimed at employees and the general public. In advertisements published in Mexicali newspapers, this campaign urged striking employees to disregard the UFW and return to work on terms offered by the

employers.

Meetings held on February 2, 4, 6, and 8 resulted in some progress on non-economic items. At a meeting on February 7, the parties had before them for the first time, and were able to discuss, each other's complete proposals. Each found the other's economic proposal utterly unacceptable. On February 10, UFW member Rufino Contreras was shot and killed during a demonstration at the ranch of one of the Employers. Criminal charges were filed against certain supervisory employees of that employer, but were later dismissed. Meetings that had been scheduled for February 13 and 14 were cancelled because of the Contreras funeral. At the next meeting, on February 19, the parties discussed in detail their positions on a health-and-safety provision, with each side making several concessions. At the February 20 meeting, there was further discussion on health-and-safety issues. At the end of the meeting, the Employers' representatives asked whether the Union had any new proposals to offer on this or other provisions. The Union representatives said they did not, having indicated that they expected significant movement by the Employers on economic issues before they would agree to concessions in other areas.

At a brief meeting held February 21, the Employers' representatives put a complete contract proposal on the table, signed it, and put it to the Union on a take-it-or-leave-it basis. The Union negotiators said they would have a response one week later. In the one-week interim, the Employers, through the Dolphin Group, publicized extensively the terms of their take-it-or-leave-it offer, urging striking employees to disregard the Union and return

to work. On February 28, the Union presented a counteroffer in which it slightly reduced some of its economic demands. Instead of discussing this counteroffer or issues which had not yet been discussed, the Employers declared that an impasse existed and broke off negotiations.

Some of the Employers met again with the Union on June 5, but neither they nor the Union had any new proposals to make or concessions to offer. Several Employers requested a meeting on August 8, on which occasion they merely asked whether the Union was willing to change its position on any issues. When the UFW representatives answered in the negative, the meeting ended. There is no record evidence of any further contacts between the parties.

Respondent Employers' Lack of Good Faith

In judging whether the Employers satisfied the statutory requirement that they bargain in good faith with their employees' statutory representative, we consider the totality of the circumstances before us in the record, drawing such inferences as the record evidence itself suggests. Penasquitos Village, Inc. v. NLRB (9th Cir. 1977) 565,F.2d 1074 [97 LRRM 2244]; Hedstrom Co. v. NLRB (3rd Cir. 1980) 629 F.2d 305 [105 LRRM 2183]; NLRB v. Chef Nathan Sez Eat Here, Inc. (3rd Cir. 1970) 434 F.2d 126 [75 LRRM 2605]; Groendyke Transport, Inc. v. NLRB (10th Cir. 1976) 530 F.2d 137 [91 LRRM 2405]. In the present instance we have been guided by the observation that:

> The test of good faith in bargaining that the Act requires of an employer is not a rigid but a fluctuating one, and is dependent in part upon how a reasonable man might be expected to react to the bargaining attitude displayed by

> those across the table.__
> TimesPublishingCompany (1947) 72 NLRB 676, 682-683 [19 LRRM 1199].

and that:

> Surely the conduct of the union cannot be completely ignored when assessing the good or bad faith of the employer at the bargaining sessions. NLRB v. Stevenson Brick and Block Co. (4th Cir, 1968) 393 F.2d 234 [68 LRRM 2086, 2089].

Here, by not requesting necessary information far enough in advance of the start of negotiations so that it could present an economic proposal as soon as they got under way, by cancelling four meetings scheduled for December and one in early January in order to prepare an economic proposal, by failing to submit proposals on job classifications and local issues until early February, and in other ways, the Union prevented the emergence of a situation in which the Employers' good faith could fairly be tested during the period from November 27 to mid-February. Dunn Packing Co. (1963) 143 NLRB 1149 [53 LRRM 1471]; Kaplan's Fruit and Produce Company (July 1, 1980) 6 ALRB No. 36.

It is well established that use of an economic weapon, such as a strike, during negotiations is not inconsistent with the duty to bargain in good faith, NLRB v. Insurance Agents Int'l. Union (1960) 361 U.S. 477 [45 LRRM 2704], that strike-related violence and picket line misconduct do not demonstrate a lack of desire on a union's part to reach a collective bargaining agreement, Cheney California Lumber Co. v. NLRB (9th Cir. 1963) 319 F.2D 375 [53 LRRM 2598], and that an employer's bargaining in bad faith may not be excused by a union's strike or strike-related violence, Rabhor Company, Inc. (1936) 1 NLRB 470; Reed and Prince

Manufacturing Company (1939) 12 NLRB 944 [4 LRRM 208] enforced as modified (1st Cir. 1941) 118 F.2d 874, cert, denied (1941) 313 U.S. 595; NLRB v. Ramona's Mexican Food Products, Inc. (9th Cir. 1975) 531 F.2d 390 [89 LRRM 1191].[4/] In evaluating a party's good or bad faith in negotiations, however, we consider the totality of the circumstances, and that totality does include such factors as the above. Unoco Apparel, Inc. (1974) 208 NLRB 601 [85 LRRM 1169] enf. (5th Cir. 1975) 508 F.2d 1368 [88 LRRM 2956]. We find, therefore, that the UFW cannot altogether escape responsibility for the snail's pace at which negotiations proceeded until mid-February, and that its lack of preparation and dilatory bargaining created a situation in which it is impossible for us to determine clearly whether the Employers were bargaining in bad faith during that period.

We do not agree with the ALO that the Employers' failure to produce all information requested by the Union by December 8

[4/]We note, as the ALO did, that an employer who refused to meet for negotiations with representatives of a striking union while picketing strikers were engaging in violence has been held to have justifiably so refused to meet, in circumstances of serious misconduct and clear union responsibility therefor, which the employer asserted as its reason for declining to meet. Kohler Co. (I960) 128 NLRB 1062, 1181 [46 LRRM 1389] (trial examiner's decision), modified on other grounds sub nom. Local 833, UAW v. NLRB (D.C. Cir. 1962) 300 F.2d 699 [49 LRRM 2485], cert, denied (1965) 832 U.S. 836 [60 LRRM 2234]; Union Nacional de Trabajadores (1975) 219 NLRB 862 [90 LRRM 1023], modified on other grounds, (1st Cir. 1976) 540 F.2d 1 [92 LRRM 3425]. Those circumstances are hot all present here. The remarks of our dissenting colleague to the contrary notwithstanding, these cases and others in the same line do not reach a fact situation like the one before us, where the Employers never refused to meet because of strike-related violence and where, moreover, provocative remarks and behavior by some Employers and their agents, such as "exercising" guard dogs and brandishing firearms in close proximity to picket lines until they were told by the Sheriff not to do so, may have been contributing causes of the violence.

manifested bad faith. Andrew Church, who served as the Employers' lead negotiator, testified without contradiction that at the November 27 meeting at which negotiations began, UFW President Cesar Chavez accepted the Employers' representations that much of the information the Union had requested was not available in the form requested. Chavez indicated that the Union would accept the information in whatever form the Employers had it. In subsequent requests, however, the Union renewed its demand for information in the form it had earlier requested. Given this reversal of the Union's position regarding information and the Employers' efforts to meet the Union's requests, the Employers' delay in fully complying with the requests cannot be taken as a manifestation of bad faith. Similarly, delays by some of the Employers in meeting later Union requests for information not previously requested did not, under the circumstances here before us, constitute bad faith, as much of the requested information was difficult to compile and, in some instances, the Union apparently asked for information it had already received.

We also do not agree with the ALO that Respondent Employers violated section 1153(e) of the Act by demanding a complete proposal, including economic provisions, from the Union before making counter-offers on any provisions of the Union's non-economic contract proposal. We have previously held that this can be a legitimate bargaining tactic and is therefore an issue for the parties to work out between themselves in the negotiating context. McFarland Rose Production (April 8, 1980) 6 ALRB NO. 18.

The ALO correctly pointed out that the Respondent

Employers' economic counterproposal severely curtailed Union prerogatives which had been granted in earlier contracts. But the ALO erred, we hold, in considering this to be evidence of bad faith. The Board does not sit in judgment upon the substantive terms of parties' bargaining proposals or positions; "the proper role of the Board is to watch over the process, not guarantee the results, of collective bargaining." NLRB v. Tomco Communications, Inc. (9th Cir. 1978) 567 F.2d 871, 877 [97 LRRM 2660], citing H. K. Porter v. NLRB (1970) 397 U.S. 99 [73 LRRM 2561]. Compare Eastern Maine Medical Center v. NLRB (Sept. 23, 1981) 184 BNA Daily Labor Report D-1.

Although we disagree with some of the reasons given by the ALO for finding that the Employers did not bargain in good faith, and also disagree with her finding that they had begun to bargain in bad faith by December 8, 1978, we do find that by February 21, 1979, with complete proposals by both sides on the table, and with evidence in the record that the parties had been able to engage in apparently meaningful negotiations on health and safety issues, the Employers clearly evidenced bad faith in the negotiations. Their anti-UFW publicity campaign was then in full swing, climaxing in the much-publicized tactic on that date when three of the negotiator-representatives, representing all of the Employers, signed a "complete contract" (major provisions of which had never been discussed and others of which the Union had previously rejected as unacceptable) and submitted it to the Union on a take-it-or-leave-it basis.

As part of its publicity campaign aimed at employees, the

employer-sponsored "Committee for Fair Negotiations Between Workers and Growers" ran a full page advertisement on February 24, 1979, in La Voz, a Mexicali newspaper regularly read by many agricultural employees who work in the Imperial Valley. This advertisement, which appears in the record as General Counsel's Exhibit 45, starts with a bold headline saying, "We have signed the contract, why doesn't the Union sign it?" The advertisement goes on to state: "The contract is complete in each of its clauses and it is already accepted and signed by the 27 affected companies. Now, the Union must sign it so that you can return to work." This evidence indicates either that the employers intended the February 21 document to be accepted by the UFW as a complete contract or that they expected the UFW to reject it and were trying to create a situation in which they would reap public-relations advantages from such a rejection. On either view, it is evidence which severely undercuts our dissenting colleague's inventive interpretation of the signed February 21 document as "simply a proposal" offered in good faith.

The Employers' premature and unjustified declaration of impasse one week later confirms their lack of good faith as of February 21. They contend that as of February 28 the parties were really at an impasse and that further attempts to reconcile differences would have been futile. We have previously pointed out that:

> As a general rule, contract negotiations are not at impasse if the parties still have room for movement on major contract items, even if the parties are deadlocked in some areas. Schuck Component Systems (1977) 230 NLRB 838 [95 LRRM 1607]; Chambers Manufacturing Corporation (159) 124 NLRB 721 [44 LRRM 1477], enfd. (5th Cir. 1960)

> 278 F.2d 715 [46 LRRM 2316]. Continued negotiations in areas of concern where there is still room for movement may serve to loosen the deadlock in other areas. Montebello Rose Co., Inc. (Oct. 29, 1979) 5 ALRB No. 64.

Here, the parties had substantial room for movement on several major items such as mechanization, job definitions, overtime, and standby pay, as well as wages.

The Employers contend that their declaration of impasse was justified because the negotiations had dealt with all the mandatory subjects of bargaining in the parties' contract proposals. The Employers acknowledge that not all mandatory subjects had been discussed, but they argue that the method of bargaining in which the parties were engaging did not require discussion of all such subjects. According to their argument, when parties exchange package proposals, and one party signals its rejection of a provision by repeatedly omitting it from the packages which that party submits, the other party is to understand that the provision in question is unacceptable in principle, so that discussion about it would be pointless. So long as both parties understand this process, the employers imply, they discharge the bargaining obligation by exchanging such packages in hope that eventually one package will satisfy both sides. We disagree. A package method of bargaining may prove fruitful in contexts where a substantial bargaining history and a series of prior contracts have familiarized each side with the other's interests and objectives, and trade-offs can be arranged in fairly neat, quick steps. But in the context before us, due to the parties' relatively short bargaining history and the complexity of the issues separating them, the package

approach tended to frustrate rather than facilitate the negotiations. Before declaring impasse the Employers clearly should have pursued reasoned discussion about issues which had not been discussed, exploring avenues for possible movement, for "the purpose of collective bargaining is to promote the 'rational exchange of facts and arguments' that will measurably increase the chance for amicable agreement ...." NLRB v. General Electric Co. (2nd Cir. 1969) 418 F.2d 736, 755 [72 LRRM 2530], cert, denied (1970) 397 U.S. 965 [73 LRRM 2600] enforcing (1964) 150 NLRB 192 [57 LRRM 1491]. Because the Employers decided to declare impasse rather than engage in a rational exchange of facts and arguments, we must conclude, as the NLRB did in determining that an employer had failed to bargain in good faith, "The record does not show a genuine attempt by the respondent to explain the basis for its assessment of its ... proposals." Borg-Warner Controls (1972) 198 NLRB 726, 727 [80 LRRM 1790, 1792].

The Employers also argue that the parties were so far apart on economic issues that there was simply no possibility of reaching a comprehensive agreement. This argument also fails to persuade us. The Employers' own conduct precluded serious, meaningful negotiation from taking place on economic issues, for they were, as they admitted at the hearing, claiming to be legally bound by federal guidelines which they did not believe to be truly binding upon

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them.[5/] As the U. S. Supreme Court has stated, "Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims." NLRB v. Truitt Mfg. Co. (1959) 351 U.S. 149 [38 LRRM 2042]. By violating this rule and advancing what was, at the very least, a "patently improbable" justification for their

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[5/]An example of the evidence which shows that the employers were claiming to be bound by the federal guidelines while not believing that they were so bound occurs in the testimony of Everett Hillard, president of Hardin Farms. Mr. Hillard testified that the employer-sponsored Committee for Fair Negotiations Between Workers and Growers had "probably" placed newspaper advertisements directed to employees in which the Employers stated that they had offered all that they were permitted to offer, and that employer negotiating representative Andrew Church "probably" told the UFW during one session that "if they were insulted by the seven percent offer, they had been insulted by President Carter and not by the employers." Mr. Hardin made these admissions just after the following interchange:

> Q. Did you ever believe you were bound by [the guidelines]?
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> A. We felt that, under the circumstances, what we had received from the Union, this was the proper response to make for what movement the Union had made and because we had it—still an incomplete proposal from the Union.
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> Q. So, it was just a bargaining position.
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> A. That's right.
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> Q. And it was never more than a bargaining position?
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> A. Right. Hearing Transcript VIII, p. 136.

Transcripts of the negotiating sessions themselves, which were introduced into evidence at the hearing as exhibits, show that at the negotiating session on January 16 one of the Employers' representatives emphatically stated that the federal wage guideline program, including the sanctions it entailed, "applies to every company here. It applies to their compensation and pay to your members, and it applies to the compensation to other union members, and it applies to the compensation and pay of every person on the managerial staff. It does not apply to the prices." (Transcript of Negotiation Session of January 16, 1979, p. 5.)

stance, the Employers made it impossible for the Union to seek possible areas of economic compromise. Glomac Plastics, Inc. v. NLRB (2nd Cir. 1979) 592 F.2d 94 [100 LRRM 2508]; Queen Mary Restaurants Corp. v. NLRB (9th Cir. 1977) 560 F.2d 403 [96 LRRM 2456]; Fraser & Johnston Co. v. NLRB (9th Cir. 1972) 469 F.2d 1259 [81 LRRM 2964]. As the parties' deadlock over economic issues was due to the Employers' bad faith bargaining posture in respect to this issue, the deadlock cannot be considered the basis for a bona fide impasse. Valley Oil Co. (1974) 210 NLRB 370 [86 LRRM 1351].

We agree with the ALO's analysis of the Employers' public relations campaign. She correctly points out that newspaper advertisements, published by the Employers' Committee for Fair Negotiations and addressed to the employees,

> ... repeatedly exhort them to pressure the union to accept the growers' offer, stress the companies' concern and the union's lack of concern with their welfare, and accuse the union and its officials of intimidation, terrorism, misrepresentation and outright lying, inadequate representation of its members, and misuse of funds. (ALO Decision, p. 60.)

We concur with the ALO's conclusion that by their efforts to communicate directly to employees, bypassing the Union, and in that communication to destroy employee support for the Union, the Employers committed a per se violation of section 1153(e). McFarland Rose Production Co. (Apr. 8, 1980) 6 ALRB No., 18; Medo Photo Supply Corp. v. NLRB (1944) 321 U.S. 678 [14 LRRM 581].

In the oft-cited benchmark case on the impermissible practice known as "Boulwarism," NLRB v. General Electric Co. (2d Cir. 1969) 418 F.2d 736 [72 LRRM 2530], cert, denied (1970) 397 U.S. 965 [73 LRRM 2600] enforcing (1964) 150 NLRB 192 [57 LRRM-1491], the

NLRB and the Court of Appeals for the Second Circuit found that the General Electric Corporation violated section 8(a)(5) of the NLRA by combining a take-it-or-leave-it bargaining posture with a public relations campaign undertaken

> for the purpose of disparaging and discrediting the statutory representative in the eyes of its employee constituents, to seek to persuade the employees to exert pressure on the representative to submit to the will of the employer, and to create the impression that the employer rather than the union is the true protector of the employees' interest. (Citations.) Id., 150 NLRB at 195.

In upholding the NLRB's conclusions as to the bad faith shown by General Electric, the Second Circuit Court of Appeals provided its own classic description of Boulwarism in terms remarkably suited to the facts before us:

> ... We hold that an employer may not so combine "take-it-or-leave-it" bargaining methods with a widely publicized stance of unbending firmness that he is himself unable to alter a position once taken .... Such conduct, we find, constitutes a refusal to bargain "in fact." ... It also constitutes ... an absence of subjective good faith, for it implies that the Company can deliberately bargain and communicate as though the Union did not exist, in clear derogation of the Union's status as exclusive representative of its members .... Id., 418 F.2d at 762-763.

We hold that such practices are no more acceptable in California agriculture than in the industries subject to the NLRA. Violations of Section 1154(c) of the Act by the UFW.

We affirm the ALO's conclusion that the UFW violated section 1154(c) of the Act by failing or refusing to provide information which the employers requested about the Union's Robert F. Kennedy Medical Plan. Contrary to the ALO, we also conclude that the Union violated the same section by failing or refusing to

provide requested information about its Martin Luther King Farm Workers Fund, about which, despite repeated requests by the Employers, it provided only very incomplete information. Unions as well as employers are legally required to provide requested information that is relevant and necessary to collective bargaining, Local 13, Detroit Newspaper Printing & Graphic Communication Union v. NLRB (Oakland Press Co.) (D.C. Cir. 1979) 598 F.2d 267, 271 [101 LRRM 2036]; Teamsters Local 959 (Frontier Transp. Co.) (1979) 244 NLRB 19 [102 LRRM 1117], The information requested by the Employers was relevant to the negotiations and was requested far enough in advance of the cessation of negotiations on February 28, 1979, that the Union's failure to provide it by that date constituted a violation of section 1154(c) of the Act.[6/] Accordingly, we shall include in our remedial Order provisions requiring the Union to comply with requests for information about these funds, excusing the Employers from bargaining about contributions to the funds until the

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[6/]Parties in collective bargaining negotiations are entitled to request and receive relevant information from each other regarding pension, medical, educational, and welfare plans. Such plans constitute mandatory subjects of bargaining, as they are "emoluments resulting from employment in addition to or supplementary to actual 'rates of pay'." W. W. Cross & Co. v. NLRB (1st Cir. 1949) 174 F.2d 875 [24 LRRM 2068].Information about such plans may enable employers to propose more efficient or effective ways of using moneys contributed by them to provide the intended benefits to their employees. We note that this analysis does not apply to the UFW's Citizens' Participation Day (CPD) Fund. Because contributions to the CPD Fund represent wages for a paid holiday, a bargaining proposal for such a holiday constitutes a mandatory subject of bargaining, as do holidays generally. NLRB v. Sharon Hats, Inc. (5th Cir. 1961) 289 F.2d 628 [48 LRRM 2098]. However, the management of and expenditures by the CPD Fund are matters of concern only to the Union and its members and are therefore only permissive subjects of bargaining. See NLRB v. Wooster Division of Borg-Warner Corp. (1958) 365 U.S. 342 [42 LRRM 2034].

Union so complies, see, RWDSU, District 119E (Sinai Hospital) (1980) 245 NLRB 631 [103 LRRM 1459], and excluding from the Employers' obligation to make their employees whole for economic losses suffered as a result of the Employers' unfair labor practices the increased amounts the Employers would have been required to contribute to the funds.

We shall also order that the UFW post and read to employees of the Respondent Employers a Notice to Members and Agricultural Employees informing them of the violations of section 1154(c) of the Act which we have found the Union committed, and to make available to each Respondent Employer, upon request, sufficient copies of the Notice, translated into the appropriate languages, for the Respondent Employer to mail to its employees together with the Notice to Agricultural Employees which it is similarly required to mail. The Union shall reimburse any Respondent Employer which mails copies of the Notice on behalf of the Union to its employees, in the amount of one half of the postage and other mailing costs.[7/] Similarly, the Union shall pay each Respondent Employer a pro-rata share of the costs entailed in the Union's reading of the Notice to Members and Agricultural Employees on company time. Disputes as to the proper amounts may be resolved by the Regional Director.

Unilateral Changes

We find no merit in General Counsel's exception to the ALO's conclusion that General Counsel failed to establish a

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[7/]we adopt this voluntary joint-mailing measure as the best method of achieving effective notice to all employees regarding the UFW's violation of the Act. Mailing directly by the Union would be less effective as the Union does not have all the employees' addresses.

violation of section 1153(e) by Gourmet Harvesting and Packing or by Carl Joseph Maggio Co. with respect to changes they made, allegedly without providing the Union an opportunity to bargain about them, in terms and conditions of employment. The evidence raises a suspicion, at most, that these employers failed to notify the Union about the proposed changes. But "circumstances which merely raise a suspicion do not establish a violation." Rod McLellan Company (Aug. 30, 1977) 3 ALRB No. 71.

Employees to be Made Whole

In its exceptions to the ALO's Decision, the UFW asks us to make whole all of the Respondent Employers' agricultural employees, including employees hired to replace strikers, for losses they incurred as a result of the Employers' bad faith bargaining, including losses of wages incurred by employees who went on strike.

The General Counsel requests a narrower application of the make-whole remedy. With respect to Respondent Employers whose employees did go on strike on or before February 21, 1979, the General Counsel requests that we apply our usual make-whole remedy to any employees who had been employed before the commencement of the strike and continued working during the strike. Employees who went on strike should be made whole, General Counsel argues, not for wages they lost while on strike but for an amount representing the difference between what they would have earned by continuing to work at 1978 rates during the strike and what they would have earned by so working at rates established in 1979 contracts at comparable operations in the same geographic region. General Counsel further argues that employees hired to replace strikers cannot be said to

have suffered harm as a result of the employers' failure or refusal to bargain in good faith and that they therefore should not be included in the make-whole remedy.

General Counsel argues that section 1160.3 of the Act vests this Board with discretionary authority to fashion remedies, including the make-whole remedy, in a manner that will best achieve the purposes of the Act, and that an award of make-whole as described above will achieve the purposes of the Act in that it will prevent employers from profiting, at their employees' expense, from their bad-faith bargaining, while it will also avoid burdening the right to strike, specifically guaranteed by section 1166 of the Act, as would result from treating employees who went on strike less well than employees who chose not to strike.

The General Counsel assumes that the Employers' violation of section 1153(e), through their refusal to bargain in good faith, commenced on December 8, 1978, as found by the ALO. On the basis of this assumption, all employees who went on strike after that date would be unfair labor practice strikers from the commencement of the strike.

Economic strikes and unfair labor practice strikes both constitute protected activity under our Act as under the National Labor Relations Act (NLRA), Because unfair labor practice strikers are regarded as withholding their labor to protest employer misconduct and not simply to force financial concessions from an-unwilling employer, they are accorded broader reinstatement rights than economic strikers. NLRB v. Mackay Radio & Telegraph Co. (1938) 304 U.S. 333 [2 LRRM 610]; NLRB v. Fleetwood Trailer Co., Inc.

(1967) 389 U.S. 375 [66 LRRM 2737]; Morris, The Developing Labor Law (Washington, D.C. 1971) pp. 524-529. For example, employees who engage in an unfair labor practice strike are entitled to reinstatement to their former or equivalent positions upon their unconditional offer to return to work even if employees hired to replace them must be discharged to make those positions available. NLRB v. Fleetwood Trailer Co., Inc., supra, 389 U.S. 375; NLRB v. Murray Products, Inc. (9th Cir. 1978) 584 F.2d 934 [99 LRRM 3272]; German, Basic Text on Labor Law (St. Paul, 1976) p. 341.

In view of our conclusion that Respondent Employers were not clearly bargaining in bad faith until February 21, 1979, strikes which began before that date were economic strikes until they were converted into unfair labor practice strikes by the Employers' illegal conduct as of that date. Our remedial Order reflects the distinction between economic strikers and unfair labor practice strikers by excluding from participation in the make-whole award, first, any strikers for whom permanent replacements were hired before February 21, 1979, while the strikes were economic strikes,[8/] second, employees hired as temporary replacements for strikers before February 21, 1979, and third, employees hired after February 21, 1979, as replacements for strikers.

[8/]In determining at the compliance stage of these proceedings whether a striking employee was permanently replaced or only temporarily replaced, and what his or her employment status should have been in subsequent seasons, the employer's payroll records for subsequent seasons, and other evidence, should be examined in the light of principles we set forth in Seabreeze Berry Farms (Nov. 16, 1981) 7 ALRB No. 40. If some but not all striking employees were permanently replaced, principles of seniority should determine which employees in a particular job classification were replaced; the least senior employees are deemed to be the first replaced.

The conversion from economic to unfair labor practice strikes reflects the fact that the Employers' refusal to bargain in good faith prolonged the strikes by preventing the development of conditions under which the strikers would have returned to work. Manville Jenckes Corp. (1941) 30 NLRB 382 [8 LRRM 55]; Cavalier Div. of Seeburg Corp. (1971) 192 NLRB 290 [77 LRRM 1899]; mdfd. on other grounds (D.C. Cir. 1973) 476 F.2d 868 [82 LRRM 2225];; American Cyanamid Company v. NLRB (7th Cir. 1979) 592 F.2d 356 [100 LRRM 2640]; NLRB v. Pecheur Lozenge Co., Inc. (2nd Cir. 1953) 209 F.3d 393 [33 LRRM 2324] cert, denied 1954) 347 U.S. 953 [34 LRRM 2027]; NLRB v. Windham Community Memorial Hospital (2nd Cir. 1978) 577 F.2d 805 [99 LRRM 2242], enforcing Windham Community Memorial Hospital (1977) 230 NLRB 1070 [95 LRRM 1565].

We follow the usual manner in which the NLRB applies the conversion doctrine. The national Board's approach is summarized as follows by German, Basic Text on Labor Law (St. Paul, Minn., 1976) p. 340:

> ... rather than determine the date in the future at which an economic strike would likely end, and then date the conversion from that point, the Board is generally content to conclude that conversion occurs immediately upon the commission of, for example, the employer's refusal to bargain since protest against that action is assumed to be one of the union's motives for continuing the strike thereafter. E.g., Cavalier Div. of Seeburg Corp. (1971) 192 NLRB 290 [77 LRRM 1889], mdfd. on other grounds (D.C. Cir. 1973) 476 F.2d 868 [82 LRRM 2225],

We note that the UFW filed a charge on March 1, 1979, accusing the employers of failing or refusing to bargain in good faith in violation of section 1153(e) of the Act. This is a sufficient indication that in continuing to strike the Union was to some

extent, at least, motivated by the Employers' unfair labor practice. NLRB v. Moore Business Forms, Inc. (5th Cir. 1978) 574 F.2d 835 [98 LRRM 2773].

We accept the General Counsel's recommendation that for purposes of the make-whole award all of the Respondent Employers' employees be grouped in three categories. The first category consists of employees who did not go on strike during the period under consideration, including employees of employers at whose operations no strike occurred, employees who did not join strikes which did occur at the operations where they were employed, and employees hired before February 21, 1979, as permanent replacements for strikers. All employees in this category are entitled to be made whole in the manner which is now customary in cases under the ALRA where employers have been found to have failed or refused to bargain in good faith, in violation of section 1153(e) of the Act. That is, employees in this category are to be made whole for losses they incurred as a result of their employer's bad-faith bargaining, from February 21, 1979, to such date as their employer commenced (or commences) good-faith bargaining which resulted (or results) in either a contract or a bona fide impasse.[9/] They are entitled to the difference, if any, between their actual earnings and what they would have earned at rates established in 1979 contracts at comparable agricultural operations in the same geographic region.

The second category for purposes of make-whole consists of

[9/]As we indicated earlier in this Decision, the make-whole award will not include amounts attributable to the benefit funds about which the Union failed or refused to provdide requested information.

those employees who did join strikes at any of the Respondent Employers' operations and had not been permanently replaced by February 21, 1979. In considering this category of employees we have been guided by section 1166 of the Act, which provides:

> Nothing in this part, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on such right.

We believe that the intent of the Legislature in enacting this section would be thwarted if our make-whole award completely excluded employees who exercised their right to go on strike. On the other hand, it would be inappropriate to order that these employees be paid wages which they voluntarily gave up by withholding their labor. In order to accommodate both these considerations, we shall order that employees who went on strike before February 21, 1979, and had not been permanently replaced as of that date, be made whole in the amount of the difference between what they would have earned if, instead of striking, they had worked from February 21, 1979, at rates established in 1978 contracts and what they would have earned by working at rates established in 1979 contracts at comparable agricultural operations in the same geographic region. In so structuring the award of make-whole for employees who went on strike we prevent Respondent Employers from enjoying the unjust enrichment which would otherwise accrue to them as a result of their misconduct. In the absence of this award of partial make-whole to employees who went on strike their employers would profit from their violation of the Act in the amount that the wages they paid to employees hired to replace strikers fell short of

the wages they would have paid employees under the contracts which likely would have been reached if the employers had bargained in good faith.[10/]

Employees who joined a strike and then returned to work are entitled to be made whole in the same manner as strikers during the period they were on strike and in the same manner as non-strikers during the period they were working.

The third category of employees for purposes of make-whole consists of employees hired as temporary replacements for strikers. This category includes employees hired as temporary replacements for strikers before February 21, 1979, and all employees hired as replacements for strikers thereafter. We agree with the General Counsel that employees in this category cannot be said to have suffered loss as a result of the Employers' violation of the Act. Indeed, these employees would probably not have been employed by these Employers during the relevant time period if there had been no strikes. As employees in this category therefore benefited as a result of the Employers' misconduct, we see no basis for including them in the make-whole award. Were we to include these workers in the make-whole award as we do the strikers whom they replaced, the result would be a penalty as to the Employers, who would be required to pay the make-whole increment to more employees than would have

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[10/]While there may appear to be a certain anomaly in awarding as make-whole an incremental wage to employees who were not earning regular wages because they were on strike, we believe such an anomaly represents a "lesser evil" than the burden on the statutorily protected right to strike and the unjust enrichment of Respondent Employers from their misconduct which would result if striking employees were entirely excluded from the make-whole award.

been working if the Employers' unfair-labor-practice had not occurred. This would clash with the purpose of make-whole, which is strictly remedial, not punitive.

Our approach is consistent with the practice of the NLRB, whose precedents section 1148 of the Act requires us to follow "where applicable." The NLRB does not generally provide backpay for strikers,[11/] but it does include, in remedial backpay awards to unfair-labor-practice strikers who were unlawfully denied reinstatement after making an unconditional offer to return to work, any raises or bonuses to which the employees would have been entitled during the period following the unlawful denial of reinstatement. Golay & Co. v. NLRB (7th Cir. 1971) 447 F.2d 290 [77 LRRM 304] cert, denied (1972) 404 U.S. 1058 (raises); Nabors v. NLRB (5th Cir. 1963) 323 F.2d 686 [54 LRRM 2259] cert, denied (1964) 376 U.S. 911 [55 LRRM 2455] (bonus). The NLRB determines entitlement to a raise or bonus by referring to the earnings of employees comparable in classification and seniority to the discriminatee. German, Basic Text on Labor Law, supra, p. 348. In 1979 the NLRB changed an earlier rule whereby employees who had been illegally discharged while on strike were required to make an unconditional offer to return to work as a condition for reinstatement and backpay. In Abilities and Goodwill, Inc. (1979) 241 NLRB 27 [100 LRRM 1470] the

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[11/]The NLRB does provide backpay for strikers who have been discharged for striking, e.g., NLRB v. United States Cold Storage Corp. (5th Cir. 1953) 203 F.2d 924 [32 LRRM 2024], cert, denied (1953) 346 U.S. 818 [32 LRRM 2750], and for unfair labor practice strikers who have been denied reinstatement after an unconditional offer to return to work. D'Armigene, Inc. (1964) 148 NLRB 2 [56 LRRM 1456], mdfd. on other grounds (2nd Cir, 1965) 353 F.2d 406 [59 LRRM 1703],

national Board determined that it is more equitable to require the employer who violated the law by discharging the strikers to offer them reinstatement and to give them backpay from the date of the illegal discharge than to require the illegally discharged strikers, who had not violated the Act by exercising their right to strike, to abandon their strike before they could be eligible for reinstatement or backpay. Based on a similar view of the equities, we believe the make-whole remedy should apply to employees who went on strike, from the date when the Respondent Employer's failure or refusal to bargain in good faith commenced, and we will not impose as a condition for their eligibility for the award of make-whole that they have abandoned their strike and offered unconditionally to return to work.

Extension of Certification

We shall order that certification of the UFW as the collective bargaining representative of the agricultural employees of each of the Respondent Employers shall be extended for one year from the date on which Respondent commences bargaining in good faith with the UFW pursuant to our remedial Order herein.

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ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent California Coastal Farms, its officers/ agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F, Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondents failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of California Coastal Farms be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques,

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: CALIFORNIA COASTAL FARMS

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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130, Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Colace Brothers, its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board’s Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board’s Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Colace Brothers be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: COLACE BROTHERS

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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160,3, the Agricultural Labor Relations Board hereby orders that Respondent J. J. Crosetti Company, Inc., its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Make whole all agricultural employees on its payroll as of February 21, 1979, for losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adams Dairy dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No, 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, to July 24, 1979, unless J. J. Crosetti Company, Inc., has resumed agricultural operations since that date. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F.

Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to contract.

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

(c) Sign the attached Notice to Agricultural Employees, and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(d) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to July 24, 1979.

(e) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

3. If J. J. Crosetti Company, Inc., has resumed or resumes its agricultural operations, it shall:

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining, representative of its agricultural employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's

Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(c) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the resumption of its agricultural operations.

(d) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(e) Make whole all agricultural employees on its payroll as of February 21, 1979, for losses they suffered as a result of Respondent's failure or refusal to bargain in good faith, in accordance with the formula set forth in Adam Dairy dba Rancho

Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period shall extend from the date J. J. Crosetti Company, Inc., resumes agricultural operations until the date Respondent commences good faith bargaining with the UFW which results in a contract or bona fide impasse. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a contract.

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

(g) Notify the Board's Regional Director in writing, within 30 days after resuming agricultural operations, of the steps taken to comply with this Order and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of J. J. Crosetti Company, Inc., be, and hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of the agricultural employees who was on our payroll as of February 21, 1979, for all losses of pay and other economic losses which he or she has suffered as a result of our refusal to bargain with the UFW in good faith.

Dated: J. J. CROSETTI, 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 319 Waterman Avenue, El Centro, California; the telephone number if 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Gourmet Harvesting & Packing Company, its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 28, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 28, 1979, as temporary replacements for strikers, or employees hired after February 28, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 28, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 28, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 28, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Gourmet Harvesting & Packing Company be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 28, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 28, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 28, 1979, as temporary replacements for strikers, or employees hired after February 28, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: GOURMET HARVESTING & PACKING COMPANY

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 319 Waterman Avenue, El Centro, California; the telephone number if 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160,3, the Agricultural Labor Relations Board hereby orders that Respondent Lu-Ette Farms, Inc., its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondents contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Lu-Ette Farms, Inc., be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R, WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel, of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice, We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: LU-ETTE FARMS, 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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130, Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Carl Joseph Maggio, Inc., its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Carl Joseph Maggio, Inc., be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

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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 to obtain a contract covering 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 help or protect one another; and
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WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: CARL JOSEPH MAGGIO, 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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agriculture Labor Relations Board hereby orders that Respondent Joe Maggio, Inc., its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No, 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present,

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Joe Maggio, Inc., be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel, of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things,

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, ,or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: JOE MAGGIO, 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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Martori Brothers Distributors, its officers, agents, successors, and assigns shall individually;

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract,

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

(d) Sign the attached Notice to Aricultural Employees and/ upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place{s) of posting to be determined by the Board's" Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed,

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Martori Brothers Distributors be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with 'the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things,

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: MARTORI BROTHERS DISTRIBUTORS

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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California/the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent 0. P. Murphy & Sons, its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board’s Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in. appropriate" languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of O. P. Murphy & Sons be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel, of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: O. P. MURPHY & SONS

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 319 Waterman Avenue, El Centro, California; the telephone number if 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Mario Saikhon, Inc., its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for "N the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a,

contract.

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is' altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order,

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place{s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Mario Saikhon, Inc., be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques,

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: MARIO SAIKHON, 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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Vessey & Company, Inc., its officers, agents, successors, and assigns shall individually:

1. Cease and desist from:

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

(b) Attempting to bypass the UFW as the exclusive collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement. Respondent is not required to bargain about contributions to the UFW's Robert F. Kennedy Medical Fund or Martin Luther King Farmworkers Fund unless and until the UFW provides requested information relevant to bargaining about contributions to said funds.

(b) Make whole all its agricultural employees,

including employees who went on strike before February 21, 1979, in support of contract demands by the UFW, who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of Respondent's failure or refusal to bargain in good faith in accordance with the formula set forth in Adam Dairy, dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, plus interest computed at seven percent per annum. The period of said obligation shall extend from February 21, 1979, until the date Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse. The economic losses for which an employee who went on strike is to be made whole shall not include wages or benefits for -v the period from the commencement of the strike to the date such employee unconditionally offered or offers to return to work, but shall include the difference between what such employee would have earned by working at 1978 rates of payment during the period from February 21, 1979, or such later date as the employee went on strike, to the date of the employee's unconditional offer to return to work, and what the employee would have earned by working during the same period at rates of payment established in 1979 contracts at comparable agricultural operations in the same geographic region. Amounts by which employees are to be made whole shall not include amounts by which Respondent's contributions to the UFW's Robert F. Kennedy Medical Fund and Martin Luther King Farmworkers Fund would have increased if Respondent had bargained in good faith to a

contract,

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

(d) Sign the attached Notice to Aricultural Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(e) Post copies of the attached Notice at conspicuous places on its premises for 60 consecutive days, the period and place(s) of posting to be determined by the Board's Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(f) Within 30 days after the date of issuance of this Order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from February 21, 1979, to the present.

(g) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this Order.

(h) Arrange for a representative of Respondent or the Board to distribute and read the attached Notice in appropriate languages to Respondent's assembled employees on company time. The reading or readings shall be at such time(s) and place(s) as are specified by the Board's Regional Director and, following each reading, a Board agent shall be given the opportunity, outside the

presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Board's Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of Vessey & Company, Inc., be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with the UFW.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), since February 21, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to 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 to obtain a contract covering 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 help or protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT seek to bypass or disparage the UFW by advertisements, notices, leaflets, or any other public relations techniques.

WE WILL reimburse each of our agricultural employees, including employees who went on strike before February 21, 1979, in support of contract demands by the UFW who had not been permanently replaced as of that date, but not including employees hired before February 21, 1979, as temporary replacements for strikers, or employees hired after February 21, 1979, as replacements for strikers, for any economic losses they suffered as a result of our failure or refusal to bargain in good faith.

Dated: VESSEY & COMPANY, 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 319 Waterman Avenue, El Centro, California; the telephone number is 714/353-2130. Another office is located at 112 Boronda Road, Salinas, California; the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent United Farm Workers of America, AFL-CIO, its officers, agents, successors, and assigns shall;

1. Cease and desist from:

(a) Failing or refusing to furnish relevant and necessary information to California Coastal Farms, Colace Brothers, J. J. Crosetti Company, Inc., Lu-Ette Farms, Inc., Carl Joseph Maggio, Inc., Joe Maggio, Inc., Martori Brothers Distributors, O. P. Murphy & Sons, Mario Saikhon, Inc., and Vessey & Company, Inc., or any of them, for purposes of bargaining.

(b) Engage in any like or related conduct in derogation of its statutorty duty.

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

(a) Provide to the above-named employers the information requested by them regarding the Robert F. Kennedy Farmworkers Medical Fund and the Martin Luther King Farmworkers Fund, which is relevant and necessary to the bargaining process.

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

(b) Post copies of the attached Notice for 60 consecutive days at conspicuous places at UFW headquarters, hiring halls, meeting halls, and any other locations where notices to its members are customarily posted, in the vicinity of operations of

Respondent Employers; the periods and places of posting to be determined by the Board's Regional Director. Respondent UFW shall exercise due care to replace any Notice which is altered, defaced, covered, or removed.

(d) With the consent of each Respondent Employer, provide sufficient copies of the attached Notice in the appropriate languages to such Respondent Employer to post and/or to distribute with the Employer's attached Notice in this case to all agricultural employees currently employed or hired during the 12-month period following the date of the issuance of this Order.

(e) With the consent of each Employer, arrange for a Union representative or a Board agent to read the attached Notice in the appropriate languages to the Respondent Employer's assembled agricultural employees immediately following the reading and question-and-answer period of any reading of the Notice attached to the Respondent Employer's Order in this case. Following the reading of the Union's Notice, the Board agent shall be given the opportunity, outside the presence of supervisors, management, and nonemployee UFW officials or agents, to answer any questions employees may have concerning the Notice and their rights under the Act. The Regional Director shall equitably apportion the cost between the Employer and the Union to compensate the employees for time lost at the readings and question-and-answer periods.

(f) With the consent of each Employer, provide sufficient copies of the Notice in appropriate languages to said Employer for mailing with the Notice attached to the Employer's Order in this case; one-half of the postage and other mailing costs

shall be paid by the Union.

(g) Notify the Regional Director in writing, within 30 days after the date of the issuance of this Order, of the steps taken to comply with it and, upon request, notify the Regional Director in writing periodically thereafter of further steps taken to comply.

Dated: December 14, 1981

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Board Member

JEROME R. WALDIE, Board Member

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF CALIFORNIA COASTAL FARMS

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to California Coastal Farms which is relevant and necessary for the bargaining process.

WE WILL furnish to California Coastal Farms, upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF COLACE BROTHERS

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to Colace Brothers which is relevant and necessary for the bargaining process.

WE WILL furnish to Colace Brothers, upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF J. J. CROSETTI COMPANY, INC.

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to J. J. Crosetti Company, Inc., which is relevant and necessary for the bargaining process.

WE WILL furnish to J. J. Crosetti Company, Inc., upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF LU-ETTE FARMS, INC.

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to Lu-Ette Farms, Inc. which is relevant and necessary for the bargaining process.

WE WILL furnish to Lu-Ette Farms, Inc., upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board, One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF CARL JOSEPH MAGGIO, INC.

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to Carl Joseph Maggio, Inc. which is relevant and necessary for the bargaining process.

WE WILL furnish to Carl Joseph Maggio, Inc., upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

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(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE,

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OP JOE MAGGIO, INC.

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to Joe Maggio, Inc., which is relevant and necessary for the bargaining process.

WE WILL furnish to Joe Maggio, Inc., upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF MARTORI BROTHERS DISTRIBUTORS

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to Martori Brothers Distributors which is relevant and necessary for the bargaining process.

WE WILL furnish to Martori Brothers Distributors, upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF O. P. MURPHY & SONS

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to O. P. Murphy & Sons which is relevant and necessary for the bargaining process.

WE WILL furnish to O. P. Murphy & Sons, upon request, information concerning the Robert P. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF MARIO SAIKHON, INC.

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to Mario Saikhon, Inc. which is relevant and necessary for the bargaining process.

WE WILL furnish to Mario Saikhon, Inc., upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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

DO NOT REMOVE OR MUTILATE.

NOTICE TO MEMBERS AND AGRICULTURAL
EMPLOYEES OF VESSEY & COMPANY, INC.

After investigating charges that were filed against us, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the Agricultural Labor Relations Act. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Act by failing or refusing to provide information requested by your Employer which was relevant to our contract negotiations. The Board has ordered us to post and distribute this Notice.

The Agricultural Labor Relations Act is a law that requires unions representing agricultural employees to bargain collectively in good faith with their employers.

Because this is true, we promise that:

WE WILL NOT refuse to provide information to Vessey & Company, Inc. which is relevant and necessary for the bargaining process.

WE WILL furnish to Vessey & Company, Inc., upon request, information concerning the Robert F. Kennedy Farm Workers Medical Plan and the Martin Luther King Farm Workers Trust Fund which is relevant and necessary to the bargaining process.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

_____

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, the telephone number is 714/353-2130; another office is located at 112 Boronda Road, Salinas, California, the telephone number is 408/443-3160.

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MEMBER McCARTHY, dissenting:

I cannot agree with the majority's conclusion that the Respondents were engaged in bad-faith bargaining on and after February 21, 1979. I believe that, in arriving at their conclusion, the majority has failed to fully consider all of the relevant facts, has misconstrued some of the key facts on which they rely and has misapplied the law concerning the obligation to bargain in good faith. Furthermore, irrespective of the validity of their conclusion as to bad-faith bargaining, the majority improperly grants the make-whole remedy to the striking workers while, at the same time, improperly denying it to the replacement employees.

The cornerstone of the majority's case for bad-faith bargaining seems to be their finding that Respondent's bargaining position was not based on an honestly-held belief. The majority, contends that, during negotiations. Respondents characterized the President's 7% Wage and Price Guidelines as a legally binding restriction on any wage increase or economic benefits it could

grant, and further that such position was belied by testimony from certain of Respondents' officers to the effect that they did not actually believe the guidelines to be a legal restriction on the amount of their wage offer. In so arguing, the majority has completely distorted the evidence. Respondents' position, as demonstrated in the record, was not that the guidelines precluded a higher wage offer, but rather that the guidelines were simply applicable to agriculture,[1/] that the government had some sanctions at its disposal to help procure adherence to the guidelines and that the guidelines were a reasonable basis for negotiating wages. It was a well-known fact, and acknowledged by the Union's negotiators, that the guidelines were no more than a presidential request, not binding in law upon anyone.

Thus, contrary to the majority's assertion, the claims made by Respondents at the bargaining table were in fact honest claims and such claims did not make it "impossible for the Union to seek possible areas of economic compromise." As explained infra, the deadlock over economic issues arose not from Respondent's statements concerning the wage and price guidelines, but rather from the Union's demands for astronomical increases in wages and benefits. The deadlock over economic issues was therefore not spurious and did indeed provide a basis for a bona fide impasse. The majority also mischaracterizes the facts which surround the statement of impasse. A review of the verbatim transcript of the negotiations on February 21, 1979, clearly shows that the complete contract presented to the

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[1/] This is borne out by evidence which the majority itself cites. See footnote 5 on page 18 of the majority decision.

Union on that date was not a "take-it-or-leave-it" offer. By February 21, just 3 months after the negotiations had begun, the parties had met a total of 24 times and had considered, and made compromises on, a substantial number of non-economic matters. However, the parties were far apart on wages and other economic matters. With a debilitating and violent strike in progress, the Employers would naturally have wanted to propel the negotiations forward and conclude an agreement with reasonable economic terms. Presenting a complete contract proposal was thus an appropriate response on the part of the Respondents. The majority ignores the fact that the offer was simply a proposal and that the Union regarded it as such. The contract was always referred to as a proposal-, and never as a "final offer." To demonstrate that the Employers were of one mind and were serious about their proposal, representatives of several major employers affixed their signatures to the front of the proposed contract.[2/]

[2/]The majority makes improper use of newspaper advertisements to demonstrate the nature of the February 21 proposal (which incidently, was not signed by the 27 affected companies, as the majority asserts). In NLRB v. Major League Baseball Player Relations Committee, Inc. (1981) 516 F.Supp. 588, the court held that public statements made away from the bargaining table by the Baseball Commissioner and various baseball club owners, could not be imputed to the Baseball Owners Association as a statement of its bargaining position. The court stated,

> In a multi-employer bargaining unit as large and publicly visible as the Major League Baseball Clubs, it is inevitable that extraneous statements will be made by individuals affiliated in some way with the group which are inconsistent with the official position of the unit. This only underscores the necessity ... for centralized bargaining responsibility and authority. Clearly, individual expression of opinion cannot serve to bind the

(fn. 2 cont. on p.)

At the following meeting, on February 28, the Union, understanding that further negotiations were not foreclosed, offered a counterproposal. It contained only slight changes with respect to economic issues -- the area where the parties were furthest apart, and no new offer as to non-economic issues. After reviewing the counterproposal, the Employers concluded that it was unacceptable as it then stood and asked the Union representatives if there was anything further that they would like the Employers to consider or any other proposals they would like to submit. The Union replied that it had made its proposal and had no further proposals to make. It was thus made evident to the Employers that even major concessions on their part at that point might not be enough to keep the talks going. The Employers reacted by saying that they stood on their proposal of the week before, and then stated the obvious -- that impasse appeared to have been reached. This statement met with no disagreement from the Union representatives who were present. During his testimony at the hearing, one of the principal Union negotiators admitted that he regarded the situation as being at an impasse as of February 28.

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(fn. 2 cont.)

> entire bargaining unit in the absence of authority to speak for the group.

See Anderson Pharmacy (1970) 187 NLRB 301, 302 n. 10, where the" National Board refused to hold the employers1 association accountable for the statements made by one of the owners not on the negotiating committee.

As much as the majority would like to find an unfair labor practice because of the public statements by a group supposedly sponsored by some of the Respondent Employers, the courts have shown no inclination to base a violation of the Act on so-called "collective bargaining through the press."

The majority states that, "Before declaring impasse the Employers clearly should have pursued reasoned discussion about issues which had not been discussed, exploring avenues for possible movement ...." The evidence shows that the Employers were prepared to discuss issues where movement might still be possible, but the union foreclosed that opportunity by stating that there were no further items that they wished to have considered and that they had no further proposals to make. To contend that a legitimate impasse did not then exist and to fault the employers for their conduct is an inaccurate and one-sided assessment of the situation. It is also contrary to law, for, as the Supreme Court has said of the NLRA in language equally applicable to the ALRA:

> Thus it is now apparent from the statute itself that the act does not encourage a party to engage in fruitless marathon discussions at the expense of frank statement and support of its positions. Labor Board v. American Nat'l Ins. Co. (1951) 343 U.S. 395.

Even if the Union were to have replied to the Employers' non-economic offer in the contract proposal of February 21, the bargaining positions of both parties had produced a bona fide impasse on economic issues which would not have been broken by discussions of secondary non-economic issues, and there was "no realistic possibility that continuation of discussion at that time, would have been fruitful." See American Fed. of Television & Radio Artists v. NLRB, 395 F.2d 622. Given the pivotal importance of -economic issues to both parties, it is apparent that once impasse had been reached on those issues, any further discussion on non-economic items would have been to no avail in resolving the

major disagreement. See NLRB v. Yama Woodcraft, Inc. (1978) 580 F.2d 972. As the court observed in American Fed. of Television & Radio Artists, supra,

> It cannot be doubted that a deadlock on one critical issue can create as impassable a situation as an inability to agree on several or all issues.

The majority further errs in comparing the Employer's conduct to that which gave rise to the "Boulwarism" epithet. See NLRB v. General Electric Co. (2d Cir., 1919) 418 F.2d 736 [72 LRRM 2530], cert. den. (1970) 397 U.S. 965 [73 LRRM 2600] enforcing (1964) 150 NLRB 192 [57 LRRM 1491]. Unlike the employer in that case/ Respondents here did not

> ... so combine 'take-it-or-leave-it' bargaining methods with a widely publicized stance of unbending firmness that he is himself unable to alter a position once taken. 418 F.2d at 762-763.

Under the court's narrow holding, it was only that combination of tactics which constituted bad-faith bargaining. Under the majority's application of the General Electric case to the instant matter, "Boulwarism" would consist of hard bargaining combined with an attempt by the employer to state its case to its employees during negotiations. Respondents were engaged in no more than that, and such conduct does not remotely approach the totality of conduct which the court in the General Electric case found to 'be violative of the NLRA. If anything, Respondents' appeal to the workers was designed to show that they were taking a flexible approach to bargaining and were hoping the Union would do the same. Furthermore, unlike the situation in General Electric, the Union initiated the publicity campaign in this case, and, in so doing, the Union

violated an agreement the parties had when they began negotiations. Finally, it must be remembered that the public statements here in question derive protection from section 1155 of the Act:

> The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

The majority can point to no statement by the Respondents which contains any of the proscribed language.

It is most regrettable that the strike in this case resulted in the shooting death of a striking worker, and the majority is correct in taking note of this tragic incident. The surrounding atmosphere of violence and hostility cannot be ignored. There is no doubt that the Imperial Valley was racked by violence during the 1979 industry negotiations, yet, while professing to weigh the Union's conduct in its evaluation of the parties' bargaining responsibilities, the majority gives virtually no weight to the serious and continuing acts of violence which characterized the strike against the Respondents. It is therefore important to take note of some illustrative incidents of the flagrant misconduct repeatedly engaged in by strikers, picketers, and Union officials with the full knowledge and tacit approval of the Union.

Thus, for example, at the inception of the strike, the first major act of violence occurred when a group of Union picketers trespassed on the property of Vessey & Company, storming onto the field, screaming obscenities and throwing rocks at a crew of Vessey employees. The crew members, fearing bodily harm, ran to a bus for

protection and were hastily transported away from the scene. A few days later, violence again erupted in a Vessey & Company field. Filsm shown at the hearing vividly depict the extreme violence engaged in by Union picketers. A group of about 40 Union picketers, present when buses were transporting Vessey employees to work in the fields, grew into a mass of 600 to 800 Union picketers by the end of the day. At that time, the police asked the picketers to disperse so as to allow the six buses containing the workers to pass through. The picketers refused to leave, and the police declared the gathering to be an unlawful assembly. The film shows what happened as the buses began to leave the area. First, the Union picketers broke through police and security lines and intercepted the buses and farm equipment. Windows were then shattered by pieces of concrete thrown by the picketers. One bus was forced off of an embankment by the attacking strikers. When police attempted to subdue the rioting Union picketers, they were in turn attacked. At least four or five employees were injured by rocks and shattered glass.

Five days later, 400-500 Union picketers used the same technique of throwing rocks and dirt clods at Maggio, Inc. equipment and workers in the fields. Fortunately, only property damage was inflicted in that incident. The next act of violence occurred when approximately 500 picketers gathered on the edge of a grower's field being harvested by crews from Vessey, Saikhon, Lu-Ette Farms, and other respondent growers. Sheriff Oren Fox identified a Union picket captain at this gathering. The picketers ran into the field, traversing a ditch, and across the field where the buses, trucks, and cars were parked. The Union picketers inflicted a considerable

amount of damage to the vehicles, breaking windows and denting metal by using rocks and other projectiles. The police had to use tear gas to repel the rioting picketers. After being repelled by the police, the picketers threatened to attack again, but the police calmed them down by showing them that there were no Filipino crews in the fields as the Union had suspected. After this February 10 incident, Sheriff Oren Fox spoke to Manuel Chavez, cousin to Cesar Chavez and one of the UFW officials assisting with strike coordination, and told him that nobody concerned could afford a continuation of the type of mass picketing which had occurred on a number of occasions and had led to various forms of violence. On February 16, at a Gourmet Harvesting & Packing Co. employee pick-up point, Union pickets surrounded the Employer's buses and began to throw rocks at the buses, breaking a large number of windows. The employees attempting to board the buses were threatened with bodily injury, and because of these threats, the employees left the area.

The last major act of violence, prior to the impasse reached in negotiations, occurred on February 21, 1979. Approximately 1500-2000 Union picketers gathered at a Maggie field. The picketers began throwing rocks and other projectiles at Sheriff vehicles. Then groups of picketers trespassed on the property and rushed toward a group of replacement workers huddled in the center of the field. Police attempted in vain to repel, with tear gas, the oncoming rush of picketers. The picketers overturned a lettuce loader. The terrified employees in the field were quickly loaded onto buses while 25 or 30 strikers were running across the field toward the buses. An irrigation ditch slowed down the attacking

strikers enough to allow the buses to escape.

That the Union is responsible for the violence perpetrated on the employees cannot be seriously questioned. Ann Smith, a Union negotiator, made it clear at the bargaining table that the Union was fully staffed with picket captains and strike coordinators in the fields who were there to "keep our people on the track that we decide we be on at any given time." (Emphasis added.) Sheriff Oren Fox met with Union officials on numerous occasions to discuss the incidents of violence that were occurring in the fields. The Union was well aware of the acts of violence that regularly occurred.

In such circumstances, the NLRB and the courts have repeatedly found that the Union is responsible for the picket line violence. In International Association of Machinists (1970) 183 NLRB 1225, 1230 [75 LRRM 1094], the NLRB stated:

> It is settled that where, as in this case, a picket line is the scene of repeated acts of misconduct, to the knowledge of the union conducting the picketing, the union has the duty to take steps reasonably calculated to effectively curb the misconduct, and failing this the union may be held responsible for resulting restraint and coercion of employees. (Citations omitted.) Furthermore, even as to conduct occurring outside the presence of acknowledged union agents and without the knowledge of the union conducting the picketing, the union may be held responsible for such conduct where it follows a pattern established by acknowledged union agents.

It has been repeatedly held that where a labor organization is aware of continual, unlawful misconduct occurring during a strike and does nothing to curb that misconduct, the labor organization must be held responsible for that misconduct. See Union National de Trabajadores [92 LRRM at 3430]; International Union of Electrical Workers (1961) 134 NLRB 1713 [49 LRRM 1407]; Congress de Uniones

Industrials (1967) 163 NLRB 448 [64 LRRM 1370]; Teamsters Local 115 (1966) 157 NLRB 1637 [61 LRRM 1568]. It is not sufficient for the labor organization involved merely to issue peaceful directives in regard to known misconduct, as the Union allegedly did each morning of the strike, for the labor organization must take steps "reasonably calculated to effectively stop such acts." Teamsters Local 695 (1973) 204 NLRB 866 [83 LRRM 1650].

The Board must look at the totality of the parties' bargaining conduct in making determinations as to good and bad faith. A party's acts and conduct away from the bargaining table which are sufficiently connected to the party's negotiation tactics, as is the Union violence outlined above, must also be taken into consideration. See Continental Insurance Co. v. NLRB (1974) 945 F.2d 44, or even NLRB v. General Electric Co. (2d Cir. 1969) 418 F.2d 736.

Such conduct on the part of a Union has been held to relieve the employer from its duty to bargain in good faith. NLRB v. United Mineral & Chemical Corporation (1968) 391 F.2d 829; Laura Modes Co. (1963) 144 NLRB 1592 [54 LRRM 1299], In Cascade Corporation (1971) 192 NLRB 533 [77 LRRM 1823], the National Board acknowledged the above cases and considered the Union's picket line misconduct. The Administrative Law Judge, whose decision the Board adopted, came to the following conclusions:

> [T]he problem is essentially one of weighing the gravity of employee misconduct against the employer's unfair labor practice which, in the first place, provoked the employees to resort to unprotected activities. [Footnote omitted,] Viewing the UAW'S misconduct [the violence consisted of shaking and bouncing a single company truck occupied

> by one employee and an unsuccessful attempt to overturn another employee's personal vehicle as he was waiting to enter the plant], especially in view of the company's refusal to bargain, I conclude that the few proven incidents', while reprehensible and not to be condoned, were not so widespread or pervasive as to relieve it from bargaining with UAW. See World Carpets of New York, Inc. 188 NLRB No. 10.

The scales tip quite differently in the case at hand. Here, the violent Union conduct was far greater in magnitude, scope, and pervasiveness than it was in Cascade. Moreover, this case unlike Cascade, does not involve an employer's outright refusal to bargain despite an election and certification of the Union. Even if Respondents' negotiating conduct could be construed as exhibiting bad faith (which I am convinced it cannot), it would by no means be a blatant violation, and, in any event, such conduct did not precipitate the unprotected activities. Violence was perpetrated by striking workers and their union leaders long before Respondents' alleged bad-faith bargaining purportedly converted the economic strike to an unfair labor practice strike. The fact that Respondents did not flatly refuse to meet with the Union because of the violence is no basis upon which to relieve the Union of culpability in this matter, as the majority seems to imply it should. An employer who seeks to keep open its channels of communication with the Union despite strike violence should not be penalized for so doing.

The inappropriateness of overlooking union violence when determining bargaining obligations is especially pronounced under

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the ALRA.[3/] By finding Respondents to have bargained in bad faith and ordering the make-whole remedy, this Board is subjecting Respondents to a far greater penalty than they would have incurred under the NLRA. The National Board does not provide for a make-whole remedy in bad-faith bargaining cases and, at most, would require the employer to commence good-faith bargaining with the Union. The make-whole award which Respondents may be forced to pay in this case could be staggering. Yet, under NLRB standards, Respondents' bargaining conduct, if it is reproachable at all, pales in significance when compared to the massive instances of union strike violence. Rather than impose a draconian remedy on the beleaguered employers in this case, the majority should have, at most, disaffirmed the existence of an impasse and ordered the parties to resume bargaining.

The majority compounds its error of disregarding Union violence by awarding a make-whole remedy to striking workers, the very people who participated in the violent conduct, and withholding that remedy from the replacement workers, a group constituting one of the two principal targets of the violence (the other being the Employers and their property). The remedy also constitutes preferential treatment for participation in union activity, something which is clearly contrary to one of the key principles behind section 1152: that the rights of agricultural workers who refrain from union activity are of equal weight with the rights of

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[3/]One gets the impression from the majority's cursory treatment of strike violence that they find such conduct to be more acceptable in California agriculture than it is in the industries subject to the NLRA.

the workers who participate in lawful union activity. Thus, if a violation were found here, and if the make-whole remedy were appropriate, the make-whole award should go to both the non-striking employees and the replacement workers. However, it should not be awarded to the striking workers for any period(s) when they were away from their work. Neither economic strikers nor unfair labor practice strikers are ever awarded backpay in NLRB remedial orders,[4/] nor have they ever previously received backpay or make-whole awards in prior ALRB remedial orders. This is because both types of strikers have voluntarily chosen not to work, and such remedial orders are intended to reimburse strikers who have lost work, not by choice, but as a result of a discriminatory discharge or discriminatory refusal to rehire. In the instant case, the strikers should not be awarded any monies based on the period(s) when they were voluntarily absent from the job, and the non-strikers

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[4/] The NLRB does not award backpay to economic or ULP strikers, "on the theory that it cannot be said there was a loss of pay caused by the employer's conduct until the strikers indicate a willingness to return to work." Kohler Co. and Local 833, UAW-AFL-CIO, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America. (August 26, 1960) 128 NLRB 1062, 1110. See also The Rivoli Mills, Inc., 104 NLRB 169, 170; Climate Control Corp. (1980) 251 NLRB No. 102, 105 LRRM 1167; Crystal Springs Shirt Corp. (1979) 245 NLRB No. 112 [102 LRRM 1404]; Frank E. Nash dba Frank E. Nash Fence Company (1979) 242 NLRB No. 42 [101 LRRM 1152]. Phelps-Dodge 313 U.S. 177 [8 LRRM 439, 448 fn. 7]; Nathanson 344 U.S. 25 [31 LRRM 2036, 2037]; Trinity Valley, 410 F.2d 1161 [71 LRRM 2067].

The cases cited in the majority opinion at page 30 and footnote 11 are inapposite as the strikers here were not discharged, discriminated against, or illegally denied reinstatement. Although employees clearly have the right to engage in an economic or ULP strike, there is no NLRA precedent for requiring their employer to subsidize either type of strike by paying all or any part of the wages the employees would have received had they elected not to go on strike.

and replacement workers {temporary as well as permanent) should be awarded makewhole for whatever portion(s) of the make-whole period during which they were actually employed. The rationale of backpay and make-whole awards is not, as the majority appears to suggest, to place the employer in status quo ante, but to reimburse employees for what they would have earned during a certain period absent the employer's unfair labor practices. The back-pay period or make-whole period does not include days or weeks or months when the employee would not have worked, or did not work because he elected not to do so.[5/] By requiring Respondents to award makewhole to strikers and to withhold it from replacement workers, the majority is in effect ordering them to remedy their past unfair labor practices by committing additional violations of the Act, i.e., by awarding or denying make-whole solely on the basis of whether the employee engaged in, or elected to refrain from, union activities. Such payments would clearly tend to encourage union activity and to discourage refraining from such activity and thus amount to a per se violation of section 1153(c) and (a) when and if Respondents comply with the Board's order in this matter.

If the majority were indeed serious about the need to

[5/]This fact is reflected in section 10530.1 of the NLRB's Case Handling Manual. That section, which concerns making discriminatees whole, reads in pertinent part as follows:

> Period covered: The period covered is that from the discriminatory loss of employment to a bona fide offer of reinstatement, but it does not include any period (1) during which there was no obligation to reinstate (see Reinstatement 10528); (2) during which the discriminatee was not available for work or has otherwise incurred a wilful loss of earnings (see 10612-10620).

consider the "totality of circumstances" when deciding cases of alleged bad-faith bargaining (or at least were consistent in their application of that principle), they would see that the Union bears an equal responsibility with the employer in keeping negotiations afloat and that the Union's demands and conduct shape the course of negotiations at least as much as the actions or inaction of the employer. It is obvious that two of the critical factors in the overall bargaining situation were: (1) the Union's continuing demand for an economic package which exceeded the then-current level of wages and benefits by upward of 200 percent; and (2) a strike effort which began even before the Union had given the Employers a complete proposal and just one day after the Employers submitted their economic proposal and which was characterized by repeated and large-scale collective acts of violence. During the entire period of the negotiations, the Union budged only a slight degree from its original economic demands and sanctioned, if not instigated, major acts of violence on a number of occasions prior to Respondents' complete contract proposal. The violent conduct resulted in very large property losses and numerous injuries. Given the Union's extreme bargaining position and truculent and coercive away-from-the-table conduct, it is unreasonable indeed to expect the employers to maintain a textbook-perfect bargaining posture. Even so, the employers here exhibited a degree of flexibility that is not always present in NLRB cases where no bad-faith bargaining is found. A good example is Romo Paper Products Corp. (1974) 208 NLRB 644,[85 LRRM 1165] a case wherein the National Board specifically affirmed all of the Administrative Law Judge's findings and conclusions as to

the alleged bad-faith bargaining. In concluding that the employer did not engage in overall bad-faith bargaining,[6/] the ALJ had the following reaction to an argument which the General Counsel presented in its brief:

> To begin with, the General Counsel contends that the Respondent's attitude was a take-it-or-leave-it position. What the General Counsel overlooks, however, is that the Union was equally adamant in adhering to its proposals. It does not appear that either side showed the slightest tendency to compromise its position in any way. Nor does it appear that the Union was diligent in its efforts to set up negotiating conferences in an attempt to resolve its differences with Respondent. In sum, there was no give and take on either side. Id.[7/]

Even if the offer of the Respondents in the instant case could be characterized as a take-it-or-leave-it proposition, it is evident that the NLRB would have regarded the Union's adamant stance concerning the nearly 200-percent economic demand as a countervailing factor -- one which would more than offset any questionable aspects of the positions taken by the Respondents during negotiations.

It is important to note that in Romo Paper Products the finding of no overall bad-faith bargaining was unaffected by a

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[6/]It is interesting to note that this conclusion was not affected by the employer's reliance on the wage increase limitations (5.5%) promulgated by the Federal Pay Board. The employer' based his wage offer on the pay board regulation without knowing whether he was actually required to comply with the regulation. 208 NLRB at 647-648.

[7/]Although the applicability of Romo Paper Products to the case is not dependent upon lack of union diligence, it may be worth noting that the union here cancelled a number of negotiation sessions and sent only one representative lacking full authority to several others.

finding that Respondent's president violated section 8(a)(5) and (1) of the NLRA when he gave coercive speeches to the employees while the parties were still engaged in contract negotiations. In the case at hand, the communications that Respondents directed at its employees during negotiations were not coercive and did not occur in the context of other alleged unfair labor practices.[8/] Thus, it is doubly clear that the majority has erred in considering Respondents' communications to the employees during negotiations as evidence of bad-faith bargaining.

Yet another holding of the NLRB in Romo Paper Products has great significance for both the case at hand and subsequent cases which may turn on the majority's finding that the economic strike here was converted to unfair labor practice strike on February 21, 1979, by Respondent's "illegal conduct" as of that date. In Romo, the NLRB agreed with the ALJ that the strike began as an economic strike and was not converted to an unfair labor practice strike by the employer's unlawful refusal to bargain a little less than two months later. That refusal to bargain was, according to the National Board, improperly based on a decertification petition. Again, as with the matter of coercive speeches, this violation did not affect the overall finding of no bad-faith bargaining. The ALJ's reasons for finding that a conversion did not take place are as follows:

> Although I have found that Respondent's conduct at the meeting of November 1 was violative of the Act, I cannot find that it converted the strike which started

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[8/]See Wantagh Auto Sales, Inc. 177 NLRB 150-154; Stokeley-Van Camp, Inc., 186 NLRB 440, 450.

as an economic one into an unfair labor practice strike. As the Board stated in Anchor Rome Mills, Inc. 86 NLRB 1120 at 1122:

> '... an employer's unfair labor practices during an economic strike do not automatically convert it into an unfair labor practice strike. Such conversion will be found only when there is proof of a casual [sic] relationship between the unfair labor practices and the prolongation of the strike. [Citing cases.] Proof of such causal relationship is absent here. To the contrary, the issue which caused the strike -- a difference in the amount of pay -- remains the issue which still keeps the parties apart.'
> 208 NLRB at 653-654.

I submit that the same can be said of the instant case -- that there is no causal relationship between Respondent's alleged unfair labor practices and the purported prolongation of the strike. The issue which caused the strike was the amount of pay, and that remained the overriding issue which kept the parties apart throughout the en tip. relevant time period. I find it rather preposterous to say that Respondents supposed lack of good faith, rather than substantive differences over wage and benefit issues, was the factor responsible for prolonging the strike. Even if Respondents' statement of impasse could be considered an unlawful refusal to bargain, there is absolutely no showing that the strike would have been shortened except in the event of employer acquiesence in, or a major concession toward, the Union's astronomical wage demands. And the majority should not have to be reminded that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment of the substantive terms of collective bargaining agreements. Labor Board v. American Nat'l Ins. Co. (1951) 343 U.S. 395, 404.

In conclusion, it is clear to me that there was no bad-faith bargaining conduct on the part of the Respondents and that even if there was, the Union's involvement in strike violence would serve to nullify that conduct. Moreover, even if the duty to bargain in good faith did not abate, there was no conversion of the economic strike into an unfair labor practice strike, and consequently the strikers are not entitled to an automatic right of return. Finally, the majority has imposed the make-whole remedy under inappropriate circumstances and in an inequitable fashion. Thus, through a succession of glaring errors the majority has managed to transform a case where both sides were engaged in lawful hard bargaining at 24 meetings, where neither side was willing to accept the other's contract proposal, and where both agree that impasse was reached, into one where the Employers alone are deemed guilty of bad-faith bargaining and are subjected to a staggering make-whole remedy which improperly discriminates in favor of the strikers and against the replacement employees. The complaint against the Respondent employers should have been dismissed in its entirety.

Dated: December 14, 1981

JOHN P. McCARTHY, Member

CASE SUMMARY

Admiral Packing Company, et al. {UFW) — 7 ALRB No. 43
Case No. 79-CE-38-EC, et al.

United Farm Workers of America, AFL-CIO
(Admiral Packing Company, et al.) — Case No. 79-CL-6-SAL

ALO DECISION

On the basis of charges filed by the UFW alleging that a group of 28 employers failed or refused to bargain in good faith, in violation of section 1153(e) of the Act, the ALO found that, beginning December 8, 1978, the employers did violate section 1153(e) by failing to provide in a timely manner information relevant to bargaining which the Union had requested, by refusing to submit a proposal until the Union submitted its complete proposal, by conducting a public relations campaign aimed at bypassing the UFW to communicate directly with employees and to disparage the Union in their eyes, by claiming to be bound by voluntary federal wage and price guidelines and acting as if they were bound while not believing themselves to be so bound, and by declaring, prematurely, that the parties were at impasse, while many issues had not yet been discussed and there remained considerable room for movement on other issues. The ALO found that the General Counsel did not produce sufficient evidence to establish that two of the employers violated section 1153(e) by unilaterally changing terms and conditions of employment without negotiating with the .UFW about the changes.

In a Supplemental Decision, the ALO found that allegations in Case No. 79-CL-6-SAL based on the same negotiations, that the UFW violated section 1154{c) by failing or refusing to bargain in good faith, had been established only to the extent that by failing to provide the employers information about the UFW's Robert F. Kennedy Medical Plan the Union committed a per se violation of section 1154(c). Concluding that this violation had not caused the breakdown of negotiations, the ALO recommended that the make-whole remedy be imposed, without set-off or mitigation of any sort from December 8, 1978, on the employers which had not had contracts with the UFW during 1978 and from January 1, 1979, for the employers which had had contracts with the UFW during 1978.

BOARD DECISION

The Board found that the conduct of the UFW during the first two months of negotiations made it impossible to determine that the slow pace of negotiations during this period was due to a lack of good faith on the part of the employers, but that by February 21, 1979, the employers clearly manifested bad faith by combining the offer of a signed contract, some provisions of which had not been discussed, on a take-it-or-leave-it basis, with a public-relations campaign aimed at bypassing and discrediting the Union, and that their lack of good faith was confirmed by their premature declaration of impasse on February 28, 1979. The Board found that the UFW violated

section 1154(c) by failing to provide information, requested by the employers, which was relevant and necessary to bargaining, about the Robert F. Kennedy Medical Plan and the Martin Luther King Farm Workers Fund. The Board found that strike-related violence which occurred during the negotiations did not provide a defense to the employers' failure to bargain in good faith. The Board further found that the economic strikes which began before February 21, 1979, were converted to unfair labor practice strikes on that date. The Board affirmed the ALO's finding that the General Counsel failed to establish that two Respondent Employers violated section 1153(e) by unilaterally changing terms and conditions of employment.

REMEDY

The Board ordered that Respondent 'Employers make whole their agricultural employees for economic losses they suffered as a result of the Respondents' failure or refusal to bargain in good faith. The Board established three categories of employees for purposes of the make-whole award: (1) employees who did not go on strike in support of the UFW's contract demands; (2) employees who did go on strike in support of those demands and were not permanently replaced; (3) and employees hired as temporary replacements for strikers. Employees in the first category, including permanent replacements hired before February 21, 1979, and employees in the second group, are to be made whole in the amount of the difference between the wages they earned (or would have earned if they had not gone on strike) and what they would have earned by working at rates which likely would have applied if the employers had bargained to a contract. Employees hired as temporary replacements for strikers were not included in the make-whole award. Amounts by which employees were to be made whole did not include amounts by which employer contributions to the Robert F. Kennedy Medical Fund and the Martin Luther King Farm Workers Fund would have increased if the employers had bargained to a contract.

The Board ordered that each of the Respondent Employer's read, mail, and post an official Notice to Agricultural Employees and that "the UFW publish such a Notice and, upon the consent of any Respondent Employer, read said Notice to employees on company property (apportioning the cost of the company time involved) and, with the consent of any Respondent Employer make copies of said Notice available for the Respondent Employer to send to its employees with its own Notice, with costs of mailing to be apportioned equitably between the Respondent Employer and the UFW.

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DISSENT

Member McCarthy agrees with the majority's conclusion that Respondent Employers bargained in good faith with the Union from November 27, 1978, to February 21, 1979, but dissents from the majority's conclusion that the Employers engaged in bad-faith bargaining on and after February 21, 1979. He would find that the Employers' use of the Wage and Price Guidelines as a basis for negotiations over economic issues was appropriate and no indication of bad faith since they never contended that the Guidelines were legally binding. He would find also that the Employers' contract proposal of February 21 was not a take-it-or-leave-it offer and that a legitimate bilateral impasse was reached on February 28 when the Union: (1) rejected the Employers' February 21 proposal; (2) presented a counterproposal which the Employers rejected because of the Union's continuing excessive wage demand; and (3) indicated that it was unwilling to advance any new proposals on economic or non-economic issues. In Member McCarthy's view, the Employers' conduct cannot be equated with Boulwarism because they did not combine take-it-or-leave-it bargaining methods with a public position of unbending firmness.

He would find further that the majority gave insufficient weight to widespread strike violence attributable to the Union. Under his assessment of NLRA precedent, this violence was of sufficient gravity to relieve the Employers of their bargaining obligation. Because of the make-whole remedy available under the ALRA, Member McCarthy deems it particularly important to carefully weigh the relative conduct of the parties before imposing that extreme remedy in bad-faith-bargaining cases. He considers the majority's imposition of make-whole inappropriate in this case and also inequitable because it is awarded to striking workers, but not to the replacement employees. Such an award he regards as preferential treatment for strikers and therefore contrary to the equality-of-treatment principle mandated by section 1152. Member McCarthy considers the majority's make-whole award to be contrary to NLRB and U. S. Supreme Court precedents holding that neither economic strikers nor unfair-labor-practice strikers are entitled to either partial or full reimbursement for periods when they were on strike, since their loss of earnings during such periods resulted from their voluntary absence from work.

He would also conclude that the economic strike was not at any point converted to an unfair labor practice strike, because the different over wages rather than the Respondent's bargaining conduct was the sole reason why the strike began and why it continued after February 21, and because there was no proof that the economic strike was

prolonged by the Employers' bargaining tactics.

Member McCarthy regards both parties as having been engaged in lawful hard bargaining, noting that a bona fide impasse occurred after each party rejected the other's contract proposal, and that both parties considered that they were at impasse as of February 28, 1979. Accordingly, he would have dismissed the consolidated complaint against Respondent Employers in its entirety.

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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

ADMIRAL PACKING COMPANY, ARROW LETTUCE COMPANY, ASSOCIATED PRODUCE DISTRIBUTORS, CALIFORNIA COASTAL FARMS, COLACE BROTHERS, J.J. CROSETTI COMPANY, INC., GONZALES PACKING COMPANY, GOURMET HARVESTING & PACKING, GREEN VALLEY PRODUCE COOPERATIVE, GROWERS EXCHANGE, INC., HARDEN FARMS OF CALIFORNIA. THE HUBBARD COMPANY, LU-ETTE FARMS, INC. , CARL JOSEPH MAGGIO, INC., JOE MAGGIO, INC., MANN PACKING COMPANY, INC., MARTORI BROTHERS DISTRIBUTORS, MEYER TOMATOES, O.P, MURPHY & SONS, OSHITA, INC., MARIO SAIKHON, INC., SALINAS MARKETING COOPERATIVE, SENINI ARIZONA, INC., SUN HARVEST, INC., VALLEY HARVEST DISTRIBUTORS, INC., VEG-PAK INC., VESSEY & COMPANY, INC., and WEST COAST FARMS, Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	) CASE NOS.)) 79-CE-36-EC 79-CE-116-SAL) 79-CE-38-EC 79-CE-117-SAL) 79-CE-43-EC 79-CE-120-SAL) 79-CE-45-EC 79-CE-129-SAL) 79-CE-34-SAL 79-CE-131-SAL) 79-CE-35-SAL 79-CE-132-SAL) 79-CE-36-SAL 79-CE-144-SAL) 79-CE-37-SAL 79-CE-167-SAL) 79-CE-46-SAL 79-CE-168-SAL) 79-CE-53-SAL 79-CE-183-SAL) 79-CE-64-SAL 79-CE-185-SAL) 79-CE-64-1-SAL 79-CE-188-SAL) 79-CE-70-SAL 79-CE-191-SAL) 79-CE-92-SAL 79-CE-202-SAL) 79-CE-94-SAL 79-CE-203-SAL) 79-CE-95-SAL 79-CE-206-SAL) 79-CE-99-SAL 79-CE-248-SAL) 79-CE-112-SAL 79-CE-16-OX)))) DECISION OF ADMINISTRATIVE) LAW OFFICER)))))))	

Martin Fassler and Elise Manders, Salinas,
for the General Counsel

George McInnis and Arnold B. Myers (Abramson, Church & Stave), Salinas, for Respondents Admiral Packing Company, Arrow Lettuce Company, Associated Produce Distributors, California Coastal Farms, J.J. Crosetti Company, Inc., Gonzales Packing Company, Green Valley Produce Cooperative, Growers Exchange, Inc., Harden Farms of California, Mann Packing Company, Inc., Meyer Tomatoes, O. P. Murphy & Sons, Oshita, Inc., Salinas Marketing Cooperative, Senini Arizona, Inc., Valley Harvest Distributors, Inc., and Veg-Pak, Inc.

Marion I. Quesenbery (Dressier, Stoll, Hersh & Quesenbery), Newport Beach, for Respondents Colace Brothers, Gourmet Harvesting & Packing, Growers Exchange, Inc., The Hubbard Company, Lu-Ette Farms, Inc., Carl Joseph Maggio, Inc., Joe Maggio, Inc., Martori Brothers Distributors, O. P. Murphy & Sons, Mario Saikhon, Inc., and Vessey & Company, Inc.

Thomas A. Nassif (Byrd, Sturdevant, Nassif & Pinney), El Centro, for Respondents Colace Brothers, Carl Joseph Maggio, Inc., Joe Maggio, Inc., Martori Brothers Distributors, and Vessey & Company, Inc.

Tom Dalzell, Lori Huerta, Ned Dunphy and Carlos Alcala, Salinas, for Charging Party United Farm Workers of America, AFL-CIO

Jennie Rhine, Administrative Law Officer

STATEMENT OF THE CASE

This action arises from the inability of the United Farm Workers of America, AFL-CIO {UFW), and a major portion of the vegetable growing industry to negotiate a new contract in the winter of 1978-79. On March 1, 1979, one day after negotiations were discontinued, the UFW filed Charge No. 79-CE-38-EC against all 28 named employer respondents, all growers that had been negotiating collectively, claiming that they had refused to bargain in good faith in violation of Sections 1153(a) and 1153(e) of the Agricultural Labor Relations Act.[1/] During the enusing months, complaints based upon additional UFW charges issued in the remaining cases, alleging that specified individual employer respondents further violated the same sections, and in some instances Section 1153 (c) as well, by unilaterally changing the working conditions of their employees. Answers denying all charges were filed, and the cases were consolidated for hearing.[2/]

1/ Cal. Labor Code §§1153(a), 1153 (e). All statutory citations are to the Labor Code unless otherwise stated.

2/ Another complaint, No. 79-CL-6-SAL, based upon charges against the UFW by all but two respondents here, was set for hearing but not consolidated with these. (Gourmet Harvesting & Packing and West Coast Farms, although included in the heading of some of the filed documents, did not join in the charges.) The complaint alleges that the UFW refused to bargain in good faith in violation of ALRA §1154(c) by failing to provide information requested for bargaining purposes. While much of the evidence overlaps with evidence heard in this case, the record in No. 79-CL-6-SAL remains open.

By September 25, 1979, the first day of the hearing, the UFW and fifteen companies had resumed negotiations and signed contracts. The UFW withdrew all charges against those employers, and with the consent of all parties they were dismissed, on the grounds that proceeding against them would hinder, not further, the Act's purpose of encouraging collective bargaining.[3/]

Evidence was taken on the remaining charges at a hearing conducted in Watsonville, Salinas, and El Centro from September 25 through November 9, 1979. All parties were-represented

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3/ See ALRA §1140.2. The fifteen growers were Arrow Lettuce, Associated Produce Distributors, Gonzales Packing, Green Valley Produce Cooperative, Harden Farms, Hubbard Company, Mann Packing, Meyer Tomatoes, Oshita, Salinas Marketing Cooperative, Senini Arizona, Sun Harvest, Valley Harvest Distributors, Veg-Pak, and West Coast Farms. They were dismissed as respondents in No. 79-CE-38-EC, and the following complaints against them were dismissed in their entirety: Nos. 79-CE-35-SAL, 79-CE-64-SAL, 79-CE-64-1-SAL, 79-CE-99-SAL (Associated Produce); Nos. 79-CE-167-SAL, 79-CE-185-SAL, 79-CE-191-SAL, 79-CE-202-SAL, 79-CE-203-SAL (Green Valley Produce); No. 79-CE-53-SAL (Harden Farms); No. 79-CE-45-EC (Hubbard Company); Nos. 79-CE-34-SAL, 79-CE-94-SAL, 79-CE-116-SAL, 79-CE-117-SAL, 79-CE-188-SAL (Mann Packing); Nos. 79-CE-129-SAL, 79-CE-206-SAL (Oshita}; Nos. 79-CE-36-SAL, 79-CE-95-SAL, 79-CE-131-SAL, 79-CE-132-SAL (Salinas Marketing); Nos. 79-CE-36-EC, 79-CE-46-SAL, 79-CE-168-SAL, 79-CE-183-SAL, 79-CE-16-OX (Sun Harvest); No. 79-CE-112-SAL (Valley Harvest); and No. 79-CE-37-SAL (Veg-Pak).

4/ There being no opposition thereto, general counsel's post-hearing Motion to Correct Errors in Hearing Transcript is granted in the following respects:

(1) RT III, p.21, 1.24: the word "first" is corrected to "fifth";

(2) RT III, p.28, 1.24: the word "prefer" is corrected to "prepare"; (continued)

and had an opportunity to present evidence and examine witnesses. The record remained open to receive further documentary evidence and stipulations.[5/] Based upon the entire

4/ (continued)

(3) RT IV, p.6, 1.15: the date "November 7th" is corrected to "November 27th";

(4) RT X, p.153, 1.19: the last word is corrected to Shoot";

(5) RT XII, p.95, 1.12: the identification of Mr. Alcala as the speaker is corrected to Mr. Dalzell;

(6) All references to "Jerry Cowen" are corrected to "Jerry Cohen."

The motion is denied with respect to RT XII, pp.235-236. Those pages are included in the original volume.

5/

Prior to the issuance of this decision the union entered into collective bargaining agreements with two more respondents, Admiral Packing and Growers Exchange. Having been advised that the UFW has withdrawn its charges against them and that all parties concur in their dismissal, I hereby order that they be dismissed as respondents in No. 79-CE-38-EC, and that Complaint Nos. 79-CE-248-SAL (Admiral Packing) and 79-CE-144-SAL (Growers Exchange) be dismissed in their entirety.

The following employers remain as respondents in Case No. 79-CE-38-EC: California Coastal Farms, Colace Brothers, J.J. Crosetti Company, Gourmet Harvesting & Packing, Lu-Ette Farms, Carl Joseph Maggio, Joe Maggio, Martori Brothers Distributors, O.P. Murphy & Sons, Mario Saikhon and Vessey & Company. Two are additionally charged with unilaterally changing employment conditions: Gourmet Harvesting (No. 79-CE-43-EC) and Carl Joseph Maggio (Nos. 79-CE-70-SAL, 79-CE-92-SAL, 79-CE-120-SAL).

record, including my observations of the demeanor of the witnesses, and after consideration of the post-hearing briefs filed by the parties,[6/] I make the following finds of fact and conclusions of law.

THE EVIDENCE

The facts in this case are relatively undisputed, though the same cannot be said for the inferences they give rise to or their legal consequences. To the extent that no controversy is indicated in the following discussion, the facts as stated are virtually uncontradicted in the record, and corresponding findings are implicit. (Contentions in the pleadings were in some instances withdrawn or altered during the hearing.)

All of the companies originally named as respondents are growers and/or harvesters of one or more vegetables, including lettuce, celery, broccoli, carrots, cauliflower, tomatoes, and green onions. Of widely varying sizes, some operate solely

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6/ The brief on behalf of respondents Colace Brothers, et _al., was untimely filed with the hearing officer. It was ordered mailed on or before December 12, 1979, and the proof of service states that it was mailed on that date, from Newport Beach, California, but the envelope in which it was received shows a postmark of December 13, 1979, from Santa Ana, California. See envelope and Proof of Service marked as Hearing Officers' Exhibit 1. Whie its mailing at a time and place different than that stated in the Proof of Service cannot be condoned, the brief was nonetheless considered, no apparent prejudice to the other parties resulting from its being one day late.

in the Salinas Valley area, others in the Imperial Valley (and, in some instances, Arizona), and others farm in both parts of California. Together they constitute a substantial portion of the California vegetable producers. All are agricultural employers within the meaning of S1140.4(c) of the ALRA, doing business in the State of California.

The UFW is a labor organization within the meaning of S1140.4(f) of the Act. From 1975 through 1978, as the result of ALRB elections, it was certified as the collective bargaining representative for the employees of each company and had entered into contracts with all but two (Martori Brothers and O.P. Murphy & Sons) of the current respondents.

The agreements were substantially identical to the agreement executed in 1976 between the UFW and Sun Harvest (then known as Interharvest). That agreement became known as the "master" contract; there were "local" supplements containing provisions peculiar to individual growers. The agreements all had expiration dates of December 1, 1978, or January 1, 1979.

Negotiations with the goal of arriving at a new master contract and local supplements formally opened on November 27, 1978. With the consent of the union, the companies, engaged in separate but simultaneous negotiating, or group bargaining. The aim was to speak with one voice, reached by concensus, but each employer retained independent bargaining and decision-making power, and the right to withdraw from the group at any

time.[7/] Attorney Andrew Church was the chief negotiator for the companies.

Initially, the identity of the employers actually participating in the group was ambiguous, with some not joining until later, and others, never named as respondents, dropping out. Of those named as respondents, most of the Salinas-based companies, members of the Grower-Shipper Vegetable Association of Central California (represented by Church), were present at the table from the beginning. The Imperial Valley companies initially sent observers (attorneys Tom Nassif for members of the Imperial Valley Vegetable Growers Association and Charley Stoll for Western Growers Association members), and did not officially participate until after December 8, the third meeting.[8/]

In addition to the attorneys (who included Joe Herman, representing Sun Harvest along with Church), principals and representatives of the companies and trade associations attended negotiating sessions with varying regularity. Except for the

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[7/] Compare multi-employer, or "power of attorney" bargaining, described in Eugene Acosta, 1 ALRB No. 1 (1975).

In her post-hearing brief, page 52, counsel for respondent Gourmet Harvesting & Packing contends for the first time that charges against that company should be dismissed on the grounds

8/ (continued)

that the union never consented to its becoming a member of the group. As counsel argues, the transcript of the last negotiating session reveals that on that day attorney Stoll noted "as a housekeeping item" that Gourmet requested to be allowed to join the group and union negotiator Ann Smith responded that a reply would be forthcoming (see RX 12b, pp. 2-3 for 2/28/79); and the record is devoid of a reply.

However, the issue of Gourmet's not belonging to the group of employers engaged in bargaining was not raised in a timely manner. Nothing indicates that when it received notice (by the filing of the charge) that the union considered it a group member, it did anything to disabuse the union of that notion or to continue bargaining. In fact, in its answer to the complaint Gourmet implicitly admitted that it was a group member, by admitting that it negotiated with the UFW between November 27, 1978, and February 28, 1979 (the period of group bargaining), and on the latter date declared an impasse and ceased to negotiate. See GCX 1-J, 1-H. No effort was made to amend the answer.

Nor was the issue fully litigated. The only material evidence in addition to the transcript reference mentioned above was testimony by Gourmet partner and vice-president Harold Rochester, given in another context, that Gourmet joined the group on February 21, after negotiating separately with the UFW, and that he was in communication with attorney Stoll about the group negotiations for some time prior to the 28th. The inference from his testimony is that Gourmet considered itself a group member at least a week prior to the declaration of impasse. This conflicting record might well have been clarified if the parties had notice of the issue now raised by the respondent.

Because of the untimely raising of the issue which precluded it from being fully litigated, and the action (and inaction) by the respondent indicating it considered itself a group member, I conclude that Gourmet is now estopped from asserting that due to the absence of the union's consent it was not a member of the group.

opening session, which union president Cesar Chavez attended, the UFW was represented by staff negotiators David Burciaga and Ann Smith, a bargaining committee composed of worker representatives from each of the involved companies, and, to a limited extent, staff member Marshall Ganz, who directed the preparation of the union's economic proposal.

Twenty-three negotiating sessions were held from November 27 through February 28, 1979, when the employers declared that an impasse had been reached. When negotiations began the union agreed to extend pre-existing contracts with expiration dates of December 1, 1978, to January 1, 1979, the date the remainder expired; later it granted extensions until January 15, but not beyond. Beginning on January 19, the union struck selected companies in the Imperial Valley, where crops were currently being harvested; when the harvest moved north after the declaration of impasse, the strikes spread to the Salinas Valley. On June 5 negotiations resumed with the Salinas companies (and one, The Hubbard Company, from the Imperial Valley) represented by Church, ultimately resulting in some instances in the signed agreements mentioned above. Although there was an abortive meeting in August, negotiations had not resumed between the union and the remaining Imperial Valley employers through the time of the hearing.

The general counsel contends that no legitimate impasse existed on February 28 and that the employers had not been

bargaining in good faith since January 21. The Salinas respondents' alleged breach continued at least until June 5, 1979, and the Imperial Valley respondents' continues to the present.[9/] The employer respondents not only deny the charges, maintaining that the impasse of February 28 was mutual and legitimate, but allege affirmatively that the union did not bargain in good faith, as evidenced by various conduct including strike-related violence.[10/] The totality of circumstances must be

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9/

A determination of whether the bargaining which resumed en June 5 was conducted in good faith is beyond the scope of this decision. Unfair labor practice charges have been filed against four participants: Admiral Packing, California Coastal Farms, Growers Exchange, and O.P. Murphy & Sons. It was stipulated that any complaints issuing as a result would be considered in a separate proceeding. In addition to those already named, the Salinas respondents represented at the hearing were J.J. Crosetti and Growers Exchange. The Imperial Valley respondents were Gourmet Harvesting & Packing, Lu-Ette Farms, Carl Joseph Maggio, Joe Maggie, Martori Brothers, Mario Saikhon, and Vessey. See note 5, above, for those subsequently dismissed.

10/

Respondents Mario Saikhon and Vessey further allege that their prior contracts with the UFW ramin in effect by virtue of a "most favored nations" clause. Conceding that the issue had been determined adversely in a Superior Court proceeding, rather than present evidence on it they accepted a 'stipulation that the general counsel would not oppose a future request that judicial notice be taken of a favorable appellate decision in the matter, should one issue. See RT XV 139-140.

considered. See, e.g., Montebello Rose Co., Inc., 5 ALRB No. 64 (1979). The resulting lengthy discussion is divided into conduct at the bargaining table and away from the table, followed by an analysis and conclusions.

CONDUCT AT THE BARGAINING TABLE

1978 Sessions. Remarkably little was accomplished in the 23 bargaining sessions,[11/] which opened in El Centro after two preliminary meetings in October and November. At the early meetings, the parties agreed to limit publicity about the negotiations,[12/] discussed the concept of group bargaining and the question of which companies were actually participating,

11/

Both sides reported recording the sessions, but only partial transcripts were introduced into evidence. The respondents introduced transcripts of all but two 1979 meetings (January 18 and February 21; the omissions were not explained), and the union supplied those two. RX 12, CPX 3. No one introduced transcripts of the 1978 meetings or explained their absence.

12/

Whether the agreement was reached before or at the first negotiating session is unclear from the record, but a resolution of the conflict is unnecessary.

and agreed upon scheduling guidelines for future sessions (two or three days a week, during normal business hours). At the formal opening on November 27, the union presented a comprehensive language proposal (GCX 9) which contained changes in more than half of the 43 articles comprising the old master contract. At the next two meetings, in addition to the ongoing issue of which companies were at the table, the union's language proposal was discussed, with the union explaining its reasons for the changes it proposed.

Following up on a request first made in late September, at the opening meeting the union also made a demand on all companies for information it considered necessary for the negotiations. By the third session (December 8th), if not before, the employers were insisting that they would not respond to any proposal until the union's entire package was on the table.[13/] The union replied that it was unable to present its economic demands until it received the information it had requested. Although they had begun compiling information in October (see GCX 2), the employers first responded to the request on December 12, 1978. The response was only partial: some companies (e.g., O.P, Murphy, Senini, and Mario Saikhon)

13/

Several witnesses for the growers testified that their custom was to consider only package proposals. However, it appears quite common, not only from Ann Smith's testimony but also from other cases, for the UFW to submit and negotiate its language and economic proposals separately. See, e.g., Adam Dairy, 4 ALRB No. 24 (1978); O.P. Murphy Produce Co. Inc., 5 ALRB No. 63 (1979); Montebello Rose Co., Inc., 5 ALRB No. 64 (1979); AS-H-NE Farms, Inc., 6 ALRB No. 9 (1980).

provided no information and that supplied by the others was incomplete. While additional information and clarifications continued to trickle in the completeness of the employers' response remained a subject of dispute throughout the negotiations.[14/]

Since the union did not have its economic proposal ready, no further meetings were held until January 5, 1979.[15/] In the interim the union agreed to extend the old contracts until January 15th. In return most of the companies agreed that any wage increase ultimately agreed upon without strikes or other economic action would be retroactive to January 1st, but the Imperial Valley companies represented by Nassif waffled on the issue.[16/] The companies also made their first demand for information about various funds to which they contributed.

14/ For documentary evidence concerning the requested information, see GCX 12 (union request of 11/27/78); RX 35, RX 14, and RX 15 (information sent by Salinas companies on 12/12/78, 12/20/78, and 12/28/78); RX 16 (supplemental union request dated 12/28/78, crossed RX 15 in mail); RX 18 (response of 1/12/79 from Imperial Valley companies, refers to earlier response to 12/12/78, not introduced); RX 20 and RX 21 (supplemental union requests dated 1/24/79 and 2/6/79); RX 22 (information submitted by Salinas companies on 2/19/79); RX 23 (letter referring to information submitted by Imperial Valley companies on 2/23/79); CPX 2 (information provided in February 1979 by Mario Saikhon, Inc.; also see testimony of Ed Palmer).

15/ Four meetings scheduled for December were cancelled for this reason. The reason for the union's last minute postponement of a meeting scheduled for January 4 is not clear from the record.

16/ See RX 12a, pp. 1-2 for 1/5/79.

The Union's Economic Proposal. On January 5th, the UFW presented an extensive economic proposal (GCX 10) calling for a one-year contract with, among other radical changes, large pay increases for all field workers. Examples of the wage increases are: for hourly workers, from $3.70 to $5.25 for general labor (the lowest paid field work), $4.525 to $8.25 for tractor drivers, $3.78 to $6.00 for cutters on lettuce harvest machines, $3.75 to $6.00 for irrigators; for piece rate workers, from $.57 to $.87 per box of hand-packed lettuce for the ground crew, and from $.858 to $1.41 per box of celery.[17/]

Other significant economic demands included: time and a half after eight hours per day or 40 hours per week with additional premiums for weekend and night work, and an end to compulsory overtime, for most job classifications; longer rest periods; an additional five paid holidays annually, and improved vacation rights; and cost of living adjustments. The union also proposed employer wage payments to employees for worktime spent as union representatives, and an employer financed, jointly administered apprenticeship program.

Among the most controversial demands in addition to the wage increases were proposals for: standby and reporting pay; guaranteed minimum workdays and workweeks; mileage and expense

17/ The final amounts paid under the expiring contracts are found in GCX 29, pp. 2-3; the final rates shown in the old master contract, GCX 27, had been renegotiated.

allowances for migrant workers; a moratorium on the loss of jobs through mechanization; and percentage contributions instead of fixed amounts for each hour worked to the union's medical and pension plans.[18/] Employer estimates of their increased labor costs under the proposal ranged from 128 to 196%.[19/]

In justification of the admittedly expensive proposal, Marshall Ganz, who had directed its preparation, explained to the employers that it was a reflection of the workers' expressed needs, that the earnings of many workers had not kept abreast

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18/ The union proposed contributions to the medical and pension plans of 6-1/2% and 6%, respectively, of each worker's total compensation. Under the old contract employers had contributed 16-1/2¢ and 15¢, respectively, for each hour worked.

19/ See, e.g., testimony of D. Bertelsman of Salinas Marketing Cooperative (RT IX, 103); H. Bradshaw of Sun Harvest (RT VIII, 150). Other employer representatives testified to intermediate percentages or to the estimated cost in dollars, but not percentages. The impact of the proposal varied because of differences in the companies' operations. For example, the companies with year-round operations would be more affected by the addition of paid holidays than those that function only seasonally, and the companies with operations confined to one locale would be unaffected by mileage and expense allowances for migrant workers. The cost estimates did not take into account the union's stated goal of eliminating some controllable company practices, such as regularly requiring overtime and having workers stand by idly when the unavailability of work could have been anticipated. No evidence was elicited about the relationship between labor costs and total production costs, so the overall impact of the proposal is not ascertainable.

of inflation, much less resulted in an improved standard of living, and that the lot of agricultural fieldworkers had not improved at the same rate as other union members in the state, or even at the same rate as other union members in the same industry. He also noted the generally prosperous year in the vegetable industry, and stated that the workers wanted their fair share of that prosperity. Ganz testified at the hearing that in preparing its economic proposal, in addition to eliciting suggestions from its membership, the union conducted economic studies of the agriculture industry and the economic position of its members compared to other unionized workers within that industry and others in California. Information requested from the companies was essential to the studies.[20/]

The remainder of the January 5th meeting consisted primarily of questions and explanations about the proposal, with the union representatives agreeing to return with clarifications of ambiguous or conflicting aspects of it. The union's package was not yet complete; job descriptions implied in the economic proposal and local issues were still to be presented.

At the following meeting on January 11 Andrew Church complained about the distribution of a union leaflet (RX 1) which, he contended, undermined the spirit of the negotiations, since it accused the employers of bad faith and had been

20/ See GCX 29 (Estudio economico), GCX 33 (Comparacion de beneficios—pensiones), GCX 34 (Comparacion de beneficios plan medico), They were not shown to the employers during negotiations.

distributed prior to the union's making its economic demands known Union spokesperson David Burciaga replied that the leaflet was a response to decertification campaigns being waged by some unidentified employers. Other topics were the possibility of contract extensions beyond the 15th (to which the union refused to commit itself), and clarifications of the union's economic proposal.

At the end of the meeting the employers made their first counterproposal (GCX 11), a response to the union's language proposal which rejected virtually all the proposed changes and contained alternative modifications of many provisions in the

old master contract. Among other changes, the growers proposed eliminating the union's right to determine pursuant to its constitution who was a member in good standing, and limiting good standing to payment of dues and initiation fees; eliminating any reference to the union in the hiring process; adding a probationary period during which an employee's termination could not be the subject of a grievance; adding, for violations of the no strike clause, employer rights to pursue legal and equitable relief and to determine disciplinary actions which would not necessarily be imposed equally; removing warning notices to workers from the grievance procedure; and replacing a prohibition on changes in pre-contract working conditions in the maintenance of standards clause with a provision permitting the companies to change them "for legitimate business reasons." Negotiator Church advised that the absence of an explicit response to a union proposal meant its rejection.

The following day contract extensions were once again

discussed, with the union negotiators making it clear that an employer response on economic issues was a necessary precondition to an extension. They stated that while the bargaining committee could make a recommendation about a contract extension, only the affected workers could actually decide. They also proposed daily negotiations, a suggestion rejected by the grower negotiators on the grounds that their schedules could not accommodate it.

In response to the employers' earlier requests, the union also presented information about some of its funds. Since the Juan de la Cruz Farmworkers Pension Plan was not yet operative (approval of the plan by the Internal Revenue Service was pending), and reliable actuarial data about farmworkers was not available, concrete figures about the actual or projected cost of that plan's benefits could not be provided. Regarding the Robert F. Kennedy Farm Workers Medical Plan, a self-insured trust fund, the union negotiates the cost of the plan, not the benefits; benefits are determined by the plan's board of trustees, jointly representative of both the industry and the union, depending upon the available money. The cost of possible benefit improvements had not been calculated. Thus, though they explained their general goals, plan representatives were

21/ See the transcript of the session, RX 12a, pp. 4-47 for 1/12/79; the testimony of Frank Denison, RT XV, 4-115; and documents distributed or made available, GCX 56(a)-(f) (Juan de la Cruz Farmworkers Pension Plan), GCX 57(a)-(i) (Robert F. Kennedy Farm Workers Medical Plan), and GCX 58(a)-(c) (Martin Luther King Farm Workers Fund).

unable to state precisely what benefits would be provided with the requested increase in employer contributions, the amount of which (based upon a percentage) could not even be calculated without knowing what the final wage package would contain. Questions were answered about both plans, and documents were distributed or made available. Nothing was asked or reported about Citizenship Participation Day (a paid holiday in UFW contracts, payment for which is remitted, upon authorization by the worker, to a union committee) or the Martin Luther King Farm Workers Fund (a charitable trust to provide educational and welfare services to farmworkers and their families), although documents about the latter were available at the meeting. No further information about any of the funds was provided during negotiations, including those later resulting in contracts.

After a review of all the evidence, I conclude as a matter of fact that the union provided all the requested information about the pension and medical plans that was available, except the cost of maintaining the current medical benefits in the new contract period and a detailed breakdown of medical plan receipts and expenses for 1976 (1978 figures being unavailable at the time). Regarding the Martin Luther King Fund, documents, which contained some information requested later by the employers, were made available. The union refused to provide information about receipts and expenditures of its

Citizenship Participation Day funds.[22/]

The remainder of the January 12th meeting was devoted to a discussion of the employers' language proposal of the preceding day. Church also protested the publication of the union's economic demands as a paid advertisement (RX 3) in La Voz, a Mexicali newspaper of general circulation. To his accusation that the union had violated the agreement not to conduct negotiations in the press, Marshall Ganz responded that the ad was intended to inform its members of the union's proposal, not to comment on the status or conduct of the negotiations. At the end of the meeting Church advised the union that there would be no response to its economic proposal until the week of January 22nd.

The Employers1 7 Per Cent Offer. With the exception of the employers' proposal on the last day, nothing substantive occurred at the January 16, 17, and 18 meetings in Los Angeles. The union was represented by only David Burciaga and one other person, a situation which evoked mild protest.

22/

These findings are chronologically premature, in the sense that some employer information requests were not made until later. See, e.g., RX 6 (letter dated 2/19/79 containing, inter alia, the first request for specific information about _ medical plan receipts and expenditures and the MLK and CPD funds; by omission, the same letter suggests that information requests about the pension plan had been satisfied). Oral requests continued to be made at the meetings. See, e.g., RX 12a, pp.7-10 for 1/16/79; RX 12b, p.12 for 2/28/79.

The union insisted it would have nothing new to offer until it received a response on economics. The employers announced that their economic counterproposal would comply with the wage and price standards prescribed by President Carter[23/] until they were told by the government that the guidelines were not applicable. The parties argued about the applicability of the standards, and the employers repeatedly urged the union to agree to the inclusion in negotiations of representatives from the Council on Wage and Price Stability (CWPS), and the Federal Mediation and Conciliation Service (FMCS).

Toward the end of the January 18th meeting the employers presented their economic proposal (GCX 13). It consisted of two pages, and in general terms proposed an annual total pay increase (for wages, hours, fringe benefits, and working conditions) of seven per cent in each of three years, to be allocated as the union determined. It also contained the following paragraph:

> The companies have been informed by the United States Government that the Standards issued by the Council on Wage Price Stability and printed in the Federal Register on December 28, 1978, are applicable to these negotiations and believe that the above proposal is consistent with these Standards and is fair to all parties.

23/ The standards were promulgated in Executive Order 12092, and detailed in 43 Fed. Reg. 60772 (28 Dec. 1978) {GCX 4).

The parties discussed when the union's proposal on local issues would be forthcoming, and scheduled meetings in San Diego for the following week.

On January 23, the first meeting after the strike began opened with an accusation by Andrew Church that the union by its tactics had destroyed the trust that had been developed between it and the industry. Although union publicity and the absence of the bargaining committee the previous week were alluded to, picket line violence was not mentioned. After that discussion, in response to a telegram (RX 7) it had received from the company attorneys, the union negotiators indicated their willingness to meet continuously and asked for clarification of the proposal that the negotiations be open to the public. Although it was not stated or implied in the wire, after a caucus the employers announced that the proposal of continuous negotiations open to the public was conditioned upon the union's accepting the participation of a FMCS mediator.

The discussion turned once again to the subject of the information requests of both sides. Acreage figures were supplied by Church for most of the Salinas companies, and the union noted the absence of much information, particularly from the Imperial Valley companies. The companies reiterated their request for information about the various union funds.

When the union sought clarification of the employers' economic proposal, the growers insisted that they needed the assistance of someone from the government to provide information about the operation of the wage guidelines, and they could not

get that assistance without a joint request. They told the union that even though the guidelines were voluntary, there were sanctions for noncompliance.[24/] They also took the position that the position that the corresponding limits on price increases could not be discussed because of possible anti-trust law violations. Finally, at the end of the meeting, the union agreed to issue a joint invitation to a CWPS representative.

24/

The only mention of sanctions appears in 44 Fed.Reg. 1229 (GCX 3), which indicates that companies found to be in non-compliance will be ineligible for federal contracts anticipated to exceed five million dollars. The general counsel introduced uncontroverted evidence that no respondent has had federal contracts even remotely approaching that amount. The only evidence of any company at the table possibly being affected concerned Sun Harvest {not a respondent), through its parent company, United Brands. Andrew Church testified to the effect that he had been advised by a government official/ whose position he did not know, that government contracts with another United Brands subsidiary might be in jeopardy if Sun Harvest entered into a collective bargaining agreement which violated the guidelines. Stronger evidence was presumably available to the respondents .from Sun Harvest attorney Joe Herman, who was described as a major instigator of the 7 per cent proposal and the authority among the negotiators on the subject of the guidelines, for example, or from Harold Bradshaw, executive vice-president of Sun Harvest at the time of the negotiations, who testified about other matters. Under these circumstances the hearsay evidence offered by the respondents should be viewed with distrust. Evidence Code, § 412.

The following morning Ann Smith announced that the union had reconsidered and was retracting its agreement, because it was incumbent upon the employers themselves to explain their own proposal. After a lengthy discussion basically repeating the parties' positions of the previous day, the union presented a proposal (GCX 14} on local issues and crop supplements.

Later in the day, in response to the union's insistence on a more concrete proposal, the employers presented a two-page handwritten document (supplemented the next-day) translating its general 7 per cent offer into dollars and cents figures -- computations of 7 per cent increases over the expired contract rates for each of three years.[25/] The following day they also offered figures for increased fringe benefits, amounting to 7 per cent per year over the total amounts previously contributed to the medical and pension plans and the MLK Fund, to be distributed among those funds as the union chose. During the ensuing discussion the growers made it clear that their counter-proposal was essentially complete and they were rejecting the remaining terms of the union's economic proposal, such as the moratorium on the less of jobs through mechanization, additional paid holidays, improved vacation, overtime, reporting and standby pay, cost of living adjustments, etc. At this meeting the union also clarified its position on crop supplements. Meetings were scheduled for San Diego the following week.

25/ This and the following days' proposals were not introduced into evidence.

The meeting of January 30th opened with grower complains about picket line violence the previous day. The union's strike tactics were criticized and more serious efforts to negotiate were urged, but no one suggested that any growers might refuse to continue negotiations. Pursuant to an agenda suggestion of the employers, there ensued a substantive discussion of the language proposals of both parties which continued for the remainder of the week, with both sides making some concessions.[26/] Some agreements were reached, but the parties remained far apart on basic items. At the end of the week, in response to employer demands for a reply on the economic issues, the union orally modified its economic proposal in minor aspects having to do with overtime, the scheduling of CPD, jury duty and witness pay, and travel pay.

The first of the following week's meetings in El Centro began with an employer rejection of the union's economic counter-proposal as "an insult." The union insisted that it was still awaiting a serious economic proposal from the growers, and again rejected the suggestion that a FMCS mediator be called in. The meeting adjourned quickly for both sides to put their current positions in writing. The next morning, February 7 documents embodying each side's changes to date[27/] were exchanged and discussed. That day the parties also once

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26/ See, e.g., RX 25 (employer counterproposal of 2/1/79).

27/ GCX 15 (union proposal); GCX 17 (employer proposal).

again reviewed the gaps in the information supplied pursuant to each other's requests. Harold Bradshaw presented the cost implications for Sun Harvest of the union's economic proposal, Andrew Church announced that the companies were prepared to discuss health and safety issues, and the union submitted a proposal (GCX 16) for job descriptions. Health and safety provisions were the topic of the next three group meetings held on February 8, 19, and 20.[28/] The discussions were fruitful, 2V and resulted in compromises by both sides.[29/]

Declaration of Impasse. At the next meeting on February 21, after having ascertained that the union had no new proposals to make, the company attorneys presented a document (GCX 18) in the form of a new master contract and signed it at the bargaining table, a gesture subsequently used in the growers' public relations campaign, discussed below. On the crucial subject of wages, the proposal contained a slight modification of the previous 7 per cent offer: the total increase of

28/ Meetings scheduled for the week of February 11 were cancelled by the union because of the strike-related death on February 10 of union member Rufino Contreras. The union mot with Sun Harvest apart from the rest of the companies on February 10, and again at the end of the week.

29/ In addition to the transcripts of the meetings, RX 125, see GCX 21 and 22 (union proposals), and RX 26 and 27 (grower proposals).

21 per cent over three years was "front-loaded" for workers in job classifications where the previous contract rate had been less than $4.00 per hour; those workers were to receive approximately 11 per cent in the first year and approximately 3 per cent in the second year. For some piece rate work the offered rates were slightly less than those proposed originally. Contributions to the medical, pension and MLK funds were raised slightly; the growers offered an increase of 5-1/2ø (instead of 2.55ø} for all three funds in the first year, with an additional 5ø in each of the following two years. The employers offered no improvements in vacations, holidays, overtime, or the other economic provisions. They maintained that the proposal still complied with the presidential guidelines.

Contrary to their position at the table, various grower witnesses testified at the hearing that they did not think the guidelines were controlling. Only Ron Hull, representing one of the trade associations, even went as far as to say that at the time they did not know whether the guidelines applied. Andrew Church and the other company representatives who were asked testified that the offer of 7 per cent was only an opening offer, never intended to be final. Harold Bradshaw of Sun Harvest testified that the offer had no relationship to his company's ability to pay. Church testified that the modified offer in this last proposal was intended to signal the companies' willingness to increase their package.

With respect to language, the proposed contract did not otheriwse deviate from the companies' February 7th proposal (GCX 17) except to incorporate the health and safety modifications the companies had accepted. The growers rejected the union's recently submitted proposals for local supplements (except for leaving open special health and safety problems and seniority issues) and job descriptions. The meeting ajourned after a brief discussion of the proposal, which the companies implied would be their final offer in the absence of a "meaningful" response by the union.

Although the general policy was for as many company representatives (apart from the attorneys) as possible to attend the sessions, Joe Colace, Jr., was the only one who attended the next and final meeting in El Centro on February 28. The companies had already decided not to change their position unless they received a "significant" offer from the union. (Harold Rochester of Gourmet Harvesting & Packing testified that he had already decided, prior to the final session, that the parties were at impasse.)

After detailing its objections to the employers' last proposal and stating that its response was being given in that context, the union presented a counterproposal (GCX 6). Language provisions and the one-year contract term remained unchanged, but the union reduced, in varying but small amounts generally, 5 per cent or less), most of its wage demands. It also modified previous demands for overtime pay, guaranteed

minimum workdays or workweeks, standby time and travel pay for piece rate workers, increased rest periods, holidays, vacation accumulation, jury and witness pay, an apprenticeship program, and improved housing .and food in labor camps. It accepted the employers' offer for MLK Fund contributions, but did not alter its position on contributions to the health and pension plans.[30/]

After a recess during which the attorneys contacted some of the companies, Andrew Church announced that the employers rejected the union's new proposal and an impasse had been reached. No one from the union disputed his 'statement. The meeting was adjourned after arrangements were made to contact each other if either side changed its position.

In addition to the basic economic package, the parties were far apart on—and indeed, had hardly discussed—the major non-economic issues such as union security, hiring, seniority, and mechanization. Andrew Church testified that when impasse

30/ The union considered this new proposal significant, because it had made the identical proposal to Sun Harvest (in their separate negotiations) in response to a Sun Harvest proposal" which indicated a greater willingness to move than had been seen from the group. (It was willing to return to the old contract language and forego the retrogressive language demands the group had made.) Sun Harvest had, however, rejected the proposal and rejoined the group.

was declared he had authority to move on all economic and non-economic issues, though on some, particularly union security, it would have been at the expense of the group's staying together. He also said that mechanization and hiring were two areas the employers were particularly interested in discussing. Ann Smith also testified that union negotiator's had authority to move in all areas, although they would have needed membership approval to totally eliminate hiring through the union.

The June 1979 resumption of negotiations with the Salinas-based companies and the Hubbard Company was triggered by a new proposal from the growers; it ultimately led to contracts with all of the participants except California Coastal Farms, O.P. Murphy, and J.J. Crosetti Company.[31/] Around the same time the other Imperial Valley companies (Colace Brothers, Gourmet Harvesting & Packing, Lu-Ette Farms, C.J.

31/

J.J. Crosetti & Company terminated its farming operations on July 24, 1979, the end of its 1979 harvest. No evidence indicates that it participated in the resumed negotiations. For the companies that signed new contracts, see notes 3 and 5, above.

The substance of the resumed negotiations was not explored in detail; however, the companies raised their offer for the general field and harvest rate (the minimum hourly rate) from $4.12 in the first year to $4.35, an increase of 17-1/2% over the old contract rate. The rate finally agreed upon was 35.00. See GCX 28, the new agreement between Sun Harvest and the UFW, for this and other provisions.

Maggio, Joe Maggio, Martori Brothers Distributors, Mario Saikhon, and Vessey) advised the union that while they were available to meet, they were not joining in the new Salinas proposal or negotiations, but remained committed to the employer proposal of February 21.[32/] At the resulting August meeting it was quickly determined that neither side had any new proposals to make, and the meeting terminated. There is no evidence in the record of further contact between the parties.

CONDUCT AWAY FROM THE TABLE

Strike Activity. The union's strike against selected companies during negotiations and related violence are cited as evidence that the union was not bargaining in good faith, and as demonstrating that the companies, by continuing to bargain, were in good faith. The first strike against a company at the bargaining table began on January 19, the day after the employers made their 7 per cent offer, and more companies were

32/ See GCX 25. In a previous exchange of letters the union had taken the position that there was no legitimate impasse and that not all mandatory subjects of bargaining had been discussed. See GCX 23, 24.

struck in the ensuing days and weeks.[33/] While the union's bargaining committee, based upon its evaluation of a lack of progress in the negotiations, recommended that the strike take place, it did not participate in strike coordination. Marshall Ganz, the strike coordinator, testified that the purpose of the strike was to effectuate good faith bargaining by exerting economic pressure on the employers.

Evidence was introduced about several instances of strike-related violence in the period of almost six weeks between the beginning of the strike and the declaration of impasse.[34/] One or more of the witnesses who described them were virtually always present at the fields being harvested,

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33/

Strikes were initiated on the following dates against the specified companies, respondents at the time of the hearing: January 19, California Coastal Farms; January 20, Vessey & Company; January 22, Mario Saikhon, Inc.; January 25, Lu-Ette Farms; January 26, Growers Exchange; January 29, Colace Brothers; February 9, Admiral Packing; February 21, Gourmet Harvesting & Packing. Carl Joseph Maggio, Martori Brothers, O.P. Murphy, and J.J. Crosetti (at least its Imperial Valley operations) were not struck. The timing of any strikes against companies no longer respondents at the time of the hearing does not appear in the record.

34/

Consideration of strike misconduct is limited to that period since the issue is its effect upon the negotiations. Some of the incidents are the subject of other unfair labor practice charges, not consolidated with the ones herein. Because other charges are pending and the subject is of limited relevance to the bad faith bargaining charges, evidence at this hearing was more limited than it might otherwise have been.

where the greatest strike activity occurred,[35/] so it is safe to assume that no major incidents during that period went unreported. The number of people picketing at any one time increased from 25 to 30 at the beginning of the strike to 800 or 850 at the end of January; in February they averaged 400 to 500, and peaked at 1600 to 1800.

On January 25 a group of pickets left the line and entered a Vessey & Company field where they hurled rocks and verbal abuse at people working, who were taken from the field. No one was reported injured. On the morning of January 29 a group of pickets blocked egress from a staging area at Vessey & Co., where vehicles were attempting to leave for the fields. Richard King, president of the Joe Maggio ranch committee and a strike captain, was identified as among them. The group refused to obey orders to disperse by law enforcement officers. Some rocks were thrown. Later in the afternoon some pickets left a picket line of 600 to 800 to intercept a caravan of busses, carrying strikebreakers, and

35/ The witnesses who testified about the incidents were: company principals Jon Vessey (Vessey & Co.), Joe Colace, Jr. (Colace Bros.) and Harold Rochester {Gourmet Harvesting & Packing); David Lee Wells, controller at Joe Maggio, Inc.; and Imperial Valley County Sheriff Oren Fox and Lt. Ted Whitmer, the latter in charge of the strike detail of the Sheriff's office. Company representatives were frequently present in one another's fields because the struck companies joined forces to conduct operations. The details of this arrangement were not explored.

other company vehicles moving through a field. No one said how many entered the field, but Lt. Whitmer reported that though his men could not stop them, the line of officers was not broken. The vehicles and some deputies were stoned, and four or five people in the vehicles were injured. One truck was set on fire, and other vehicles were severely damaged. (David Lee Wells said that almost all of the approximately 40 vehicles were damaged, but more credence is given to the testimony of Lt. Whitmer, who was more disinterested. He placed the total number of vehicles in the field—not all of them damaged—at about 20.)[36/]

Over a six-hour period on February 4 at Joe Maggio, Inc., Lt. Whitmer Inc., Lt. Whitmer observed 20 or 25 rocks and dirt clods being thrown at people and trucks in a field from a line of 400 to 500 pickets. No injuries or damage were reported. At a Sun Harvest field on February 10 a large group of pickets left the line of 400 or 500 and crossed one field in the direction of another field where people were working. They were repulsed by tear gas, but not before some vehicles were damaged. (The cause of this disturbance apparently was alleviated when some pickets were conveyed in Sheriff's vehicles to satisfy their" curiosity about who was working in the field; they reportedly had earlier sought but been refused permission to enter the field.)

Windows on Gourmet Harvesting busses were broken and potential replacement workers were verbally threatened, but not

[36/] Films of the January 29 incidents taken by Wells (RX 11a-c), were shown to absent growers.

physically harmed, at a pick-up point in Calexico on February 16, according to Harold Rochester. He could not identify the attackers, who came not from the picket line that was present but from a car caravan that arrived as the busses were being loaded. On February 21 at a Joe Maggio field another mass trespassing and rock throwing incident occurred. Although people working in the field (who included the mother and an aunt of Joe Colace, Jr.) were frightened, no one was reported hurt.

In addition to these more serious incidents, lower level rock throwing, verbal harrassment, and tire flattening occurred almost daily. Harold Rochester participated in the trespass arrest of seven pickets who entered a field and verbally threatened people working there.[37/]

Grower witnesses believed that the UFW was responsible for the violence. However, the participants were generally identified only as picketers; they were frequently seen coming from union picket lines and, on one or two occasions,

37/ It is evident from Sheriff Fox's testimony that actions of the growers contributed to tensions on the picket lines. He alluded to provocation by inadequately trained private security guards, by dogs being exercised in attack methods near picket lines, and by company foremen and supervisors being armed and arms being discovered in a Mario Saikhon labor camp. Tensions were exacerbated by the employment of strikebreakers and the February 10 death of Rufino Contreras. While unlawful activity cannot be condoned, considering the size of the daily picket lines and the intensity of emotions engendered by the strike, it is remarkable that injury to people or property was not more widespread.

carrying UFW flags. The familiarity of the witnesses with many union leaders, workers as well as union officials and staff, was apparent from their testimony as a whole, yet they were able to identify only one participant by name or as in a position of union leadership (and he was seen participating in a mass blockade of vehicles, not throwing rocks or damaging property). The only involvement of any UFW official or staff member was described by Sheriff Fox, who testified that as tension mounted at a Vessey field on January 27, Marshall Ganz expressed concern about it to him, and then spoke at length with picket captains and others. No violence occurred that day.[38/]

The three company principals who testified about picket line violence (Vessey, Colace and Rochester) also testified

38/ George Moses, a member at the time of the Sun Harvest ranch committee and the bargaining committee, testified that late in February he was criticized by Jose Morales, whom he identified as a Sun Harvest strike coordinator, for not having the people he represented participate in the "caravans." Moses said this occurred the same day as a disturbance at Sun Harvest, and Morales was referring to that disturbance. However, the details of Morales' union position and his exchange with Moses were not explored, and the entire description of the incident is too vague to warrant any conclusion that union leadership advocated participation in violence.

about its subjective effect upon them and their approach to the negotiations. In sum, Colace and Rochester said that the fear and bitterness it engendered made it difficult to face the table representatives of the union they considered responsible. Vessey stressed his conclusion that the union was not serious about negotiations, saying he was "dismayed" that Marshall Ganz, whom he considered the top negotiator, was "placing more and more emphasis on—on organizing the strikes and violence than . . . negotiating."

However, no concrete connection was made between the violence and the way in which the growers conducted negotiations. No one mentioned any alteration in his role or instructions to his bargaining representatives, and all three said that they continued to desire a contract. The union was not told that the growers would break off negotiations because of the violence or that they conditioned their continued participation upon its cessation. Strike-related violence was mentioned at the bargaining table only twice. On January 30 the employers complained about the previous day's incidents at Vessey & Co. and urged more serious efforts at negotiations. After union representatives responded, the discussion turned to other topics. The meeting on February 19 opened with Andrew Church relaying the growers' condolences for the death of Rufino Contreras.

In fact, the major impact on the negotiations appears to have been made, not by the violence, but by the strike itself When he was asked at the hearing whether there were any

discussions about calling off the bargaining sessions until violence had stopped, Andrew Church responded that refusing to bargain was discussed right after the strike started. He described the employers as "dumbfounded" by the strike, and said that within a week the eight struck companies wanted to pull out of the negotiations. (The most serious incidents of violence occurred from ten days to over a month after the strike began.) Differences in strategy developed, and in deference to the struck companies, the Salinas-based companies refrained from making some concessions.

Union Publications. The respondents contend that the publication of a paid advertisement in La Voz, a Mexicali newspaper of general circulation, and the distribution of various leaflets by the union are indications of its bad faith bargaining. As mentioned above, the parties had agreed that the negotiations would not be publicized.[39/]

The La Voz ad (RX 3), published on January 12, 1979, is headlined "Declaration to the Members of the United Farm Workers of America, AFL-CIO", and consists of a message from union

39/ The terms of the oral agreement are vague. Andrew Church and Ron Hull characterized it as an agreement not to negotiate with the contract in the media. One-time bargaining committee member George Moses said it was explained in terms of its being in the best interest of the negotiations to keep them private instead of going to the press. Ann Smith said that there was an agreement that neither side was going to comment to the press on the progress of the negotiations.

president Chavez, a summary of the union's economic demands, and a plan of action. Marshall Ganz testified that its purpose was to inform the entire union membership, all or most of whom read the newspaper, of the economic proposal that had been made on January 5. The ad was the subject of a brief exchange at the January 12 negotiations.

As it did with the ad, the union acknowledged the leaflets as its publications. As far as the record reveals, they were distributed to union members but not to the press or general public. The first of the leaflets (RX 1), distributed around January 4, 1979, accused the growers of trying to divide the workers with threats, bribes and promises. In response to Church's complaint about the leaflet at the January 11 meeting, David Burciaga said it was aimed at certain companies that were waging decertification campaigns. Those companies were never identified, nor was it shown that the leaflet's distribution was limited to their employees.

The remaining leaflets (RX 32a-f, h) urge support for the strike and were distributed over a nine or ten week period after it began. The respondents object to those which characterize the death of Rufino Contreras as murder and charge the growers with responsibility. (The accusation is most explicit in RX 32a, c, and 3; also see RX 32b and h.) Homicide 'charges were filed against the three Mario Saikhon foremen named in the leaflets, and were dismissed sometime in May.

The Growers' Public Relations Campaign. The general

counsel cites an advertising campaign by the employers as further evidence of their failure to bargain in good faith. The Committee for Fair Negotiations between Growers and Workers was formed in late January, 1979. Those involved in its formation included Jon Vessey, Mario Saikhon, Bill Daniels of Lu-Ette Farms, Mike Storm of Veg-Pak, Dick Thornton, executive vice-president of the Grower-Shipper Vegetable Association, and Ron Hull, general manager of the Imperial Valley Vegetable Growers Association. If there were more, they too were representatives of the growers involved in the negotiations or their trade associations.

The co-chairpersons of the committee were originally Jon Vassey and Alice Colace, wife of one of the Colace Brothers' partners; they were replaced after the harvest moved north by Herb Fleming of Admiral Packing and Hal Moller of Growers Exchange. Others who attended some of the committee meetings included Walter Bryggman of California Coastal Farms, Joe Colace, Jr., Lael Lee and Ed Stoll of Growers Exchange, and Carl Maggio. The ads published by the committee were reviewed by the growers' attorneys. Although details of the financing of the committee's activities were not explored, the testimony of Harden Farms president Everett Hillard, suggests that it came from the growners. Contrary to the contention of counsel,[40/]

40/ See the post-hearing brief filed on behalf of Colace Brothers, et al., p. 43.

I find that the evidence amply supports the conclusion that the committee was the agent of the respondent companies.

With the assistance of two public relations firms, from January 22 to April 24, 1979, the committee prepared and published at least nineteen advertisements, including duplicates that appeared on different dates in different newspapers (see OCX 5, 39-55; RX 10). Three English language ads were placed in major California and national newspapers; sixteen ads in Spanish were published in La Voz and other newspapers that circulate around the California border. Reprints of the Spanish language ads were distributed to people crossing into the United States early in the morning, mostly farmworkers employed by Imperial Valley growers. The English language ads were, at least in general, intended to reach the general public, but the Spanish language ads were directed at the employees of the bargaining companies. 11 While Ron Hull of the Imperial Valley Vegetable Growers Association testified that the ads were informational, intended, to correct misinformation disseminated by the union, an examination of them reveals that they went far beyond merely stating the employers' side of their differences with the union. In general, the ads urge the workers to press the union to accept the employers' offer. In an ad published January 31 (GX 41), the exhortation is explicit and repeated:

> Do you know that you can have (an) annual salary increase of 7%...22-1/2% during the following three years from tomorrow, if you ask the Union to accept our offer?
>
> . . .
>
> Ask the Union, why don't they want to sign the contract and let you return to work immediately!
>
> . . .
>
> The Union can refuse to sign the contract for a long time...8 or 10 weeks or more, unless you tell the[m] to sign it now.
>
> And then, tell the Union that you want them to sign the contract right away so that you can return to work. . . . (emphasis added)

In a cartoon in another ad (GCX 49), workers are portrayed asking Chavez, "Why don't you sign the contract?" under the heading, "Caesar, why are you pretending you are deaf?"

The ads seek to give the impression that the companies are more concerned than the union with the welfare of the workers. One ad (GCX 40) is headlined, "WE WANT TO LISTEN TO YOU," and after each of a list of demands, repeats "WE

WILL LISTEN TO YOU!" Another (GCX 42), after suggesting ulterior motives for the strike, states, "We are for our workers." See also GCX 41, 46, 47, 49, and 53.

One ad (GCX 45) explicitly accuses the union of using intimidation and terrorism to enforce the strike, and Chavez of lying to the workers. Others accuse the union of misusing or hoarding funds (GCX 42, 46, 47) and of rendering "deficient services" (GCX 42).

The union's wage demands are characterized as "so exaggerated that [they] cannot be taken seriously" and "exorbitantly and excessively inflationary" (GCX 42); "ridiculous" (GCX 45); "excessive and ridiculous" (GCX 36); and "so absurd and inflationary that it is difficult to take [them] seriously" (GCX 55). The growers, on the other hand, are offering "the highest possible raise, within the guidelines established by President Carter"(GCX 42; also see GCX 55). This theme is repeated in the English language ads (GCX 5, 39).

At times it is difficult to tell which came first, the growers' negotiating tactics or their public relations concerns. Although on January 12 they rejected a union request for continuous meetings, on January 22, two days after the growers sent a similar wire to the union, an ad appeared in which they publicly proposed continuous negotiations open to the public (see GCX 40). At the next day's bargaining session, when the

union agreed to continuous meetings and expressed interest in their being public, the employers conditioned their proposal upon the union's also agreeing to the participation of a FMCS mediator, a condition that the union rejected. A subsequent ad portrays the union as being unwilling to open the meetings, without mentioning the employers' condition (GCX 41).

After the February 21 session when the attorneys signed the proposal at the bargaining table, a series of ads appeared that referred to the employers as having already "signed the contract" and called for the union to sign it also (GCX 45, 47, 49). The ads referring to the presidential guidelines, have already been mentioned. Andrew Church testified that the public stance of being against inflation was one reason for the 7 per cent offer, and that the ads reflected the public relations use that had been envisioned.

Changes in Employment Conditions. Two respondents, Gourmet Harvesting & Packing and Carl Joseph Maggio, Inc., are charged with having unilaterally changed wages. C.J. Maggio is also accused of having failed to recall its seniority workers. Regarding Gourmet, the parties stipulated that:

> At the beginning of the season in mid-January, 1979, Gourmet Harvesting paid its asparagus pickers $3.70 an hour. For the weeks ending February 18th and February 25th, Gourmet Harvesting paid its asparagus pickers by piece rate at $2.03 per picked box. On February 26th and 27th, the piece rate was increased to $2.22 per picked box. On February 28th, the piece rate was raised to $2.35 per picked box. Beginning March 12th and ending March 16th, Gourmet Harvesting paid some of its asparagus pickers $4.00 per hour.

Regarding C.J. Maggie's wage increase, the parties stipulated that at the end of the 1978 seasons the piece rates for lettuce and carrots were, respectively, 57 and 32 cents, and at the beginning of the 1979 season the rates were 61 and 34 cents, respectively. In their last proposal before declaring impasse, the employers had offered a lettuce piece rate of 61 cents per carton; the proposal does not contain a carrot piece rate for C.J. Maggio, though 34 cents is offered as the rate for other companies.

Regarding C.J. Maggio's method of recalling workers, the parties stipulated that the company did not recall any seniority workers at the beginning of the lettuce season in April in King City. Two employees also testified that they did not receive notice of the season's beginning from the company as they had in previous years. Discovering through other means that work had begun, they applied for jobs but there was a delay of nine days to two weeks before they were rehired.

According to company controller William Despain, C.J. Maggio did not recall its workers as usual because "we considered ourselves struck," and sending out notices would have meant notifying workers striking against Joe Maggio in the Imperial Valley of the date of operations of C.J. Maggio in the Salinas Valley, and might have engendered violence there.

(People working at Joe Maggio in spite of the strike were verbally notified of the availability of work in the north.) The union struck Joe Maggio, but notified its members that there was no strike against Carl Joseph Maggio.

Before negotiations began C.J. Maggio and Joe Maggio had been merged at different times into Maggio, Inc. The union was not advised of the mergers. In support of his contention that the companies are one, Despain testified (and RX 36 corroborates) that hours worked by employees in either operation are combined for vacation benefit purposes. However, the agreement to that effect was reached with the union prior to the mergers, and otherwise each entity had separate contracts with the union. Moreover, David Lee Wells, controller for Joe Maggio, Inc., testified that though they are commonly owned and their operations overlap in some respects, the two entities are operated separately. Considered as a whole, the evidence does not support a finding that respondent Carl Joseph Maggio justifiably believed its seniority workers were on strike.

While the general counsel elicited evidence that some respondents, now dismissed, did not negotiate with the union about changes, no such evidence was elicited about either Gourmet or C.J. Maggio. Thus, there is no evidence that either company instituted its changes unilaterally.

ANALYSIS AND CONCLUSIONS

ALRA section 1153(e), modeled after section 8{a)(5) of the NLRA, states that it is an unfair labor practice for an agricultural employer "[t]o refuse to bargain collectively in good faith" with the certified bargaining representative of its agricultural employees. In language essentially identical to NLRA section 8(d), section 1155.2(a) of the Act defines good faith bargaining:

> . . . to bargain collectively in good faith is the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees 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, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Conduct which violates section 1153(e) violates section 1153(a) as well. See, e.g., Adam Dairy, 4 ALRB No. 24 (1978); O.P. Murphy Produce Co., Inc., 5 ALRB No. 63 (1979).

As in the recent case of P.P. Murphy, supra, the respondents in this case did not refuse to meet; on the contrary, there were numerous meetings, some substantive discussions of the issues, and a few areas of agreement. But the Act requires more than merely meeting with the other side and going through the motions of negotiation. Id. at 2-3. The Board

went on to quote with approval from an early NLRB case, Atlas Mills, Inc., 3 NLRB 10, 21, 1 LRRM 60 (1937);

> [I]f the obligation of the Act is to produce more than a series of empty discussions, bargaining must mean more than mere negotiation. It must mean negotiation with a bona fide intent to reach an agreement if agreement is possible. Id. at 3.

The parties are obliged to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement, and a sincere effort must be made to reach a common ground. Ibid.; see also, AS-H-NE Farms, Inc., 6 ALRB Mo. 9, p.2 (1980); Montebello Rose Co., Inc., 5 ALRB No, 64, p.6 (1979).

The determination of the respondent's state of mind is not easy. Since an admission of intent not to reach agreement is rarely found, the charged party's motive must of necessity be ascertained from circumstantial evidence. Continental Insurance Co. v. NLRB, 495 F.2d 44, 48, 86 LRRM 2003, 2005 (2d Cir. 1974); see O.P. Murphy, supra, p.5, n.5. Thus, the totality of the parties' conduct, both at and away from the bargaining table must be considered. Montebello Rose, supra at 7; also see O.P. Murphy, supra at 4, and citations there. The facts must be treated as an interrelated whole, for some conduct, innocuous in and of itself, may support an inference of bad faith when examined in light of all the evidence. Montebello Rose, supra at 7, citing Continental Insurance Co. v. NLRB, supra. An examination of the record in this case leads inescapably to the conclusion that the respondents were not bargaining in good faith,

THE EMPLOYERS' CONDUCT

Surface Bargaining. Viewed with the benefit of hindsight, a number of events indicate that the employers were engaging in mere surface bargaining prior to their declaration of impasse. Early in the negotiations they insisted upon receiving a complete proposal from the union before they made any response.[42/] However, uncontroverted evidence indicates that the preparation of the union's economic proposal was delayed because of the employers' slowness in providing requested information. The proposal was partially based upon economic studies conducted by the union, and several parts of the studies utilized information most readily available to the companies. The information was first requested in late September, and first provided (but only partially) in mid-December.

41/ The Board explicitly acknowledged the role of hindsight in discerning bad faith bargaining in Montebello Rose Co., Inc., supra at 14-15.

42/ The respondents did not pursue this position as far as they might have; they submitted their proposals .before they-received the union's proposals on job descriptions and local issues.

As a consequence, the union's proposal was not submitted until January 5, and the employers' first response, their language counterproposal, was not on the table until January 11. In it the employers not only rejected all the language changes proposed by the union, but also proposed eliminating many rights acquired by the union in the old contract.

Neither the insistence upon a complete proposal, nor the delay in providing information,[43/] nor the substance of the respondents' proposal, standing alone, would "necessarily indicate bad faith. But combined, they create doubts about the respondents' motives which are confirmed by subsequent events. Cf. O.P. Murphy, Supra, pp. 8-10. Prominent among the subsequent events is the respondent's adherence to the wage and price guidelines.

The respondents do not contend that they were actually required by the Wage and Price Standards to limit their economic offer to 7 per cent per annum.[44/] However, during the

43/ The general counsel does not contend, and I do not conclude, that the respondents ultimately failed to fulfill their obligation to provide relevant information.

44/ Some respondents raised the guidelines as an affirmative defense in their answer (see GCX 1-K), but supplied no supporting evidence or legal argument. The position that the guidelines were controlling is untenable, first and foremost, because they were voluntary. See 43 Fed.Reg. 60772 (GCX 4). Although sanctions appear in 44 Fed.Reg. 1229 (GCX 3), their possible application to the companies at the table is not [continued]

negotiations they consistently maintained that the guidelines were applicable. An explicit statement to that effect was contained in their first offer, in which they generally proposed a 7 per cent increase to be allocated as the union determined. In their second offer, they priced out a 7 per cent increase across the board. In their third and last offer before declaring impasse, the previous offer for some job classifications was "frontloaded," but the total for the first two years was still 14 per cent, and, for three years, 21 per cent. Notwithstanding negotiator Church's testimony about the growers' intent, a signal that they were to increase their package cannot reasonably be implied in this last offer. On the contrary, the opposite inference was warranted, for the second and third year percentage totals were the same, and the

44/ [continued]

supportable. See note 24, above. Even if they did apply to Sun Harvest, the other companies, including all the respondents here, were free to separate themselves from Sun Harvest at any time, and potential consequences to it cannot justify their taking a similar position to the point of impasse. In any event, a wage agreement that exceeds the standards does not violate federal law. IBEW, 102 LRRM 1673 (1979) {advice memo of NLRB general counsel).

Apart from being voluntary, the guidelines are not applicable to employees earning $4.00 or less per hour (43 Fed.Reg. 60772, 60775, $705B-8), or non-residents of the United States (Id. at 60776, §705D). A large (but unspecified) proportion of the respondents' employees falls into one or both categories, a fact unacknowledged in the employer proposals.

increased first-year rates were only for job categories previously earning less than $4.00 per hour, which were not even arguably covered by the guidelines. Moreover, the offer was accompanied by a declaration that the employers still considered it to be within the guidelines.

The adherence to the standards was firmly embodied not only in the proposals and statements made at the table, but in the employers' public relations campaign as well. In ads directed to both employees and the general public, the growers maintained that they were offering the highest possible raise permitted by the guidelines. In fact, as Church testified, the public image of their efforts to combat inflation as expressed in these ads was a significant factor in determining the offers they made. The growers' public relations efforts thus went hand-in-hand with their inflexible bargaining position.

The obligation to bargain in good faith does not require the making of concessions, section 1155.2(a), nor the yielding of positions fairly maintained, NLRB v. Herman Sausage Co., 275 F.2d 229, 45 LRRM 2829 (5th Cir. 1960) (emphasis added). It is equally true that if the Board is not to be blinded by empty talk and by the mere surface motions of collective bargaining, it must take some cognizance of the reasonableness of the positions taken by an employer in the course of

negotiations. Montebello Rose Co., Inc., supra at 22; NLRB v. Reed & Prince Mfg. Co., 205 F.2d 131, 32 LRRM 2225, 2228 (1st Cir.) cert. denied 346 US 887, 33 LRRM 2133 (1953).

Good faith bargaining necessarily requires that claims made by either bargainer are honest. NLRB v. Truitt Mfg. Co., 351 U.S. 149, 38 LRRM 2042 (1959); Montebello Rose Co., Inc., supra at 23. The courts have condemned patently improbably justifications, Queen Mary Restaurants v. NLRB, 560 F.2d 403, 96 LRRM 2456 (9th Cir. 1977), and untenable claims of legal necessity, Fraser & Johnston Co. v. NLRB, 469 F.2d 1259, 81 LRRM 2964 (9th Cir. 1972).

Here, the respondents do not even argue that at the time they had a good faith belief that the presidential guidelines dictated their offer. As one executive conceded, it had no relationship to the companies' ability to pay. For tactical reasons they took a position that had neither factual nor legal merit, and steadfastly maintained it with only minor modifications .to the point of impasse. Their posture prevented serious discussion with the union of. their economic differences, and was tantamount to a refusal to negotiate about them. Because the guidelines allegedly applied to all economic benefits, reliance on them foreclosed discussion of other economic terms in addition to wage rates, such as improved overtime, standby and reporting provisions, holidays, vacations,

and cost of living adjustments. Adherence to the guidelines demonstrated the absence of any serious intent to adjust differences and reach an acceptable common ground.[45/]

Impasse Not Bona Fide. Notwithstanding the union's failure to contradict the declaration of impasse by the employers on February 28, the impasse was not genuine. Mutual recognition by the parties of a deadlock does not preclude an inquiry into whether it resulted from good faith bargaining. Reed & Prince Mfg. Co., 96 NLRB 850, 851, n.2, 28 LRRM 1608 (1951), enforced 205 F.2d 131, 32 LRRM 2225 (1st Cir.), cert. denied 346 US 887, 33 LRRM 2133 (1953).

45/ The respondents assert that the union's demands demonstrate bad faith on its part. However, the issue is not the size, as such, of either the employers' offer or the union's demand. An economically "preposterous" proposal does not necessarily indicate bad faith. NLRB v. Big Three Industries, Inc., 497 F.2d 43, 86 LRRM 3031 (5th Cir. 1974). The significant distinction, because it reveals motive, is the reasonableness of the underlying rationale. In contrast to the employer proposals, the union proposals were based upon concrete problems and suggestions solicited from workers and upon studies which showed that the economic position of the members was not only not improving but, in some instances, actually deteriorating, while the industry was generally prosperous. While the demands were undeniably expensive, they were not asserted in bad faith.

A bona fide impasse is reached when the parties to negotiations are unable to reach agreement despite their best, good faith efforts. Montebello Rose Co., Inc., 5 ALRB No. 64 (1979). The employers' adherence to the wage and price guidelines was inconsistent with good faith efforts to reach agreement, and, putting aside for the moment the economic concessions made by the union on the 28th, it had resulted in a deadlock on economic issues. A deadlock caused by a party's bad faith bargaining posture is not a legally cognizable impasse. Ibid.; Valley Oil Co., 210 NLRB 370, 86 LRRM 1351 (1974).

Additional, independent grounds support the conclusion that the impasse was not authentic. The employers' proposal of February 21, the "signed contract," was, in effect, a patently unacceptable final offer which foreclosed discussion of mandatory bargaining subjects. Although at the time they made its finality contingent upon a meaningful union response, the method of presentation of the offer, its subsequent use in ads, and the absence at the next (and last) meeting of all but one company representative other than the attorneys, all indicate that the employers intended to declare an impasse unless the union virtually capitulated. This conclusion is buttressed by the cavalier dismissal of the economic counterproposal the union offered on the 28th. Although not substantial, it signified the union's willingness to continue

bargaining. Given that movement, the employers' insistence on yet another union proposal was unreasonable and their declaration of impasse was premature.

When the employers stood firm on their February 21 proposal, virtually no discussion of many items had yet occurred. The effect of the employers' economic proposal on any meaningful discussion of wage rates and other economic terms has already been mentioned. By intentionally omitting job descriptions from their "contract," they rejected without any discussion the union's proposal in that area, made two weeks earlier. Other than indicating their willingness to discuss particular seniority provisions and health and safety problems applicable to individual companies, they also rejected the union's proposal on local issues, which had been discussed only to the extent of clarifying it at the time of its presentation. There had been no movement on or substantive discussion of union security, mechanization or hiring.[46/] The outright rejection of union proposals without any attempt to explain or minimize differences is inconsistent with a bona fide desire to reach an agreement. AS-H-NE Farms, Inc., 6 ALRB No. 9 (1980).

46/ The only area which had been extensively discussed was the subject of health and safety; there, the reasons for each side's position were explored, both sides made compromises, and agreements were reached. Although differences remained on some aspects, the nature of the process indicates that real negotiations between the parties could be, and were, productive.

The growers' position on the 21st and 28th effectively foreclosed fruitful negotiation in areas in which there was room to move. Smith and Church both testified that they had authority to make concessions in most areas when the negotiations were broken off. As a general rule, even if the parties are deadlocked in some areas, there is no impasse if they still have room for movement on major items, for continued negotiations in those areas may serve to loosen the deadlock in other areas. Montebello Rose, supra, and cases cited therein.

For all of the foregoing reasons, I conclude that no bona fide impasse existed on February 28 and the respondents were not entitled to break off negotiations.

Boulwarism. Where an employer seeks to undermine and bypass the collective bargaining representative by communicating directly with its employees and attempting to convince them that the company is responsive to their needs and their representative is unnecessary, the tactic has become known as Boulwarism. [47/] The leading case condemning the practice is NLRB v. General Electric Co., 418 F.2d 736, 72 LRRM 2530 (2d Cir. 1969), cert. denied 397 US 965, 73 LRRM 2600 (1970), enforcing 150 NLRB 192, 57 LRRM 1491 (1964). In General Electric, along with other conduct that the court found indicative of bad faith bargaining, the company mounted a massive publicity campaign

47/ See, generally, Morris, The Developing Labor Law 278-279 n.61 (1971).

announcing its opening offer, which it characterized as fair and firm while characterizing itself as doing right voluntarily. The Board stated that the campaign was intended to:

> disparag[e] and discredit . . . the statutory representative in the eyes of its employee constituents, to seek to persuade the employees to exert pressure on the representative to submit to the will of the employer, and to create the impression that the employer rather than the union is the true protector of the employees' interest. Id., 57 LRRM at 1499-1500.

The court affirmed the board's finding that the company's bargaining stance and conduct considered as a whole was designed to derogate the union in the eyes of its members and the public at large. The court described the company's plan as having two major facets: a take-it-or-leave-it approach to negotiations in general which emphasized both the powerlessness and uselessness of the union to its members; and a communications program that portrayed the company as the true defender of the employees' interest. The combination denigrated the union and sharply curbed the company's ability to change its own position. Id., 418 F.2d at 756. Stating that it was not prohibiting employer communications with employees during negotiations nor dictating or forbidding specific bargaining techniques, the court went on to say:

> ... We hold that an employer may not so combine "take-it-or-leave-it" bargaining methods with a widely publicized stance of unbending firmness that he is himself unable to alter a position once taken. . . . Such conduct, we find, constitutes a refusal to bargain "in fact." ... It also constitutes ... an absence of subjective good faith, for it implies that the Company can deliberately bargain and communicate as though the Union did not exist, in clear derogation of the Union's status as exclusive representative of its members. . . . Id., 418 F.2d at 762-763.

Our Board has also concluded in a bargaining context that employer communications with employees may be persuasive evidence of a desire to bypass and undermine the union, and violative of the ALRA, Montebello Rose Co., Inc., 5 ALRB No. 64 (1979).

Not every communication by an employer about the status of negotiations, its proposals, or the reasons, as it sees them, for a breakdown in negotiations, violates the duty to bargain in good faith. See, e.g., Procter & Gamble Mfg. Co., 160 NLRB 334, 62 LRRM 1617 (1966) (where the remainder of the employer's conduct evidenced good faith). In this case, however, the general counsel's contention that the employers' public relations campaign violated the standards of General Electric is well founded.

Through its alter ego, the Committee for Fair Negotiations, the group of bargaining employers published a series of ads, and distributed reprints of many, directed to the general public and the employees of the growers. The ads addressed to the workers repeatedly exhort them to pressure the union to accept the growers' offer, stress the companies' concern and the union's lack of concern with their welfare, and accuse the union and its officials of intimidation, terrorism, misrepresentation and outright lying, inadequate representation of its members, and misuse of funds. It would be difficult to fit more accurately the board's description in General Electric, quoted above, of a campaign intended to

disparage and discredit the union in the eyes of its constituents, to seek to persuade the employees to exert pressure on the union to submit to the will of the employers, and to create the impression that the employers rather than the union are the true protector of the employees' interest. Moreover, by the repeated insistence that the union need only sign the "contract" that the growers had already signed,[48/] and that they have offered the maximum permitted by the wage and price guidelines, the growers conveyed publicly the same unmoving position that they had taken at the bargaining table.

Through their public relations campaign the employers attempted to denigrate, undermine and bypass the union. They also combined "take-it-or-leave-it" bargaining methods with a widely publicized stance of unwavering firmness. In addition to revealing an absence of subjective good faith, such conduct constitutes a per se refusal to bargain. NLRB v. General Electric Co., supra, 418 F.2d at 762-763 (quoted above).

Alleged Unilateral Changes. Two respondents, Gourmet Harvesting & Packing and Carl Joseph Maggio, are separately charged with having instituted unilateral changes in working conditions. It is well settled that an employer who bypasses the collective bargaining representative and unilaterally

48/ In Reed & Prince Mfg. Co., 12 NLRB 944, 4 LRRM 208 (1939) enforced 118 F.2d 874, 8 LRRM 478 (1st Cir.), cert. denied 313 US 595, 8 LRRM 458 (1941), both the Board and the Court of Appeals cited an obviously unacceptable "contract" executed by the employer, submitted to the union, and then used to influence the employees to force the union to accept it, as an indication of bad faith bargaining.

institutes changes in wages or other working conditions commits a per se violation of the duty to bargain without regard to good or bad faith. See, e.g., NLRB v. Katz, 369 US 736, 50 LRRM 2177 (1962); O.P. Murphy Produce Co., Inc., 5 ALRB No. 63 (1979); Montebello Rose Co., Inc., 5 ALRB No. 64 (1979).

Gourmet Harvesting and Carl Joseph Maggio increased their wage rates during the 1979 season. No justification was offered for Gourmet's changes, but C.J. Maggio asserts that its increases were consistent with the last offer made to the union prior to the declaration of impasse. This is true for the increase in the lettuce piece rate, but for the other, the carrot piece rate, no offer from C.J. Maggio appears in the last employer proposal. In any event, while an employer acquires a limited right to fix wages and working conditions unilaterally after bargaining to a bona fide impasse, Bi-Rite Foods, Inc., 147 NLRB 59, 56 LRRM 1150 (1964), no such right is acquired where the impasse is not genuine, Pay 'N Save Corp., 210 NLRB 311, 86 LRRM 1457 (1974). Montebello Rose, supra. Here, because of the employers' bad faith bargaining, the impasse was not bona fide. Hence, neither respondent was entitled to increase wages unilaterally.

At the beginning of the 1979 lettuce season, C.J. Maggio failed to recall its seniority workers in accordance with its usual practice. Its purported reason was that it considered itself struck along with its brother company, Joe Maggio, in the Imperial Valley, and it was concerned that violence would accompany the strike northward. I have found

that the respondent did not justifiably believe that its seniority workers were on strike. Even if it did, its good faith would not excuse a per se violation.

One fact alone precludes findings of independent section 1153(e) violations. The record is devoid of evidence that either company made its changes without first consulting the union. There is certainly no evidence that they did consult, and it seems likely that they did not. However, mere suspicion will not support a finding. Labor Board v. Columbian Enameling & Stamping Co., 306 US 292, 4 LRRM 524 (1939); NLRB v. Garner Tool & Die Mfg., Inc., 493 F.2d 263, 85 LRRM 2652 (8th Cir. 1974). Because of the absence of evidence that the changes were instituted unilaterally, I shall recommend that these complaints be dismissed.

THE UNION'S CONDUCT

The obligation to bargain collectively in good faith is a mutual one, see section 1155.2(a), and the conduct of the union must also be considered in determining whether an employer has engaged in bad faith bargaining. See, e.g., Wald Mfg. Co., Inc. v. NLRB, 426 F.2d 1328, 1331-1332, 74 LRRM 2375 (6th Cir. 1970), and cases cited therein. The ALRB has recognized that bad faith bargaining by a labor organization may be an affirmative defense to a refusal to bargain allegation against an employer. Montebello Rose Co., Inc., 5 ALRB No. 64 (1979); also see O.P. Murphy Produce Co., Inc., 5 ALRB No. 63. Union conduct which the respondents contend militates against finding a breach of their duty to bargain includes failing to provide information,

calling the strike with its attendant violence, issuing publications that violated the agreement not to publicize the negotiations and that otherwise undermined them, and engaging in dilatory tactics such as cancelling meetings and refusing to accept participation by outsiders.

Failure to Provide Information. The UFW's alleged failure to provide information about the pension, medical, and other union funds is asserted as an affirmative defense by some respondents. See GCX1-I. The NLRB has only recently ruled that a union may be required to provide information relevant to the bargaining process and within its exclusive control. Local 13, Detroit Newspaper Printing & Graphic Communications Union, 233 NLRB 994, 97 LRRM 1047 (1977). Assuming that the ALRB adopt? a similar rule, I nonetheless find little merit in the contention that the union's failure to provide information is indicative of bad faith bargaining.

The union refused to provide information about Citizenship Participation Day, the paid holiday for which workers authorize payment directly to a union-operated fund. What the workers do with their holiday pay is not a mandatory subject of bargaining. Any questions about the use of the CPD funds are an issue between the workers and the union, not the companies and the union. Since information about the use of the funds is not relevant to negotiations, the union's refusal to provide it cannot indicate bad faith.

The union did not provide any information about the other funds after its presentation of January 12. Regarding the

pension plan, I have found that by then the union provided all the required information which was available to it. Since the plan was not yet operative, a fact well known to the employers, requests for information about the cost of maintaining present benefits were inapposite.

I have made a similar finding regarding the medical plan, except for a detailed breakdown of 1976 receipts and expenditures and the cost of maintaining existing benefits in the new contract period. The request for 1976 figures was not made until February 19, and the failure to provide them did not contribute to the termination of talks nine days later. The only reason given by the employers for needing the cost of maintaining current benefits was the wage and price guidelines.[49/] The employers did not request specific information about the Martin Luther King Fund until February 19. Documents containing some of the information they then requested had been made available on January 12, but at that time no questions were asked. In its February 28 proposal the union accepted the employer proposal on contributions to the fund.

In the overall context of the negotiations the effect of the union's failure to provide information was negligible. The only information not provided, to which the employers were arguably entitled, was detailed 1976 receipts and expenditures

49/ Under the guidelines, an increase in excess of 7 per cent in the cost of maintaining existing benefits is excluded from the 7 per cent ceiling on annual pay increases. See 43 Fed.Reg. 60772 (GCX 4), 60773, 60775, and § 705B-6.

and the cost of maintaining current benefits for the medical plan, and detailed reports about the Martin Luther King Fund. The absence of this information did not impede the negotiations. Agreement about the Martin Luther King Fund was reached prior to the declaration of impasse, and the companies which subsequently signed contracts with the UFW did so without the benefit of more information about any funds.

From the timing and nature of their requests, it appears that after January 12, if not before, the employers were more interested in making a record to substantiate a charge that the union was bargaining in bad faith than in obtaining the information for legitimate bargaining purposes. They expressed no reasons for wanting the information, except, with respect to the medical and pension plans, by reference to the wage and price guidelines. Since their reliance on the guidelines was not in good faith, their requests stand no better. Their subsequent requests did not relate to any topics under discussion at the table, for no meaningful discussion of fringe benefits occurred.

In short, I conclude that the union provided almost all of the relevant information that was available to it. Its failure to provide the rest played no part in the failure to reach a contract, cf. Kohler Co., 128 NLRB 1062, 46 LRRM 1389, 1392-1393 (1960), modified on other grounds sub nom. Local 833, UAW v. NLRB, 300 F.2d 699, 49 LRRM 2485 (D.C. Cir. 1962), cert. denied 382 U.S. 386, 60 LRRM 2234 (1965), and cannot seriously be said to indicate a subjective intent to thwart the bargaining process.

The Strike and Attendant Violence. The initiation of the strike against selected companies during negotiations is cited as evidence that the union was not bargaining in good faith. Andrew Church testified that he took the timing as a signal that the union was not interested in a contract settlement. The respondents also contend that acts of violence on the picket lines excused them from their duty to bargain.

The Supreme Court has held that the use of economic pressure during negotiations, even if unprotected, is of itself not at all inconsistent with the duty to bargain in good faith, and therefore will not warrant an inference that good faith is lacking. NLRB v. Insurance Agents' Int'l. Union, 361 US 477, 45 LRRM 2704 (1960); accord, Gulf States Mfrs. v. NLRB, 579 F. 2d 1298, 99 LRRM 2547 (5th Cir. 1978); Textile Workers Union v. NLRB, 227 F.2d 409, 36 LRRM 2778 (DC Cir. 1955}, cert. denied, 352 US 864, 38 LRRM 2757 (1956). The Court stated that "the use of economic pressure by the parties to a labor dispute is not a grudging exception to some policy of completely academic discussion. . .[but] is part and parcel of the process of collective bargaining." Id., 45 LRRM at 2711. Accordingly, the fact that during the instant negotiations the union initiated a strike against some employers is not evidence of bad faith on the part of the union, nor does it excuse the respondents from their duty to bargain. See also, e.g., NLRB v. Rutter-Rex Mfg. Co., 245 F.2d 594, 595-596, 40 LRRM 2213 (5th Cir. 1957); Lion Oil V. NLRB, 245 F.2d 376, 379, 40 LRRM 2193 (8th Cir. 1957).

By the same token, there is no inherent connection between strike-related violence and bad faith bargaining. Violence on the picket line does not of itself demonstrate a lack of desire to reach an agreement at the bargaining table. Picket line misconduct has been rejected as a defense to charges of surface bargaining. See NLRB v. Ramona's Mexican Food, 531 F.2d 390, 92 LRRM 2611 (9th Cir. 1975), enforcing 203 NLRB 663, 83 LRRM 1705 (1973);[50/] MacMillan Ring-Free Oil Co., Inc., 160 NLRB 877, 63 LRRM 1073, 1076 (1966), modified on other grounds 394 F. 2d 26, 68 LRRM 2004 (9th Cir. 1968); Kohler Co., 128 NLRB 1062, 1181, 46 LRRM 1389 (1960) (trial examiner's decision), modified on other grounds sub nom. Local 833, UAW v. NLRB, 300 F.2d 699, 49 LRRM 2485 {DC Cir. 1962), cert. denied 382 US 836, 60 LRRM 2234 (1965).

In Kohler, supra, while generally finding that the employer had engaged in surface bargaining, the Board also found that the employer was justified in not bargaining during periods of violence and intimidation, where the misconduct was severe, the union was clearly responsible for it, and the employer asserted it as a reason for refusing to meet. See id., 46 LRRM at 1395; see also Union Nacional de Trabajadores, 219 NLRB 862, 90 LRRM 1023 (1975), modified on other grounds,

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Counsel for some respondents inaccurately characterizes the Board's holding and erroneously states that the court denied enforcement. See post-hearing brief for Colace Brothers, et al., p. 57.

540 F.2d 1, 92 LRRM 3425 (1st Cir. 1976).[51/] Although excusing the employer from its obligation to bargain, the Board does not suggest in either decision that the misconduct was equivalent to bad faith bargaining by the union.

Here, none of the respondents refused to meet with the union because of the violence; hence, the issue of whether they would have been justified had they refused is not reached.[52/]

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The quotation in counsel's brief from the Trabajadores opinion (see post-hearing brief for Colace Brothers, et al., p. 56) appears in the context of a discussion of refusing to enter a bargaining order as an alternative to the more drastic remedy of decertifying a union which has engaged in serious, repeated, violent and coercive conduct; the entire discussion is dictum. See id., 92 LRRM at 3433-3436. The union did not petition for review of the dismissal of its §8(a)(5) complaint; enforcement of the Board's finding of §8(b)(1)(A) (the equivalent of §1154(a) (1) of the ALRA) violations by the union was the only issue before the court.

Laura Modes Co., 144 NLRB 1592, 54 LRRM 1299 (1963), and Allou Distributors, Inc., 201 NLRB 47, 82 LRRM 1102 (1973), the other decisions cited by counsel, are also inapposite. In both cases the Board found employer violations of §8(a)(5) despite violence and intimidation by union agents. Because of the union misconduct it declined to issue bargaining orders, however, and directed that elections be conducted instead.

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Since the companies at the table could disassociate themselves from one another at any tine, at most only those-that directly experienced the violence would have been justified in refusing to bargain. Those companies exclude all the respondents except Colace Brothers, Lu-Ette, Gourmet, Vessey, and Joe Maggio.

The respondents have not demonstrated any relationship between the picket line misconduct and union conduct at the table such as would give rise to an inference of bad faith. They have not even shown that their own negotiating conduct was in any way affected by it.

Nor does the evidence establish that the union sponsored or condoned the misconduct. The fact that some people engaged in misconduct came from picket lines and in some instances carried union banners is insufficient to hold the union responsible. Cf. Plumbers Local 195, 233 NLRB 1087, 97 LRRM 1023 (1977). Even if the union bore some responsibility, it would make no difference.

The case here fits the Ninth Circuit's statement in Ramo's Mexican Food, supra:

> The Company's last ditch claim that it was excused from good faith bargaining by reason of, first, the employees' strike, and, secondly, the picket line misconduct or violence, is utterly without factual basis or legal merit. . . . Even [if it had control over the picket line misconduct and violence], the Union's behavior in the instant case could not have so impaired the bargaining relationship as to render further negotiations fruitless. . . . [T]he use of strike tactics which may deserve condemnation does not in itself constitute a refusal by the Union to bargain in good faith. . . Picket-line violence may be the natural 'by-product of the frustration and emotionalism engendered by a prolonged collective bargaining negotiation. . . .' Id., 92 LRRM at 2615 (citations omitted).

Publications. The respondents claim that the union's leaflets and newspaper advertisement violated the agreement not to publicize the negotiations and indicate bad faith bargaining. The agreement against publicity was vague, but

appears to have been directed against revealing the contents of the negotiating sessions to the news media.[53/] The leaflets did not violate the agreement because they were not distributed to the press or the public at large.

The union's uncontradicted explanation of the La Voz advertisement was that it was intended to advise union members, many of whom read the newspaper, of the terms of the union's economic proposal. Nothing indicates that the agreement was intended to prohibit communications about the contents of proposals with people directly affected, whether employers or union members. The ad does not purport to report the contents of the negotiating sessions. Even though its circulation was not limited to union members, I conclude that it did not violate the agreement.

The more important issue is whether either the ad or the leaflets indicate bad faith bargaining. The respondents make no argument and cite no authority for the proposition that communications between a union and its members may indicate bad faith bargaining. The concept of Boulwarism does not apply, for there the thrust of the unlawful activity is the bypassing of the workers' representative. See NLRB v. General Electric Co., 418 F.2d 736, 72 LRRM 2530 {2d Cir. 1969), cert. denied 397 US 965, 73 LRRM 2600 (1970), and discussion above.

A union's right to communicate its negotiating demands to the people it represents is indisputable. Indeed, such a

53/ See note 39, above.

practice is desirable, particularly where, as here, membership ratification of the final contract is required, even if as a consequence the union finds itself pressured not to modify its demands or make concessions. However, there is no reason to believe that California farmworkers are so naive or uninformed that they are incapable of understanding the concept of negotiating—or, as union negotiator David Burciaga put it, "Mexicali bargaining." There is no basis for concluding that the union's advertisement is evidence of bad faith bargaining.

The leaflets distributed by the union fall into two categories: the single leaflet distributed around January 4th that accuses the growers of trying to divide the workers with threats, bribes and promises; and the series of leaflets that urges support for the strike and, in some instances, accuses the growers of complicity in the "murder" of Rufino Contreras. Regarding the latter leaflets, the respondents do not contend that urging support for the strike was improper; the only argument they advance, made during the course of the hearing, is that by the accusations about Contreras' death the leaflets "poisoned" the minds of the workers against the-growers. At the time, however, there actually were homicide charges pending against three Mario Saikhon foremen.

A union's interest in communicating its views to its membership and pleading for a united front is an important one and should not be restricted unnecessarily. NLRB v. Union Nacional de Trabajadores, 540 F.2d 1, 92 LRRM 3425 (1st Cir.

1976); see generally Letter Carriers v. Austin, 418 US 264, 86 LRRM 2740, 2744 (1974). Given that there was some basis for the union's accusations, and that the same rationale for restricting union disparagement of employers as for the converse proposition does not exist, I conclude that these union leaflets do not constitute evidence of bad faith bargaining.

The asserted justification for the January 4th leaflet— that it was directed at certain companies who were conducting decertification campaigns is unpersuacive in the absence of evidence identifying those companies or showing that distribution was limited to their employees. Even so, and assuming without deciding that a union's communications with its members under some circumstances may be indicative of bad faith bargaining, I conclude that a single, isolated instance such as this does not warrant such an inference.

Meeting Cancellations and Other Allegedly Dilatory Tactics. The respondents contend that the union's lack of desire to reach a contract quickly was manifested by its cancellation of negotiating sessions. The UFW cancelled four scheduled meetings in December/ postponed a meeting set for January 4 until January 5th, and cancelled three meetings scheduled for the week of February 10. The February meetings were cancelled in observance of the strike-related death and funeral of Rufino Contreras. The respondents do not assert that this was not a valid reason.

The December meetings (and, presumably, the January 4th one, although no reason was stated) were cancelled because the union's economic proposal was not ready and the employers were unwilling to respond to anything before they had the union's complete proposal. The reason for the lateness of the union's economic proposal was the employers' delay in providing requested information. Because of the condition they imposed and their delay in providing information, the employers, not the union, were ultimately responsible for the cancellation of the December meetings. Cf. AS-H-NE Farms, Inc., 6 ALRB No. 9, p.20 (1980).

The allegation that the union was not diligent in meeting is decisively put to rest by the fact that the union twice indicated its willingness to meet continuously, and twice was rebuffed by the employers. On January 12, the union suggested daily meetings, and the response of the employers' negotiators was that their schedules would not allow it; on January 23, when the union responded affirmatively to an employer proposal of continuous meetings, the employers imposed the condition that a federal mediator be included.

As another example of dilatoriness, some respondents cite the Los Angeles sessions of January 16, 17, and 13, at which only David Burciaga and one member of the bargaining committee appeared, and nothing of substance was discussed.[54/] At the

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Counsel asserts that the employers believed the rest of the committee remained in the Imperial Valley to plan violence (see post-hearing brief on behalf of Colace Brothers, et, al., p. 24), but nothing in the record supports either the belief or the underlying proposition.

preceding meetings the union had clearly stated its position that nothing meaningful could be accomplished until the employers submitted an economic counterproposal, and the employers had predicted that their counterproposal would not be ready until the week of January 22nd. (The companies' opening 7 per cent offer—a simple, two-page document—was actually presented at the end of the January 18 session, more than seven weeks after negotiations had begun and almost two weeks after the union's economic proposal, and then only after the union had repeatedly demanded it and refused further contract extensions.) The lack of meaningful discussion at the Los Angeles meetings was the result of the companies' intransigence more than the union's.

The union's rejection of participation by representatives from the Federal Mediation and Conciliation Service and the Council on Wage and Price Stability is also raised by the respondents. The inclusion of a CWPS representative was a corollary of the employers' bad faith assertion of the wage and price guidelines. Given the distance between the positions of the parties and the employers' apparent lack of good faith/ it is highly unlikely that a FMCS mediator could have made a positive contribution. In any event, good faith bargaining does not require the acceptance of every procedural proposal, and the union's insistence that it and the companies alone resolve their differences does not indicate bad faith. See

NLRB v. Reed & Prince Mfg. Co., 205 F.2d 131, 32 LRRM 2225, 2231 (1st Cir.), cert. denied 346 US 887, 33 LRRM 2133 (1953), enforcing 96 NLRB 850, 28 LRRM 1608 (1951); Adam Dairy 4 ALRB No. 24 (1978) (ALO decision).

The respondents also assert an ostensible lack of authority in the union's negotiators. Union witnesses testified that bargaining authority was delegated to staff negotiators and a bargaining committee composed of workers; that they frequently consulted with executive board members and the ranch committees; that the negotiators were never told that the proposals they presented were non-negotiable; and that they had absolute authority to make concessions at the bargain-ingtable within certain limits: a final contract had to be ratified by the membership; the bargaining committee did not have authority to extend the previous contracts, but could only make recommendations;[55/] and the committee could not drop the demand for some sort of union hiring facility without the approval of the membership.

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The only evidence to the contrary is a hearsay statement by Tom Nassif, reported in the transcript of the negotiations, that David Burciaga had previously said the bargaining committee had authority to extend the contracts. RX 12a, pp.3-4 for 1/12/79. If true, the most that could be said is that the committee either had more authority than admitted at the hearing or that it claimed greater authority than it in fact had. In any event, the hearsay statement is not competent evidence.

The parties to collective bargaining have a duty to invest their negotiators with sufficient authority to conduct meaningful bargaining. See NLRB v. Fitzgerald Mills, 313 F.2d 260, 52 LRRM 2174 (2d Cir.), cert. denied 375 US 834, 54 LRRM 2312 (1963); National Amusements, Inc., 155 NLRB 1200, 60 LRRM 1485 (1965); Han-Dee Spring & Mfg. Co., 132 NLRB 1542, 48 LRRM 1566 (1961). The limitations testified to did not hamper the ability of the union's negotiators to conduct meaningful bargaining.

The most concrete evidence of any material limitations on the bargaining committee's authority was provided by former member George Moses, who appeared on behalf of the growers. His description of the early functioning of the bargaining was committee was consistent with that of the union witnesses, but he also testified that he was advised by Ann Smith that the committee's January 23rd agreement to invite a CWPS representative had been repudiated by Cesar Chavez, and that thereafter the committee was told what it was going to do and how to do it.

Apparently both Chavez and Marshall Ganz were consulted about the decision, and both opposed it. Even though Moses' hearsay testimony is uncontradicted, it is not clear whether Chavez actually overrode the committee, for Moses conceded that he did not attend a committee meeting held that night. There was no direct evidence of what occurred at the meeting, but one inference is that the committee reversed itself after

hearing the reasons for the union leadership's opposition. Even if the committee was overruled on this question, it was not about a material bargaining issue, but was merely a question of the appropriate tactical response to the employers' specious reliance on the presidential guidelines.

Of greater significance is Moses' claim that the authority of the bargaining committee was sharply curtailed thereafter, but it does not withstand scrutiny. He could cite no other instance of the overruling of a committee decision. Ann Smith's telling the committee what was on the daily agenda for the negotiating sessions was the only example he gave of the committee's being told what to do. While his testimony makes clear his personal frustration with the negotiating process, taken as a whole it does not establish that the union negotiators lacked authority to conduct meaningful bargaining.

In general, each party to the collective bargaining process has the right to choose whomever it wants to represent it. Harley Davidson Motor Co., Inc., 214 NLRB 433, 87 LRRM 1571 (1974); General Electric Co. v. NLRB, 412 F.2d 512, 71 LRRM 2418 {2d Cir. 1969). Notwithstanding the assertions of various grower witnesses that they understood the absence of Jerry Cohen or Marshall Ganz to signify that the union was not serious, the respondents have failed to demonstrate how the union's selection of negotiators evidenced bad faith.

SUMMARY

I conclude that the respondents refused to bargain collectively in good faith in violation of sections 1153(e) and, derivatively, 1153(a), by engaging in surface bargaining without a serious desire to reach an agreement if possible. The absence of bona fide intent is demonstrated by: the conditioning of any response upon the union's submission of a complete proposal, combined with the delay in providing requested information and followed by the submission of an obviously unacceptable language counterproposal; the adamant insistence on the controlling applicability of the wage and price guidelines, maintained to the point of deadlock without factual or legal merit or even good faith belief to support it; the submission of a patently unacceptable final offer and the declaration of impasse when many topics had not been seriously discussed and room for movement on major items remained; and the public relations campaign which denigrated and undermined the union, and attempted to bypass it as the collective bargaining representative.

The employer's widely publicized stance of having offered all that they could, combined with their take-it-or-leave-it tactics at the table, also constitutes a per se refusal to bargain. However, the evidence does not support findings that Gourmet Harvesting & Packing and Carl Joseph Maggio committed further per se violations by unilaterally changing working conditions.

The defense of bad faith bargaining by the union is without merit. The strike and the occasional violence which unfortunately accompanied it are not inconsistent with good faith bargaining and do not warrant an inference of bad faith. The cancellation of meetings and other allegedly dilatory conduct were in large part caused by the employers' actions. The union's refusal to accept the participation of outsiders in the negotiations does not indicate bad faith. The claim that union negotiators lacked meaningful authority is not supported by the evidence.

Even if under some circumstances a union's communications with its members may indicate bad faith bargaining, most of the union's publications here are unobjectionable. The union provided almost all the relevant information requested of it, and its failure to provide the remainder played no part in the failure to reach agreement. The conduct arguably tending to indicate bad faith—namely, the single leaflet accusing the growers of making threats and promises and the failure to provide some information—is simply insufficient to indicate a subjective desire to thwart the bargaining process, and it pales into insignificance when compared to the employers' conduct.

THE REMEDY

Having found that the respondents refused to bargain in good faith in violation of sections 1153 (a) and (e) of the Act, I shall recommend that they be ordered to cease and desist from their unlawful conduct and take certain affirmative actions designed to effectuate the policies of the Act. By their

conduct the respondents are responsible for the parties' failure to reach an agreement. Accordingly, in addition to meeting the usual notice requirements, they shall be affirmatively directed to meet and bargain collectively in good faith with the UFW, upon its request, and to make their employees whole for the wage and other economic losses incurred as a result. See section 1160.3; see also, e.g., Adam Dairy, 4 ALRB No. 24 (1978); Hickam, 4 ALRB No. 73 (1978); O.P. Murphy Produce Co., Inc., 5 ALRB No. 63 (1979); Montebello Rose Co., Inc., 5 ALRB No. 64 (1979).

In its recent surface bargaining decisions, O.P. Murphy and Montebello Rose, supra, a majority of the Board held that the make-whole remedy should commence on that, date upon which, in view of the totality of the circumstances, the respondents' unlawful conduct was first manifested. The very nature of a surface bargaining case makes it difficult to identify with exactitude the first appearance of bad faith. O.P. Murphy, supra.

In the present case I have found the first manifestation of bad faith to be the delay in providing information necessary for the preparation of the union's economic proposal, coupled with the demand for a complete proposal from the union. Information was requested first in late September, and again at the first formal negotiating session on November 27, 1979; the demand for a complete proposal clearly occurred on

December 8, if not earlier. Since December 8, 1973; is the date when the two strains of employer conduct merged, I find that to be the date when the respondents' bad faith was first manifested.[56/]

Here, however, most respondents had pre-existing contracts with the union, a circumstances not yet considered in a Board decision. Had the parties been successful in reaching an agreement, no resulting economic benefits would have been in effect prior to January 1, 1979. Consequently, where there are previous contracts, the appropriate beginning date for the make-whole remedy appears to be the date on which bad faith is first manifested or the date on which the pre-existing contract expires, whichever occurs later. Thus, I conclude that for those respondents with previous contracts, the make-whole remedy should commence on January 1, 1979.[57/]

56/ The reason for the general counsel's selection of January 21, 1979, the date alleged in the complaint for the commencement of bad faith bargaining, is not apparent. (None of the parties addressed the issue of when bad faith bargaining began in their post-hearing briefs.)

57/ Some contracts expired on December 1, 1978, but around the time of the first negotiating session on November 27, crier to any manifestation of employer bad faith, the union agreed to extend them to January 1, the expiration date of the remaining contracts.

Even though the union agreed in late December to further extend all contracts to January 15, that date is not selected because by the time the union agreed to the extension the respondents were already bargaining in bad faith. The employees should not suffer because the union extended the contracts when the respondents were not bargaining in good faith.

The only respondents that were not parties to prior contracts with the UFW and that will therefore be required to make their employees whole from December 8, 1973, are Martori Brothers Distributors and O.P. Murphy & Sons. O.P. Murphy, of course, was the company found to have failed to bargain in good faith in O.P. Murphy, supra, from shortly after the March 1977 certification of the UFW, and the Board there ordered the company to make whole its employees until it commenced to bargain in good faith and thereafter bargained to a contract or a bona fide impasse. Since in the present case it did not bargain to a contract or a bona fide impasse, the make-whole periods will overlap.[58/]

58/

In the instant case there are indications that O.P. Murphy never entered into negotiations with a bona fide intent to reach an agreement. Andrew Church testified that he was never sure who represented it and that it delayed more than most in providing information. It also has an unsavory history of unfair labor practices. In addition to the 1979 decision, see O.P. Murphy, 4 ALRB No. 106 (1978), and the discussion therein or Case No. 76-CE-33-M, in which the company was ultimately found in contempt of court. Inferences to be drawn from an employer's earlier labor relations history are not to be ignored. Local 833, UAW v. NLRB, 300 F.2d 699, 49 LRRM 2485 (DC Cir. 1962), cert. denied 382 US 336, 60 LRRM 2234 (1965), remanding Kohler Co., 128 NLRB 1062, 4,6 LRRM 1389 (1960) .

Were there not overlapping make-whole periods, this situation would make a compelling argument for Board member Ruiz's position that the make-whole remedy should generally commence on the date the union first requests negotiations. See O.P. Murphy, supra, 5 ALRB No. 63 at 31 (concurring opinion); Montebello Rose, supra at 32 n.16.

The duration of the-make-whole remedy is, as a general rule, that directed by the Board in O.P. Murphy. See, e.g., Montebello Rose, supra; AS-H-NE Farms, Inc., 6 ALRB No. 9 (1980). As indicated above, I do not here decide whether the respondents that resumed bargaining with the UFW on June 5, 1979, thereby terminated that obligation.[59/] Respondent J.J. Crosetti Company completely terminated its agricultural operations on July 24, 1979. In P & P Farms, 5 ALRB No. 59 (1979), an employer that had previously refused to bargain in good faith terminated its operations, and the Board directed it to make its employees whole to the date on which it terminated its operations and thereby eliminated all unit jobs. Accordingly, assuming that it has not resumed agricultural operations, I conclude that J.J. Crosetti Company's make-whole obligation should end on July 24, 1979.

The make-whole remedy should be calcuated in accordance with the principles of Adam Diary, supra, as modified regarding piece rate workers by Hickam, supra. The Board has acknowledged, however, that the data relied upon in Adam Dairy to calculate the average negotiated wage rate is outdated. See Hickam, supra; Superior Farming Co., Inc., 4 ALRB No. 44 (1972); Kyutoku Nursery, Inc., 4 ALRB No. 55 (1978).

Here the obvious and appropriate source of data for the make-whole calculations is the contracts successfully negotiated between the UFW and the former respondents after the February 23, 1979, declaration of impasse. Most of the

59/ See note 9, above.

employers, respondents and-erstwhile respondents alike, were parties to substantially identical previous contracts, and all found sufficient commonality of interest to bargain as a group.

The certification of the UFW as the collective bargaining representative of each respondents' agricultural employees shall be extended for a period of one year from the date on which the respondent commences to bargain in good faith. Adam Dairy, supra; see also AS-H-NE Farms, supra; O.P. Murphy, supra; Kyutoku Nursery, supra.

Accordingly, pursue to section 1160.3 of the Act, I recommend the following:

ORDER [60/]

Respondents CALIFORNIA COASTAL FARMS, COLACE BROTHERS, J.J, CROSETTI COMPANY, INC., GOURMET HARVESTING & PACKING, LU-ETTE FARMS, INC., CARL JOSEPH MAGGIO, INC., JOE MAGGIO, INC., MARTORI BROTHERS DISTRIBUTORS, 0.P. MURPHY & SONS, MARIO SAIKHON, INC., and VESSEY & COMPANY, INC., their officers, agents, successors and assigns, shall individually:

1. Cease and desist from:

a. Failing or refusing to meet and bargain collectively in good faith with the UNITED FARM WORKERS CF AMERICA, AFL-CIO (UFW);

b. Attempting to bypass the UFW as the exclusive

60/

I assume that J.J. Crosetti Company has not and does net resume its agricultural operations. If that assumption is subsequently determined to be incorrect, the exceptions regarding the company should be considered null and void.

collective bargaining representative of its employees by way of a public relations campaign or in any like or related manner;

c. In any like or related manner, interfering with, restraining, or coercing agricultural employees in the exercise of the rights guaranteed them by Labor Code Section 1152.

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

a. With the exception of J.J. Crosetti, upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive bargaining representative of its employees and embody any understanding reached in a signed agreement;

b. Make whole its present and former agricultural employees for all losses of pay and other economic losses sustained by them as the result of its failure and refusal to bargain in good faith, as such losses have been defined in Adam Dairy, 4 ALRB No. 24 (1978) and modified in Hickam, 4 ALRB No. 73 (1978); the period of said obligation shall extend from December 8, 1978 or, in the case of those respondents with previous collective bargaining agreements with the UFW, from January 1, 1979 until such time as each respondent, with the exception of J.J. CROSETTI COMPANY, commences to bargain in good faith and thereafter bargains to contract or bona fide impasse; for J.J. CROSETTI COMPANY the period of said obligation shall extend to July 24, 1979;

c. Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records relevant and necessary to a determination of the

amounts due under the terms of this order;

d. Sign the attached Notice to Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below;

e. With the exception of J.J. CROSETTI COMPANY, post copies of the attached Notice at conspicuous places on its premises for 90 consecutive days, the time and places of posting to be determined by the Board's regional director; and exercise due care to replace any Notice which is altered, defaced, covered or removed;

f. Within 30 days after issuance of this order, mail copies of the attached Notice in all appropriate languages to all agricultural employees employed at any time from December 8, 1973 to the present;

g. Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the issuance of this order;

h. With the exception of J.J, CROSETTI COMPANY, arrange for a representative of the respondent or the Board to distribute and read the attached Notice in appropriate languages to the respondent's assembled employees on company time: the reading or readings shall be at such times and places as are specified by the Board's regional director and, following each reading, a Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning

the Notice or their rights under the Act; the regional director shall determine a reasonable rate of compensation to be paid by the respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period;

i. Notify the Board's regional director in writing, within 30 days after the issuance of this order, of the steps taken to comply with it, and upon request, notify the regional director in writing periodically thereafter of further steps taken to comply.

IT IS FURTHER ORDERED that the certification of the UFW as the exclusive collective bargaining representative of the agricultural employees of each above-named respondent, with the exception of J.J. CROSETTI COMPANY, be, and it hereby is, extended for a period of one year from the date on which that respondent commences to bargain in good faith with the UFW.

IT IS FURTHER ORDERED that the complaints in Case Nos. 79-CE-43-EC, 79-CE-7Q-SAL, 79-CE-92-SAL, 79-CE-120-SAL, 79-CE-144-SAL, and 79-CE-248-SAL, and the -allegations in Case No. 79-CE-38-EC insofar as they concern respondents ADMIRAL PACKING AND GROWERS EXCHANGE be, and they hereby are, dismissed.

DATED: March 4, 1980.

JENNIE RHINE
Administrative Law Officer

NOTICE TO EMPLOYEES

After charges were made against us by the United Farm Workers and a hearing was held where each side had an opportunity to present evidence, the Agricultural Labor Relations Board has found that we violated the law by not bargaining in good faith with the union, and has ordered us to distribute and post this notice and do the things stated below. We will do what the Board has ordered, and also tell you that the Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;

2. To form, join, or help a union;

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

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

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

Because you have these rights, we promise you 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. IN PARTICULAR:

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

WE WILL MOT publish advertisements or distribute leaflets that undermine or bypass the union as the representative;

WE WILL pay our employees any money they lest because of our failure to bargain in good faith.

If you have any questions about your rights as farm workers or this notice, you may contact the UFW or any office of the Agricultural Labor Relations Board. One is located at 1629 West Main Street, El Centro, California, Telephone: 714/353-2130, and another, at 112 Boronda Road, Salinas, California, Telephone: 408/443-3145.

DATED: _____.

Company: _____

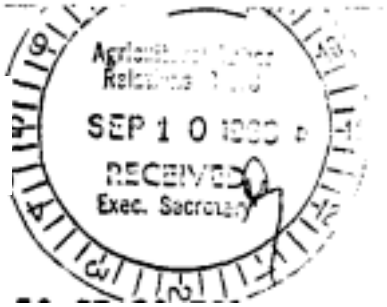
By_____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the Stare of California.

DO NOT REMOVE OR MUTILATE

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD



ADMIRAL PACKING COMPANY, ARROW LETTUCE COMPANY, ASSOCIATED PRODUCE DISTRIBUTORS, CALIFORNIA COASTAL FARMS, COLACE BROTHERS, J.J. CROSETTI COMPANY, INC., GONZALES PACKING COMPANY, GOURMET HARVESTING & PACKING, GREEN VALLEY PRODUCE COOPERATIVE, GROWERS EXCHANGE, INC., HARDEN FARMS OF CALIFORNIA, THE HUBBARD COMPANY, LU-ETTE FARMS, INC., CARL JOSEPH MAGGIO, INC., JOE MAGGIO, INC., MANN PACKING COMPANY, INC., MARTORI BROTHERS DISTRIBUTORS, MEYER TOMATOES, O.P. MURPHY & SONS, OSHITA, INC., MARIO SAIKHON, INC., SALINAS MARKETING COOPERATIVE, SENINI ARIZONA, INC., SUN HARVEST, INC., VALLEY HARVEST DISTRIBUTORS, INC., VEG-PAK, INC., VESSEY & COMPANY, INC., and WEST COAST FARMS, Respondents and UNITED FARM WORKERS OF AMERICA, AFL-CIO. Charging Party.	CASE NOS. 79-CE-38-EC 79-CE-36-EC 79-CE-117-SAL 79-CE-43-EC 79-CE-120-SAL 79-CE-45-EC 79-CE-129-SAL 79-CE-34-SAL 79-CE-131-SAL 79-CE-35-SAL 79-CE-132-SAL 79-CE-36-SAL 79-CE-144-SAL 79-CE-37-SAL 79-CE-167-SAL 79-CE-46-SAL 79-CE-168-SAL 79-CE-53-SAL 79-CE-183-SAL 79-CE-64-SAL 79-CE-185-SAL 79-CE-64-1-SAL 79-CE-188-SAL 79-CE-70-SAL 79-CE-191-SAL 79-CE-92-SAL 79-CE-202-SAL 79-CE-94-SAL 79-CE-203-SAL 79-CE-95-SAL 79-CE-206-SAL 79-CE-99-SAL 79-CE-248-SAL 79-CE-112-SAL 79-CE-16-OX 79-CE-116-SAL
UNITED FARM WORKERS OF AMERICA, AFL-CIO, Respondent, and ADMIRAL PACKING COMPANY, ARROW LETTUCE COMPANY, ASSOCIATED PRODUCE DISTRIBUTORS, CALIFORNIA COASTAL FARMS, COLACE BROTHERS, J.J. CROSETTI COMPANY, INC., GONZALES PACKING COMPANY, GREEN VALLEY PRODUCE COOPERATIVE, GROWERS EXCHANGE, INC., HARDEN FARMS OF CALIFORNIA, THE HUBBARD COMPANY, LU-ETTE FARMS, INC., CARL JOSEPH MAGGIO, INC., JOE MAGGIO, INC., MANN PACKING COMPANY, INC., MARTORI BROTHERS DISTRIBUTORS, MEYER TOMATOES, O.P. MURPHY & SONS, OSHITA, INC., MARIO SAIKHON, INC., SALINAS MARKETING COOPERATIVE, SENINI ARIZONA, INC., SUN HARVEST, INC., VALLEY HARVEST DISTRIBUTORS, INC., VEG-PAK, INC., and VESSEY & COMPANY, INC., Charging Parties.	CASE NO. 79-CL-6-SAL SUPPLEMENTAL DECISION OF ADMINISTRATIVE LAW OFFICER

Additional appearances:

William G. Hoerger, Salinas, and
William B. Eley (on the brief),
Sacramento, for the General Counsel

Carmen Flores and Marcos Camacho
(on the brief), Keene, for the
United Farm Workers of America, AFL-CIO

My decision in Admiral Packing Co., Case Nos. 79-CE-38-EC, et al., finding that a group of agricultural employers had failed to bargain in good faith with the UFW in violation of sections 1153(e) and 1153(a), was issued on March 10, 1980. I noted there that a complaint had been issued based upon related charges against the UFW by most of the employers.[1/] This supplemental decision concerns the allegations against the union.

On March 8, 1979, following the February 28-breakdown of the group negotiations described in the main decision, Case No. 79-CL-6-SAL was filed in which the employers claimed that various conduct by the union during the course of the negotiations amounted to a refusal to bargain in good faith. A complaint was issued on April 27, 1979, alleging that the UFW committed an unfair labor practice within the meaning of section 1154(c) by failing to provide information about its medical benefit and pension plans as requested by the employers. The union filed a timely answer denying the substantive allegations of the complaint.

1/ See p.3 n.2 of the main decision. The employers that entered into new collective bargaining agreements with the union also withdrew their charges against it. See id. at p.4 & n.3, p.5 n.5. The current charging parties are California Coastal Farms, Colace Brothers, J.J. Crosetti Company, Lu-Ette Farms, Carl Joseph Maggio, Joe Maggio, Martori Brothers Distributors, O.P. Murphy & Sons, Mario Saikhon, and Vessey & Company.

The CL case was noticed for hearing and opened with the CE cases consolidated as Admiral Packing, although it was not then formally consolidated with them. Evidence pertaining to the union's failure to provide information was presented in connection with the affirmative defenses asserted by the employers. The record in the CL case remained open when the Admiral hearing ended. Since all parties subsequently stated that they had no further evidence to present concerning it,[2/] the CL case has been consolidated-with the CE cases without further hearing, pursuant to an order issued simultaneously with this supplemental decision. All parties were given further opportunity to brief the factual and legal issues presented by the CL case. Briefs were subsequently received from the general counsel and the UFW, and have been considered.

I turn now to the merits of the case. The initial issue is whether the UFW violated section 1154(c) by failing to provide certain information requested by the employers. The requested information considered here concerns the Juan de la Cruz Farmworkers Pension Plan, the Robert F; Kennedy -Farm Workers Medical Plan, and the Martin Luther King Farm

2/ See Reporter's Transcript, April 22, 1980, pp. 6-7, 9,11.

Workers Fund.[3/] The pertinent evidence is reviewed and relevant findings of findings of fact are contained in the main decision.[4/]

Under section 1154(c) of the ALRA, it is an unfair labor practice for a union to refuse to bargain collectively in good faith with an agricultural employer. The obligation parallels the employer's duty to bargain collectively under section 1153(a). The NLRA contains substantially similar provisions in sections 8(b)(3) and 8(a)(5), 29 U.S.C. $$158(b)(3), 158(a)(5)(1976). It is well settled under both acts that an employer's duty to bargain in good faith includes the duty to supply the union with requested information that is relevant and necessary to collective bargaining. See, e.g. NLRB v. Acme Industrial Co., 385 U.S. 432, 64 LRRM 2069 (1969); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 38 LRRM 2024 (1955); NLRB v. Fitzgerald Mills Corp., 313 F.2d 260, 52 LRRM 2174 (2d C. 1963), enforcing 133 NLRB 877, 48 LRRM 1745 (1961), cert. den'd. 375 U.S. 834, 54 LRRM 2312 (1963); Masaji,Eto, 6 ALRB No. 20 (1980); As-H-Ne Farms, Inc., 6 ALRB No. 9 (1980); O.P. Murphy Produce Co. Inc., 5 ALRB No. 63 (1979); Hemet Wholesale Co., 4 ALRB No. 75 (1978); Adam Dairy, 4 ALRB No. 24

3/

The alleged failure to provide information about the MLK Fund is considered, even though it is not in the complaint, because it is contained in the charge, is not among the matters about which the regional director, affirmed by the General Counsel, explicitly refused to issue a complaint, and was fully litigated. The union's refusal to provide information about its Citizenship Participation Day (CPD) Fund is not considered because it was expressly omitted from the complaint.

4/

Passim: See especially pp. 19-21, 64-66.

(1978).

While the ALRB has yet to decide the question, the national board and federal courts have found that unions have a corresponding obligation to provide information. See, e.g., Local 13, Detroit Newspaper Printing & Graphic Communications Union v. NLRB (Oakland Press Co.), 598 F.2d 267, 101 LRRM 2036 (D.C.C. 1979), enforcing 233 NLRB 994, 97 LRRM 1047 (1977); Taylor Forge & Pipe Works v. NLRB, 234 F.2d 227, 230, 38 LRRM 2230 (7th C. 1956) (dicta); National Union of Hospital Employees (Sinai Hospital), 248 NLRB No. 86, 103 LRRM 1459 (1980); Teamsters Local 959 (Frontier Transp. Co.), 244 NLRB No. 3, 102 LRRM 1117 (1979). No reason for a different result under the ALRA has been suggested in the present case. I therefore conclude that a union's failure or refusal to provide requested information that is relevant and necessary to the bargaining process may constitute a violation of section 1154 (c).

I also find that the information here requested by the employers was relevant and necessary. The employers contributed to trust funds for all three plans, and substantial increases in their contributions were proposed by the union: Even though the only explanation offered for the requests was to evaluate compliance with the anti-inflation wage and price guidelines, a position taken in bad faith, the employers were entitled to information about the funds to enable them to evaluate the union's proposals and to formulate intelligent and meaningful counterproposals. Information requested of unions about

similar funds was found by the NLRB to be relevant and necessary to bargaining in both National Union of Hospital Employees (Sinai Hospital) and Teamsters Local 959 (Frontier Transp. Co.), supra. Also see Masaji Eto, supra, where the ALRB held that an employer was not justified in refusing to provide information about its pension and health-and-welfare plans and other fringe benefits.

In response to general requests for information about the MLK Fund, the union had some information available at the January 12, 1979, bargaining session; no questions were asked, however, and the fund was not discussed. Specific information was not requested until February 19, just nine days before February 28, the day the employers unlawfully declared an impasse and suspended negotiations. The union could not reasonably be expected to provide the requested information within such a brief period of time, and its failure is not a violation of its bargaining duty. The union accepted the growers' counterproposal about the fund at the last bargaining session. That fact, however, does not relieve the union of its duty to provide the information. See As-H-Ne Farms, Inc., supra; NLRB v. Fitzgerald Mills Corp., supra; National Union of Hospital Employees (Sinai Hospital), supra.

Regarding the pension plan, at the January 12 session the union provided all the requested information which was then available to it, and explained its inability to provide

the rest. Since the plan was not yet operative and reliable actuarial data about farmworkers was not available, concrete information about the actual or projected cost of benefits could not be provided. The omission of further inquiries about that fund from the information request of February 19 implies that the companies were content with the information and explanations they had received. The union satisfied its legal obligation by furnishing the requested information or adequately explaining its absence.

On January 12 the union provided some information about the medical plan and adequately explained why other information, such as the anticipated cost of new benefits under its proposal, was not available. As with the MLK Fund, the employers amplified their request shortly before breaking off negotiations. Although its failure to provide the newly requested information is excusable, the union did not respond to earlier requests for data about the current cost of providing existing benefits or the anticipated cost of maintaining them in the new contract period. Accordingly, I conclude that it has committed an unfair labor practice within the meaning of section 1154 (c).

The relationship between the union's failure to provide information and the employers' conduct remains to be explored. A failure or refusal to provide relevant information has been characterized as a per se violation of the duty to bargain without regard to motivation. See, e.g., O.P. Murphy Produce Co., Inc., supra, 5 ALRB No. 63 at 12, 14; Masaji Eto, supra,

6 ALRB No. 20 at 18; Curtis-Wright Corp., Wright Aero. Div. v. NLRB, 347 F.2d 61, 59 LRRM 2433 (3d C. 1965). While the commission of a per se violation may indicate bad faith, that determination ultimately depends upon a consideration of the totality of the circumstances. A violation of the duty to bargain does not necessarily imply the absence of subjective good faith. See J.R. Norton Co. v. ALRB, 26 C.3d 1 (1979)(technical refusal to bargain need not warrant imposition of make-whole remedy); Kaplan's Fruit and Produce CO, 6 ALRB No. 36 (1980)(employer committed per se violations by granting unilateral wage increases during negotiations, but record as a whole does not support determination that it bargained in bad faith).

In the present case, the primary conclusion that the employers engaged in surface bargaining without seriously intending to reach an agreement is unaffected by the conclusion here that the union violated section 1154(c). As is set forth more fully in the main decision, when the conduct of the parties is compared, it is clear that the employers' unlawful conduct, not the union's, caused the breakdown of negotiations. The-union did not willfully refuse to provide the requested information and its failure is insufficient to establish a subjective intent to thwart the bargaining process. Nor did the failure impede negotiations: nothing indicates that had the union provided the information, the employers' conduct would have been altered in any material way. The evidence as a whole

shows that the UFW desired and worked toward an agreement, and the employers did not. See McFarland Rose Production, 6 ALRB No. 18 (1980).

Since the union's failure to provide information played no part in the failure to reach an agreement and did not cause the workers to suffer any loss, a modification of the make-whole remedy already ordered is inappropriate. The union shall be directed to provide relevant information upon request. Further specific requests for the desired information are appropriate because the questionable motivation for some of the past requests and the passage of time create confusion about what information is genuinely desired and currently available. Future failure to provide available, requested information about any fund to which the employers contribute shall relieve them of their duty to bargain about such fund. See National Union of Hospital Employees (Sinai Hospital), supra. The union shall also take the specified steps to notify involved employees of the outcome of this proceeding.

Accordingly, pursuant to section 1160.3 of the Act, I recommend the following:

SUPPLEMENTAL ORDER

Respondent UNITED FARM WORKERS OF AMERICA, AFL-CIO {UFW), its officers, agents, successors and assigns, shall:

1. Cease and desist from failing to supply requested information that is relevant and necessary to collective

bargaining, or, in any like or related manner, refusing to bargain collectively in good faith with the charging parties.

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

a. Upon request, provide information about the Juan de la Cruz Farmworkers Pension, the Robert F. Kennedy Farm Workers Medical Plan, and the Martin Luther King Farm Workers Fund; failure to provide requested, available information about any such fund within a reasonable period of time shall relieve the requesting employer of its duty to bargain about such fund;

b. Sign the attached Notice to Employees and, upon its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth below;

c. Post copies of the attached Notice for 90 consecutive days at conspicuous places at its headquarters and any offices located in the vicinity of operations of the charging parties, the times and places of posting to be determined by the Board's regional director; and exercise due care to replace any Notice which is altered, defaced, covered or removed;

d. Upon request by any charging party, provide sufficient copies of the attached Notice for such charging party, at its option, to post and/or distribute to all agricultural employees employed currently or hired during the

12-month period, following the issuance of this order;

e. Upon the consent of any charging party, arrange for a union representative or a Board agent to read the attached Notice in appropriate languages to that employer's assembled employees, at the same time and place as is directed for any reading of the notice attached to the main decision herein;

f. Print the attached Notice in appropriate languages in all news publications distributed to its members within the six months following the issuance of this order, or, in the event that there is none, arrange for its publication in two newspapers of general circulation, one in the Imperial Valley and one in the vicinity of Salinas, said newspapers to be selected by the regional director;

g. Notify the regional director in writing, within 30 days after the issuance of this order, of the steps taken to comply with it, and upon request, notify the regional director in writing periodically thereafter of further steps taken to conply.

DATED: 5 September 1980.

Jennie Rhine
Administrative Law Officer