El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JOHN V. BORCHARD aka JOHN V. BORCKARD FARMS and ALL AMERICAN RANCHES aka ALL AMERICAN FARMS, Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 78-CE-33-E 78-CE-33-1-E 78-CE-48-E 8 ALRB No. 52

DECISION AND ORDER

On March 5, 1980, Administrative Law Officer (ALO) Arie Schoorl issued the attached Decision in this proceeding. Thereafter, General Counsel and the Charging Party, United Farm Workers of America, AFL-CIO (UFW or Union) each timely filed exceptions with a supporting brief. Respondents filed no exceptions .

Pursuant to Labor Code section 1146, the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record[1] and the attached Decision in light of the exceptions and briefs, and has decided to affirm the ALO's rulings, findings, and conclusions and to adopt his recommended Order as modified herein.

We adopt the ALO's recommendation that limited makewhole

[1] General Counsel exhibit 39 is missing from the record. The exhibit is not necessary to the resolution of the issues before us

be awarded to the agricultural employees of John V. Borchard (Borchard) for its failure to notify and bargain with the UFW over the effects of its decision to discontinue its farming operations. Borchard ceased its farming operations on December 31, 1977. We conclude that Borchard violated section 1153(e) and (a) of the Act on or about December 31, 1977, by its refusal or failure to notify and bargain with the UFW over the effects on its employees of its decision to discontinue its farming operations. As a result of Borchard's unlawful failure to so notify and bargain with the UFW, Borchard's employees were denied an opportunity to bargain through their collective-bargaining representative at a time when such bargaining would have been meaningful and a measure of balanced bargaining power existed. In numerous cases in which an employer failed to bargain with a union over the effects of its decision to go out of business, the NLRB has imposed a limited backpay order in order to assure meaningful bargaining and to effectuate the purposes of the National Labor Relations Act (NLRA).[2/] (See Transmarine Navigational Corporation (1968) 170 NLRB 389 [67 LRRM 1419]; J-B Enterprises, Inc. (1978) 237 NLRB 383 [99 LRRM 1432]; Van's Packing Plant (1974) 211 NLRB 692 [86 LRRM 1581].) Therefore, in

[2/] Although the NLRB generally does not impose a makewhole remedy in refusal to bargain cases, makewhole is imposed under these circumstances because "it is impossible to reestablish a situation equivalent to that which would have prevailed had the [employer] more timely fulfilled its statutory bargaining obligation. In fashioning an appropriate remedy, [the NLRB] must be guided by the principle that the wrongdoer, rather than the victims of the wrongdoing, should bear the consequences of his unlawful conduct,

[fn. 2 cont. on p. 3]

accordance with applicable NLRA ent, we shall order a
limited makewhole remedy designed to create conditions similar to

those that would have been present had Borchard consulted the UFW prior to the end of the lettuce harvest and the cessation of its farming operation. (Highland Ranch and San Clemente Ranch, Ltd. (Aug. 16, 1979) 5 ALRB No. 54, enforced sub nom., Highland Ranch v. ALRB (1981) 29 Cal.3d 848.) We find that all agricultural employees employed by Borchard on or about November 21, 1977, prior to the unlawful discharge of the thinning crew on that day, are entitled to receive the limited backpay.[3] On or about November 21, 1977, a measure of balanced bargaining power existed between the UFW and Borchard. On December 31, 1977, few, if any, agricultural employees were employed by Bcrchard.

We shall order Borchard to pay its terminated employees who were employed on or about November 21, 1977, their usual daily

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[fn. 2 cont.]

and that the remedy should "be adapted to the situation that calls for redress.'" (Footnote omitted.) (Transmarine Navigational Corp. (1968) 170 NLRB 389.) Under these circumstances, a bargaining order alone cannot serve as an adequate remedy for the employer's unfair labor practice, thus a limited backpay order is imposed together with the bargaining order "to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the [employer]." (Transmarine Navigational Corp. ibid, at 390.)

[3] Labor Code section 1148 requires the ALRB ". . . to follow applicable precedents of the NLRA." By utilizing that language "the Legislature intended [the ALRB to] select and follow only those federal precedents which are relevant to the particular problems of labor relations on the California agricultural scene." Departure from federal precedent is warranted when significant differences exist between the working conditions of industry in general and those of California agriculture. (ALRB v. Superior Court (1976) 16 Cal.3d 392.)

wages at that time, for the period commencing ten days after the

date of issuance of this Decision and Order and continuing until: (1) the date Borchard reaches an agreement with the UFW about the impact on its former employees of its decision to discontinue its 'agricultural business; or (2) the date Borchard and the UFW reach a bona fide impasse in bargaining on that matter; or (3) the failure of the UFW either to request bargaining about that matter within ten days after the date of issuance of the Decision and Order or to commence negotiations within five days after Borchard's notice to the UFW of its desire to so bargain; or (4) the subsequent failure of the UFW to meet and bargain in good faith with Borchard about that matter.

Remedy for Grievances Not Processed

The General Counsel and the UFW except to the ALO's recommended order requiring All American and Borchard to bargain collectively, upon request of the UFW, concerning the four grievances Borchard failed to process in violation of Labor Code section 1153(e) and (a). General Counsel and the UFW argue that the proper remedy for the violation would be an order requiring All American and Borchard to arbitrate the grievances pursuant to the Grievance and Arbitration Article of Borchard's collective bargaining agreement with the UFW.

All American is clearly the successor of Borchard. Despite the transfer of ownership from Borchard to All American, the agricultural operation itself remained almost identical and there was no significant alteration in the composition of the bargaining unit. The agricultural employees perform the same task-

for All American which they previously performed for Borchard, as All American grows essentially the same crops on the same land and uses agricultural machinery acquired from Borchard. Mr. John Borchard was retained by All American as its general manager and five of seven supervisors who worked for Borchard were retained by All American. As of February 8, 1978,[4] 29 of All American's 51 agricultural employees had previously worked for Borchard, and on July 10, 1978,[5] 29 of All American's 48 employees had previously worked for Borchard. Under these circumstances, established principles of successorship indicate that All American is Borchard's successor, and we so find. (Highland Ranch and San Clemente Ranch, Ltd., supra, 5 ALRB No. 54, enforced sub nom. San Clemente Ranch, Ltd, v. ALRB (1981) 29 Cal.3d 874.)

The ALO concluded that Borchard violated section 1153(e) and (a) of the Act by failing to process four grievances filed by the UFW in November 1977, based on Borchard's layoff of the thinning crew in violation of the collective bargaining agreement without notifying and bargaining with the Union. We affirm the ALO's finding that All American, as Borchard's successor, had knowledge of the unfair labor practices and became the beneficiary of the unremedied unfair labor practices. Borchard and All American are therefore jointly and severally liable for remedying the unfair labor practices. (See Perma Vinyl Corp. (1967) 164 NLRB 968

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[4] Mr. John Borchard testified that All American reached its "full complement" of employees on that date.

[5] The UFW sent its first request to bargain to All American on that day

[66 LRRM 1168], Golden State Bottling Company, Inc. v. NLRB (1973) 414 U.S. 168.)

In California,

> [A] successor of an employer is bound by the arbitration provision in a collective bargaining agreement executed by its predecessor if there is substantial similarity of operation and continuity of identity of the business enterprise before and after a change in ownership (citations). (Retail Clerks Union, Local 775 v. Purity Stores, Inc. (1974) 41 Cal.App.3d 225 [116 Cal.Rptr. 40].)

Federal courts also recognize that, under circumstances similar to those herein, successor employers are bound by arbitration provisions of collective bargaining agreements negotiated between a predecessor employer and a union. (See Wood, Wire and Metal Lathers International Union Local 104 v. McGlynn Plastering, Inc. (1976) 91 LRRM 3000; Russon v. Sears, Roebuck and Company (1976) 94 LRRM 2882; Local 1115 Joint Board Nursing Home and Hospital Employees, Florida Division v. B & K Investments, Inc. (1977) 96 LRRM 2348.) On the basis of the substantial similarity of All American's operation to Borchard's and the continuity of identity of the business enterprise before and after the change in ownership, we conclude that All American is bound by the arbitration provision of the collective bargaining agreement between Borchard and the UFW.

On August 14, 1978, the Imperial County Superior Court issued an order compelling John V. Borchard to arbitrate the grievances filed by the UFW in this action pursuant to Article 5

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of the collective bargaining agreement.[6] Although there is no indication in the record that a similar order was issued against All American it is, as Borchard's successor, susceptible to such an order.

An arbitration award against an employer which has ceased doing business may be enforced by the union against the successor employer since the successor employer is bound by the arbitration agreement between the union and the predecessor employer. (Shaffer v. Mitchell Transport, Inc. (3d Cir. 1980) 635 F.2d 261 [106 LRRM 2107].) California Code of Civil Procedure section 1285 provides:

> Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.

As Borchard's successor, All American would be bound by an arbitration award. In view of that fact, and in light of the existing Court order requiring Borchard to submit to arbitration, our remedial Order herein will not require All American to arbitrate the grievances.

Makewhole Period

The UFW excepts to the ALO's recommendation that the makewhole period begin July 17, 1978. The UFW argues that January 18, 1978, should be the date makewhole begins because John Borchard, as All American's general manager, and Virgil Torrance,

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[6] General Counsel Exhibit 68. Although it appears from the record that this exhibit was not received into evidence, we take administrative notice of its existence. (Evidence Code section 452.)

as its labor relations director, intentionally concealed from the Union All American's acquisition of the enterprise when the UFW telephoned Borchard on that date to discuss the grievances filed some months earlier. January 18 is also the date All American actually took over the agricultural enterprise and Mr. John Borchard became general manager.

On January 18, 1978, Barbara Macri, a UFW representative, telephoned the Borchard offices which were then occupied by All American and asked to speak to someone about the grievances covered by the UFW contract with Borchard. John Borchard told her to talk to Virgil Torrance who was in charge of his labor relations. Torrance and Macri discussed the grievances and he agreed to contact the Union about setting up a meeting to resolve the grievances. Neither John Borchard nor Virgil Torrance informed Ms. Macri that All American had taken over Borchard's farming operations. Ms. Macri sent a letter to Torrance at John V. Borchard Co. confirming their telephone conversation. When no meeting had been set, Ms. Macri sent another letter to Torrance on February 7, informing him that the grievances would be arbitrated and requesting him to select an arbitrator. The record does not indicate that any meetings, telephone conversations, or other correspondence occurred thereafter between the UFW and All American until the UFW requested All American to bargain in a letter dated July 10, 1978, four months after it learned of All American's takeover.

The UFW first learned of All American's takeover in the early part of March 1978 when former Borchard employees informed the Union that their paychecks were issued by All American rather

than Borchard. All American, as the successor of Borchard Farms, had, and has, a duty to meet and bargain in good faith with the UFW at its request. (Highland Ranch and San Clemente Ranch, Ltd., supra, 5 ALRB No. 54.) The UFW made its initial request to bargain upon All American by letter on July 10, 1978. On July 19, All American replied by letter rejecting the UFW's request. The ALO found that All American violated its duty to bargain beginning on July 11, 1978, by refusing to recognize and to meet and bargain in good faith with the UFW.

In the only case which has heretofore presented a similar set of facts to this Board, Highland Ranch and San Clemente Ranch, Ltd., supra, 5 ALRB No. 54, the UFW, which was the certified representative of Highland Ranch's agricultural employees, learned of the impending sale of Highland Ranch to San Clemente Ranch on November 29, 1977. San Clemente took over the agricultural operation on December 1. The UFW made its first demand for negotiations with San Clemente on December 9. San Clemente formally refused to bargain with the UFW on December 21. The Board found that San Clemente's refusal to bargain with the union commenced on December 9 and imposed makewhole as of that date.

The duty of an employer to bargain collectively does not arise until a union requests the employer to bargain. NLRB v. Columbian Enameling and Stamping Co., Inc. (1939) 306 U.S. 292 [4 LRRM 524]. In the instant case, the UFW did not request All American to bargain until July 10.

Borchard failed to notify the UFW of its decision to go out of business and we have imposed a limited makewhole remedy for

that violation of the Act, Contrary to our dissenting colleague, we will not impose a duty on All American, as a successor, to give prompt notice to the UFW, the certified bargaining representative of Borchard's agricultural employees, of its purchase of Borchard's agricultural operation. We find no NLRB precedent for imposing such a duty.

While we do not condone active concealment of a change in ownership of an agricultural operation, the evidence in this case is not sufficient to find that All American actively concealed its ownership of Borchard's farming operation from the UFW. In particular, Ms. Maori's contact with John Borchard and Virgil Torrance on January 18 is not sufficient to prove that All American concealed its ownership interest. The grievances she was seeking to settle were covered by the Borchard-UFW collective bargaining agreement and John Borchard could have settled those grievances in his capacity as the former owner of Borchard.

We find that All American's refusal to bargain with the UFW commenced on July 13, the date the Union's initial request to bargain was, or is presumed to have been, received by All American, Kyutoku Nursery, Inc. (Aug. 8, 1978) 4 ALRB No. 55, and therefore, that the beginning date for the makewhole period is July 13, 1978. The period shall extend until August 28, 1979, the date the hearing commenced, and continue thereafter until Respondent commences good-faith bargaining with the UFW which results in either a contract or a bona fide impasse. (John Elmore Farms (Mar. 10, 1932) 8 ALRB No. 20.)

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent John V. Borchard aka John V. Borchard Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to meet end bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), about the impact and probable effects on its agricultural employees of its decision to discontinue its business operations and to transfer the said operations to another employer.

(b) Making unilateral changes in its employees' terms or conditions of employment without giving prior notice to and bargaining with the UFW concerning such proposed changes.

(c) Failing or refusing to process grievances under the terms of the collective bargaining agreement it entered into with the UFW on or about September 9, 1977.

(d) In any like or related manner interfering with restraining, or coercing agricultural employees in the exercise of the rights guaranteed 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 with respect to the effects upon its former agricultural employees of its termination of operations, and reduce to writing, at the UFW's request, any agreement reached as a result of such bargaining.

(b) Pay to its terminated employees who were employed on or about November 21, 1977, their usual daily wages as of December 31, 1977, for the period commencing ten days after the date of the issuance of this Order and continuing until: (1) the date it reaches an agreement with the UFW about the impact and effects on its former employees of its decision to discontinue its business; or (2) the date it and the UFW reach a bona fide impasse in such collective bargaining; or (3) the failure of the UFW either to request bargaining within ten days after the date of issuance of this Order or to commence negotiations within five days after Respondent Borchard's notice to the UFW of its desire to bargain; or (4) the subsequent failure of the UFW to meet and bargain collectively in good faith with Respondent Borchard. In no event shall the backpay period for any employee exceed the period necessary for the employee to obtain alternative employment, provided, however, that in no event shall the backpay award to any employee be less than he or she would have earned for a two-week period at the rate of his or her usual wages when last in Respondent's employ.

(c) Jointly and severally with All American Ranches make whole the following-named members of the thinning crew for all losses of pay and other economic losses incurred by them as a result of their discharge by Respondent Borchard and its refusal to rehire them in November 1977, together with interest thereon at the rate of seven percent per annum, the backpay awards to be computed in accordance with Board precedents:

Celia Apodaca	Jose Madueno
Jorge Apodaca	Juana Ocano
Magdalena Davila	Concepcion Sanchez
Javier Esparza	Blanca Tafoya
Teresa Esparza	Virginia Torres
Esther Gonzales	Jose Zamora
Rafael Gonzales	Manuel Zamora
Maria Elena Hernandez	Ramon Zamora
Rosa Lopez	Rosa Zamora
Concepcion Madueno	Trinidad Zamora

(d) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and otherwise copying, all records in its possession relevant and necessary to a determination by the Regional Director of the backpay periods and the amounts due employees under the terms of this Order.

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

(f) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Borchard at any time between September 9, 1977, and December 31, 1977.

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

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent All American Ranches aka All American Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith, on request, with the United Farm Workers of America, AFL-CIO (UFW), at reasonable times and places and to submit meaningful bargaining proposals with respect to its agricultural employees' wages, hours, and other terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed 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 exclusive collective-bargaining representative of its agricultural employees and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Jointly and severally with John V. Borchard make whole the following-named members of the thinning crew for all losses of pay and other economic losses incurred by then as a result of their discharge by John V. Borchard and its refusal to rehire them in November 1977, together with interest thereon

at the rate of seven percent per annum, the backpay awards to be computed in accordance with Board precedent, and offer to reinstate them to their former or substantially equivalent jobs without prejudice to their seniority or other employment rights and privileges:

Celia Apodaca	Jose Madueno
Jorge Apodaca	Juana Ocano
Magdalena Davila	Concepcion Sanchez
Javier Esparza	Blanca Tafoya
Teresa Esparza	Virginia Torres
Esther Gonzales	Jose Zamora
Rafael Gonzales	Manuel Zamora
Maria Elena Hernandez	Ramon Zamora
Rosa Lopez	Rosa Zamora
Concepcion Madueno	Trinidad Zamora

(c) Make whole all agricultural employees employed by Respondent All American Ranches at any time during the period commencing on July 13, 1978, the date of All American's first refusal to bargain with the UFW, and extending until August 23, 1979, the date the hearing in this case commenced, and continuing thereafter until the date on which All American Ranches commences good-faith collective bargaining with the UFW which leads to a contract or a bona fide impasse, for all economic losses they have suffered as a result of the aforesaid refusal to bargain, the makewhole awards to be computed in accordance with Board precedent, plus interest computed at seven percent per annum.

(d) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and otherwise copying, all records in its possession relevant and necessary to a determination by the Regional Director of the makewhole period and the amounts due employees under the terms

of this Order.

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

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

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by it at any time during the period from July 13, 1978, to the date of said mailing.

(h) Provide a copy of the attached Notice in the appropriate language, to each agricultural employee hired by it during the 12-month period following the date of issuance of this Order.

(i) Arrange for a representative of All American Ranches or a Board agent to distribute and read the attached Notice in all appropriate languages to the assembled employees of Respondent All American Ranches on company time at such time(s) and place(s) as specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice and their

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

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

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

Dated: July 26, 1982

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Member

MEMBER WALDIE, Concurring in part, dissenting in part:

I concur with the majority's opinion in the instant case except as to the starting date of the make-whole period and the finding that the evidence in this case is not sufficient to establish that All American "actively" concealed from the UFW its successorship to Borchard's farming operation.

My colleagues have correctly held that Borchard violated section 1153(e) and (a) of the Act by its failure to notify the UFW of its decision to transfer ownership of its operations to All American. I would follow their reasoning to its logical conclusion: that All American likewise violated section 1153(e) and (a) of the Act by its failure to notify the UFW, within a reasonable time after it had purchased Borchard's operations, of that purchase and that it had become the employer with which the UFW would henceforth deal with respect to the affected employees. I would find such a violation in any case where a successor, having knowledge that the employees of the predecessor are represented by a certified union,

fails (actively, passively, or in any other manner) to timely notify the affected union(s) of the fact that it has become the employer of the unit employees, but especially in the instant matter, where predecessor John V. Borchard became the General Manager of the successor.

The majority finds that All American first refused to bargain with the UFW on July 13, 1978, three days after the Union's letter dated July 10, 1978, requesting bargaining. In so finding, they appear to accord an unwarranted preference to a formal written general bargaining request over the informal, oral and specific, but equally valid, request represented by UFW agent Barbara Macri's telephone call to Borchard and Torrance on January 18, 1978. All American was in fact, and in law, the employer of the unit employees from the time of its acquisition of Borchard's operations, and after that date, and the UFW was, de facto and de jure, the certified bargaining representative of those employees then and thereafter. Although UFW agent Macri had no knowledge at that time that All American was the employer, and although both Borchard and Torrance failed by silence (where I would find a clear duty to speak) to so inform her, it is abundantly clear that the certified union was asking the employer of the affected employees to bargain about employees' grievances, and equally clear that the employer's agents, by their actions, and subsequent refusals to answer her letters, unlawfully refused to bargain. I am not persuaded by my colleagues' reasoning that John Borchard could have settled these grievances in his capacity as the owner of Borchard. That may be so, but whether UFW agent Macri knew it or not, she was addressing her bargaining

requests to All American's manager and labor relations representative, and I find it more reasonable to believe that they were refusing to bargain in the positions they occupied at the time rather than in the capacities they may have occupied at some prior period. It can be said that John Borchard's refusal to bargain on January 20, 1978, was a refusal to bargain as a representative of Borchard Farms and as a representative of All American.

I would find that any successor has a duty to give prompt notice to the certified collective bargaining representative of its purchase of the business. The duty of the successor to notify the union of the identity of the new employer of the unit employees is just as important as the predecessor's obligation to notify and bargain with the union of its intent to transfer ownership of the employing entity. This duty is not the imposition of a new obligation, the obligation exists by virtue of the nature of successorship itself, by virtue of the change in ownership. It requires a minimal effort by the successor, and does not require the successor to request or initiate bargaining, while fulfilling the obligation will clearly further the purposes of the Act by fostering and maintaining stability in collective bargaining relationships.

The burden of notice should, of course, be upon the successor, who has direct knowledge of the successorship and who has succeeded to the bargaining obligation. Although a successor is not necessarily obligated to assume all of the obligations of its predecessor's labor contract, it does have an obligation to meet and bargain collectively in good faith, upon request, with the representative selected by the predecessor's employees certified by this

Board. The union has the obligation to request bargaining, but where the employer's failure to notify the union of the successor-ship is considered to have delayed pr prevented such a request, I would find the employer's conduct a per se refusal to bargain. (NLRB v. Burns Int'l. Security Services (1972) 406 U.S. 272 [80 LRRM 2225]; San Clemente Ranch, Ltd, v. ALRB (1981) 29 Cal.Sd 874.) Accordingly, a successor assumes the same obligation as the predecessor or any other employer whose employees are represented by a certified collective bargaining representative selected by its employees. At the time of the certification, the union would, of course, be on notice as to the identity of the employer, having participated in the secret-ballot election which resulted in the certification. A union which represents the employees of a business which is sold or otherwise transferred to another is no less entitled to know the identity of the employer with which it has the right and obligation to bargain, and no less entitled to know at the time the obligation attaches, than the union which is the beneficiary of an initial certification. I would require only that the successor notify the union(s) involved of its acquisition of the business of the predecessor and to do so at the time of acquisition, or promptly thereafter. Such duty of notification is not different from the requirements imposed by state, county and city statutes requiring that purchasers notify the appropriate governmental agencies and offices of said purchase.

Dated: July 26, 1982

JEROME R. WALDIE, Member

NOTICE TO JOHN V. BORCHARD AGRICULTURAL EMPLOYEES

After a hearing at which all parties were given an opportunity to present testimony and other evidence, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by failing and refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), about the effects of our decision to go out of business; unilaterally, and without consulting and bargaining with the UFW, laying off members of a thinning crew and refusing to rehire them; and refusing to process employees' grievances under the terms of our collective bargaining agreement with the UFW. The Board has ordered us to distribute this Notice and to take certain other actions. We shall do what the Board has ordered and also tell you that the Agricultural Labor Relations Act is a law that gives you and all farm workers these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because this is true, we premise you that:

WE WILL meet and bargain in good faith with the UFW about the effects on our former employees of our decision to discontinue business operations because it is the representative chosen by our employees.

WE WILL pay to each of the agricultural employees employed by us on November 21, 1977, their usual wages for the period described in the Board's Decision and Order.

WE WILL, jointly and severally with All American Ranches, pay backpay to Celia Apodaca, Jorge Apodaca, Magdalena Davila, Javier Esparza, Teresa Esparza, Rafael Gonzales, Esther Gonzales, Maria Elena Kernandez, Rosa Lopez, Concepcion Madueno, Jose Madueno, Juana Ocano, Concepcion Sanchez, Blanca Tafoya, Virginia Torres, Jose Zamora, Manuel Zamora, Ranon Zanora, Rosa Zamora, and Trinidad Zamora, plus seven percent interest, in accordance with the Board's Decision and Order.

Dated: JOHN V. BORCHARD

By: ______________________________

(Representaive) (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 92243. The telephone number is 714/353-2130.

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 ALL AMERICAN RANCHES AGRICULTURAL EMPLOYEES

After a hearing at which all parties were given an opportunity to present evidence, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by failing and refusing t meet and bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW), about a contract. The Board has ordered us to post this Notice and to take certain other actions. We will do what the Board has ordered and also tell you that the Agricultural Labor Relations Act is a law that gives you and all farm workers these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

WE WILL, on request, meet and bargain collectively in good faith with the UFW about a contract, because it is the bargaining representative chosen by John V. Borchard's agricultural employees and we are a successor to John V. Borchard.

WE WILL make whole each of the agricultural employees employed by us at any time after July 13, 1978, for any loss of pay or other economic losses they sustained because we have failed or refused to bargain with the UFW plus interest computed at seven percent per annum, in accordance with t. Board's Decision and Order.

WE WILL, jointly and severally, with John V. Borchard pay backpay to Celia Apodaca, Jorge Apodaca, Magdalena Davila, Javier Esparza, Teresa Esparza, Rafael Gonzales, Esther Gonzales, Maria Elena Hernandez, Rosa Lopez, Concepcicn Madueno, Jose Madueno, Juana Ocano, Concepcion Sanchez, Blanca Tafoya, Virginia Torres, Jose Zamora, Manuel Zamora, Ramon Zamora, Rosa Zamora, and Trinidad Zamora, plus seven percent interest, and will offer them immediate and full reinstatement to their former positions or substantially equivalent jobs without prejudice to their seniority or other employment rights and privileges.

Dated: ALL AMERICAN RANCHES

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 92243. The telephone number is 714/353-2130.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

John V. Borchard, et al.

8 ALRB No. 52
Case Nos. 78-CE-33-E
78-CE-33-1-E
78-CE-48-E

ALO DECISION

John V. Borchard sold his farming operation to All American Ranches on or about January 1, 1978. John V. Borchard violated Labor Code section 1153(e) and (a) when it failed or refused to notify the UFW, the certified bargaining representative of Borchard's agricultural employees, of its decision to sell its agricultural operation. Respondent Borchard also violated section 1153(e) and (a) by laying off a thinning crew on November 21, 1977, and hiring through a labor contractor, and refusing to arbitrate four grievances.

All American Ranches is the successor to John V. Borchard. In 1978 and 1979 All American farmed land that Borchard owned and leased in 1977, leased equipment used by Borchard, grew essentially the same crops grown by Borchard, retained a majority of Borchard's supervisors, hired Borchard as its general manager, and retained a majority of Borchard's agricultural employees. Because All American is Borchard's successor, it has a duty to bargain in good faith with the UFW. All American refused to bargain with the UFW in violation of section 1153 (e) and (a) on July 11, 1978. All American, Borchard's successor, took over Borchard's agricultural operation with the knowledge that Borchard had committed unfair labor practices and benefits from them. Therefore All American and Borchard are jointly and severally liable for the unfair labor practices.

Borchard and All American were ordered to bargain with the UFW over the effects of Borchard's decision to sell his operation to All American and to pay Borchard's terminated employees their normal wages for a limited period of time to create conditions similar to those that would have been present had Borchard timely notified the UFW of its decision to sell its business. The limited makewhole was imposed in accordance with Highland Ranch and San Clemente, Ltd. (Aug. 16, 1979) 5 ALRB No. 54. Respondents were also ordered to bargain with the UFW concerning the four grievances and to make whole the members of the thinning crew for any losses of pay and other economic losses as a result of Borchard's illegal termination. All American was ordered to reinstate the members of the thinning crew and to make whole its employees for refusing to bargain with the UFW from July 17, 1978, to the date it commences to bargain in good faith and thereafter bargains to contract or impasse.

BOARD DECISION

The Board affirmed the ALO's findings on all the unfair labor practices, his finding that All American was Borchard's successor, and that All American had knowledge and benefit from Borchard's unfair labor practices. The Board refused to order All American to

arbitrate the grievances because there is an outstanding court order which ordered Borchard to arbitrate the grievances. As Borchard's successor, the court order is enforceable against All American. The makewhole remedy imposed on All American shall commence on July 13, 1978. There was insufficient evidence to find that Borchard actively concealed from the UFW the sale of its operation to All American.

DISSENT

There is sufficient evidence to find that Borchard actively concealed from the UFW the sale of its agricultural operation to All American. Therefore, makewhole should be imposed from the date the concealment occurred until the UFW receives notice of the sale. The successor has a duty to give prompt notice to the certified collective bargaining representative of its purchase of the agricultural operations.

* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	
JOHN V. BORCHARD aka JOHN V. BORCHARD FARMS, and JOHN V. BORCHARD, and ALL AMERICAN RANCHES, aka ALL AMERICAN FARMS,	Case Nos 78-CE-33-E 78-CE-33-1-E 78-CE-48-E
Respondents,	
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	
Charging Party.	

Nancy Kirk, Esq.
for the General Counsel

Richard C. Fugate
Hill, Wynne, Troop and Meisinger
for Respondent All American Ranches

John V. Borchard In
Propria Persona

DECISION OF ADMINISTRATIVE LAW OFFICER

ARIE SCHOORL, Administrative Law Officer: This case was heard by me on August 28, 29, 30, September 4 and October 5, 1979 in El Centro, California. The complaint herein, which issued on December 14, 1978, based on charges filed by the United Far-Workers of America, AFL-CIO (hereinafter referred to as the UFW or the union), and duly served on May 19, July 11 and September 27, 1973, alleges that Respondents committed various violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). A first amended complaint, based on the

above-mentioned charges issued on July 11, 1979. The General Counsel and Respondent All American Ranches (hereinafter called All-American) were represented at the hearing, John V. Borchard represented himself at the hearing but the Charging Party did not participate. The General Counsel and Ail-American filed timely briefs after the close of the hearing. Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

All American Ranches is a California corporation engaged in agricultural operations in Imperial County, California. It began its operations on January 18, 1978 with the leasing and assumption of leases of farm land and equipment from Borchard. Since January 18, 1978 All American has been engaged in the growing and harvesting of various agricultural commodities. Accordingly I find that All American is engaged in agriculture within the meaning of Labor Code Section 1140.4(a) and is an agricultural employer within the meaning of Labor Code Section 1140.4(c).

John V. Borchard (hereinafter referred to as Borchard) is a sole proprietorship which was during the time frame in which it is alleged to have violated the Agricultural Labor Relations Act engaged in Imperial County, California in the growing and harvesting of agricultural commodities and was an agricultural employer within the meaning of Labor Code Section 1140.4(c) of the Act.

Both Respondents admit in their respective answers that the United Farm Workers of America, (AFL-CIO) is a labor organization as defined in Section 1140.4(f) of the Act and I so find.

II. The Alleged Unfair Labor Practices

The First Amended Complaint alleges that the UFW was certified by the Board as bargaining representative for the agricultural employees of John V. Borchard Farms on January 23, 1976, that on September 9, 1977, the UFW and Borchard entered into a collective bargaining agreement, the duration of which was from September 9, 1977 to and including January 1, 1979, and that on or about January 1, 1978 Borchard ceased a majority of his business operations and leased his land and farm equipment to All American.

The First Amended Complaint further alleges that beginning in the fall of 1977 Borchard violated its duty to bargain in good faith with the UFW as evidenced from its totality of conduct including but not limited to its failure to notify the UFW of its intent to partially close its business operations and to lease land and equipment used in said business operations to All American and to negotiate with the UFW regarding said closure and leasing; its taking unilateral action on November 21, 1977 by laying off a thinning crew and hiring through a labor contractor; its refusal to arbitrate five grievances in respect to the layoff, in violation of seniority provisions of the collective bargaining agreement, of four employees and its refusal to pay vacation pay, due under the collective bargaining agreement, to three employees and lastly by its refusal to arbitrate in respect to the lay off, in violation of the

collective bargaining agreement, of the thinning crew on November 21, 1977.

The First Amended Complaint also alleges that All American as the alter ego and/or successor of Borchard has refused to honor the collective bargaining contract entered into between Borchard and the UFW and also has refused to recognize and bargain with the UFW and that All American as the alter ego and/or successor to Borchard, is jointly and severally liable for remedying each and every violation alleged against Borchard in the preceding paragraphs.

Borchard in its answer (denies the unfair labor practice allegations of the complaint and in addition) alleges as an affirmative defense that in approximately October 1977 it did inform the UFW that it was ceasing operations as an "agricultural employer" and that it therefore had no obligation to negotiate the effects of totally ceasing operations as an agricultural employer. As a further affirmative defense Borchard alleges that since it ceased employing agricultural employees on or about January 1, 1978 and hence was no longer an "agricultural employer" under Section 1140.4(c) of the Act, its activities thereafter cannot constitute unfair labor practices as defined in Section 1160 of the Act and the Agricultural Labor Relations Board lacks jurisdiction pursuant to its grant of power in Section 1160 of the Act. As a further defense Borchard alleges that the alleged conduct complained of in the complaint is time barred by Section 1160.2 of the Act.

All American in its answer denies the allegations of unfair labor practices in the complaint and denies that it is the alter ego and/or successor of Borchard and as an affirmative

defense alleges that the alleged conduct complained of in the complaint is time barred by Section 1160.2 of the Act.[1/]

At the hearing General Counsel moved to amend the First Amended Complaint and said motion was granted. The charges in the First Amended Complaint consist of the following: 1 - The name of All American Farms to be included in the caption. 2 - The date that charge 78-CE-33-1-E was filed to be changed from May 22, 1978 to July 13, 1978. 3 - Paragraph 5 of the prayer to be omitted. 4 - The names of employees Magdalena Davila and Blanca Tafoya to be added to Attachment 1 of the complaint.

III. Background Information

John V. Borchard Farms is a sole proprietorship owned and operated by John V, Borchard. Borchard farmed approximately 6,000 acres in the Imperial Valley near El Centro in 1975, 1976 and 1977. He raised mainly cotton and alfalfa but in addition raised bests, lettuce, milo, rye grass and sudan grass.

[1/] At the hearing All American raised the issue of whether charge 78-CE-33-E complied with Section 1160.2 and claimed that the alleged unfair labor practice of unilaterally discharging the thinning crew occurred on November 21, 1977 more than six months prior to the filing of the charge on May 22, 1978. However I have in my recommended decision considered the alleged unilateral act, the temporary layoff of the thinning crew and subsequent refusal to rehire the members of the crew on November 26 and 30, 1977; as the basis of the alleged unfair labor practice and thus the unfair labor practices, if any, occurred within the 6 month period, November 22, 1977 to May 22, 1978. The language of the charge reads as follows, "On or about November 21, 1977, employer John V. Borchard discriminatorily terminated the employment of the following named employees.... Since that time John V. Borchard has refused to rehire the same named employees.

The remaining charges all deal with alleged continuous violations of the Act i.e. refusing to bargain and refusing to process grievances and are clearly within the 6 month time limit requisite of Section 1160.2 of the Act.

In 1976 he began to experience financial difficulties with his agricultural operation so on November 1st of that year he filed a petition with the United States Bankruptcy Court under the provisions of Chapter 11 of the Federal Bankruptcy Act. A committee of creditors was formed and in April 1977 a plan of arrangement was approved by the Bankruptcy Court by which John V. Borchard would, over a period of ten years, make periodic payments which would be pro-rated among the creditors.

A representative election was held at John V. Borchard Farms and the UFW was elected as the representative of Borchard agricultural employees and certified as such by the ALRB on January 23, 1976. In the Spring of 1977 Borchard and the UFW commenced collective bargaining and after reaching an agreement both parties on September 9, signed a collective bargaining contract which would remain in effect until January 1, 1979. There was a clause added to the contract which stated that the UFW was agreeing to a lower-than-standard wage scale for agricultural employees in the Imperial Valley because of Borchard's financial condition.

IV. Did Borchard violate Section 1153 (e) by failing to notify and bargain with the UFW in respect to transferring his business to All American?

A. Facts

John Borchard learned from the Crocker National Bank on or about August 28, 1977 that the Bank would no longer extend his farming operation any more credit.[2/] Shortly afterwards the Bank and the Creditors' Committee contracted with Virgil Torrance

[2/] John Borchard testified that a rain storm that destroyed the cotton crop struck on August 16 and that the Bank notified him of the cesation of credit ten days to two weeks later.

to liquidate the business by December 1977. Torrance assumed his duties as the liquidator of the Borchard assets on September 12, 1977.

John Borchard testified that in collaboration with Torrance he began to wind down his farm operations and to lay off employees in September 1977. He also testified that beginning in September he had contacted Ann Smith, the chief negotiator of the Borchard-UFW contract, and on numerous occasions "all during the fall" had informed her that because of the dire financial condition of the company that he was closing down his business and that he would be gradually reducing his work force. Ann Smith, in her testimony, admitted having conversations with John Borchard during this period but denied that at any time he mentioned that Borchard was going to shut down.[3/]

In September Ann Smith telephoned the Borchard office to protest about the layoff of a tractor driver. John Borchard talked to her first and then told her he would let her talk to the person who was in charge of labor relations, Virgil Torrance. Torrance testified that Smith called his attention to the layoff of a tractor driver with more seniority than one who was still operating a harrow bed machine. Torrance added that he explained

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[3/]Ann Smith testified that she had heard indirectly from Nick Weber (chairman of the Committee of Creditors and a negotiator for Borchard at the bargaining sessions) that Torrance had been named to liquidate some assets for Borchard but she thought that it would be a partial liquidation so Borchard could obtain additional cash to finance new crops.

to Smith that the company was going out of business so that it would be inconvenient to train the tractor driver with seniority to drive this machine when he would be doing it for so short a time, only two to three months, and that Smith agreed that there was merit in his point of view and the Union would not pursue the matter any further.

Ann Smith, in her testimony, denied that Torrance ever mentioned anything about Borchard going out of business during the conversation and contended that no agreement was reached on the subject of the tractor driver and that subsequently she turned the matter over to the UFW's grievance committee.

Both John Borchard and his wife, Doris, testified that they had overheard Torrance talking to Smith on the telephone about the seniority problem and that he had mentioned about Borchard winding down his business.[4/]

John Borchard testified that Torrance had a conversation with Smith in the last part of November in which he mentioned the closing down. However Torrance himself never testified to any such conversation in November and in fact was doubtful of any

[4/]Doris Borchard testified that she overheard Torrance inform the" UFW representative over the telephone about the eventual closure. I do not credit her testimony on this point. She undoubtedly overheard Torrance conversing about the tractor driver layoff and provide details of this part of the conversation. However in respect to closure she only testified as to her conclusion that it was mentioned but failed to provide any details of the conversation upon which she based her conclusion. In another part of her testimony she was clearly less than candid when she firmly and repeatedly denied that she believed that the transfer of her husband's farming operation to All American would benefit her husband. It is patently obvious that it would benefit him and her repeated assertions that she never believed it would help him cast doubt on the veracity of her entire testimony.

other conversation with Smith other than the one in September about the layoff of the tractor driver. Ann Smith testified that in November she was no longer in contact with anyone at Borchard since she no longer worked on the administration of the collective agreement with Borchard.

John Borchard testified that he had not given any notice in writing to the Union. He explained the reason was that the Bank had the ultimate control and that he and Torrance decided it was not their place to put anything in writing as "we did not know anything would happen the next day". So they decided rather to tell the Union what in "our opinion was happening".

In December Jake Westra and Doris Borchard decided to form All American Ranches and retained J. Wiley Jones as their attorney. Jones filed the Articles of Incorporation for All American on December 19, 1977. On January 13, 1978, All American. Ranches held its first stockholders meeting and Jake Westra and Doris Borchard were elected officers of the corporation. They contracted John Borchard to be general manager of All American and he began to act as such on January 18, 1978. All American contends it took over Borchard's farming operation on January 1, 1978 and although the employees were paid with Borchard checks between January 1 and 18, All American later reimbursed Borchard for these payroll expenditures.

On January 18, Barbara Macri, a UFW representative, telephoned the Borchard offices (now occupied by All American) and requested to speak to someone about five grievances under the UFW contract with Borchard. John Borchard told her that he would let her talk to the person in charge of his labor relations,

Virgil Torrance. Torrance and Macri discussed the grievances but Torrance never informed her that All American had taken over the Borchard's farm operation. He acted as if there had been no change in the operations and agreed to contact the union about setting up a meeting to resolve the grievances. Macri sent a letter asking Torrance to contact her about resolving the grievances. Since the UFW received no response to the letter from Torrance, Macri sent another letter to Borchard and Torrance on February 7, 1978 requesting arbitration. Macri later received a return receipt for the letter signed by Karen Cox, an All American office employee, and John Borchard admitted that he recognized the signature on the return receipt to be that of Karen Cox although he himself testified he did not remember seeing the letter. Neither she nor the UFW ever received a reply to this letter from Borchard or All American.

The UFW first became aware that there had been some sort of a change in the operations of the Borchard farming enterprise in February and March 1978, when some former Borchard employees informed UFW representatives that they were now being paid with checks from All American.

B. Analysis and Conclusion

In his brief General Counsel does not contend that Borchard's decision to transfer his business to All American violated Section 1153(e) but does contend Borchard, having made the decision to transfer his business, had the obligation to notify the UFW of this decision and bargain regarding its effects.

Clearly under NLRB precedent an employer has the duty to bargain with the certified representative over the impact on bargaining unit employees of its decision to close or transfer

a business. The ALRB has followed this precedent in Highlands Ranch, supra, in which it cited Summit Tooling, 195 NLRB 479, 99 LRRM 1396 (1972) enf'd 83 LRRM 2049 (7th Cir. 1973) to the effect that "Although it is not an unfair labor practice for an employer to go out of business without bargaining over the decision to do so, it is an unfair labor practice to refuse to bargain about the effects of that decision on the employees involved."

There is no doubt that John Borchard and Virgil Torrance in their conversations with Ann Smith in September and October 1977 mentioned the dire financial straits of Borchard farming. However reviewing the record as a whole there is no persuasive evidence that they informed her that the Borchard farming operation was actually going out of business and neither of them, according to their own testimony, informed her that Borchard was transferring his business to All American Ranches.

John Borchard testified that "all during the fall" in numerous conversations he mentioned the pending closure to Ann Smith. Torrance testified that he informed her of the closure in his conversation with her about laying off the tractor driver in September. Ann Smith's testimony was diametrically opposed. She admitted having conversations with the two about Borchard's financial condition but denied that either of the two ever mentioned anything about ultimate closure.

I resolve this question of credibility in favor of Smith and against John Borchard and Torrance for the following reasons:

First of all, both John Borchard and Torrance admittedly

never informed Smith or any UFW representative about All American taking over and even dissimulated that fact in the telephone conversation of January 18 with UFW representative Barbara Macri about processing the five grievances. Subsequent to January 18 neither John Borchard nor All American ever responded to the UFW's continuing communications concerning the grievances either in respect to the grievances or to the fact that All American had taken over. It was not until former Borchard employees began to receive checks from All American and informed UFW representatives thereof that the UFW began to realize a change over had taken place. This pattern of behavior on the part of John Borchard both as a sole proprietor of Borchard and general manager of All American, reveals an intent on his part not to be open and candid with the UFW about the closing down and transfer of his farming operation to All American and hence there is a strong inference that neither he nor Torrance ever informed Smith about winding down Borchard's farming operation.

Secondly, from John Borchard's own testimony it is evident that at the time he had the conversations with Smith in September and October 1977,[5/] during which he claims he told her about the closure, he himself was not positive that the shutdown would actually occur. In explaining why he did not provide the UFW with any written notice of the shutdown, he

[5/]I have determined that the conversations between Borchard and Smith occurred only during September and October since Smith credibly testified that she ceased to administer the collective bargaining contract during October and thus did not have any more conversations with Borchard after that month.

testified, "we did not know anything would happen the next day" and so they (he and Torrance) decided to tell the union what in their opinion was happening. This testimony indicates that during September and October John Borchard still harbored some hopes that the Bank might rescind its plan of liquidation and the rescission might happen at any time. This lack of certainty in John Borchard's mind as to the Bank's future actions also creates a strong inference that neither Borchard nor Torrance ever informed Smith that Borchard was actually closing down his business.[6/]

Accordingly I find that Borchard failed to inform the UFW about the closure or transfer of his business and by withholding this information from the UFW, he prevented the union from bargaining over the effects of the shutdown and transfer of his business on the employees and thereby failed and refused to bargain with the UFW, in violation of Section 1153 (e) and (a) of the Labor Code.

[6/] General Counsel points out that according to John Borchard's testimony he knew at the time he signed the collective bargaining agreement with the UFW on September 9, 1977 that he was going out of business since the Bank had informed him on August 28, 1C days to 2 weeks after the rain storm that destroyed the cotton crops, that it would no longer extend his farming operation any more credit. General Counsel argues this is proof of John Borchard's duplicity with the UFW over the closure of his business otherwise he would have informed them at that time he was closing down. I do not agree with General Counsel's interpretation of John Borchard's actions in this respect. I believe that during September and October 1977 although the Bank had informed him there was no more credit and Torrance was acting as liquidator, John Borchard was still optimistic and believed somehow that he could continue his business. It was not until November and December that plans were formulated for the All American take over and from that point on it is clear from the record that Borchard failed to keep the UFW informed of developments in this respect.

V. Is All American the alter ego of or successor to John Borchard and if so did it have a duty to recognize the UFW as the bargaining agent for its employees?

During the middle of August 1977 a serious rain storm struck the Imperial Valley and did extensive damage to Borchard's cotton crop, so that 85% of the crop was destroyed. The Crocker National Bank which had been extending business loans to Borchard informed the latter that because of the destruction of the cotton crop it would no longer be able to advance him any more credit. The Bank and the Plan of Arrangement Committee of Creditors retained Virgil Torrance to liquidate Borchard's equipment assets so that the Bank and the creditors could recover a portion of their loans and debts. In carrying out the liquidation, Torrance monitored Borchard's farm operations on a daily basis.

The Bank and Torrance informed Borchard that it would probably take 3 to 4 months to liquidate his assets and bring his farm operation to a halt. Also the Bank would provide him with funds so that he could finish growing and harvesting the current crops but there would be no advancement of monies for any new plantings.

Virgil Torrance began his duties on September 12 and continued in the capacity of a liquidator until January 1973. He had some contacts with Jake Westra, a dairyman from Ontario, who periodically purchased alfalfa hay from Borchard. Since Westra expressed an interest in investing in land in the Imperial Valley and Borchard had no way of avoiding the total liquidation of his farming operation, Torrance suggested to Westra that he talk to John Borchard and his wife about working out some sort of a business arrangement.

In November 1977 Jake Westra and Doris Borchard first talked to John Borchard and then to the Bank about forming a business entity to take over the Borchard farm land and equipment and commence farming operations. They decided to form ,a corporation called All American Ranches. They retained J. Wiley Jones as their attorney and on December 19, 1977 he filed the Articles of Incorporation with the Secretary of State.

John Borchard testified that on December 31, 1977 the Borchard farm operation came to a halt and All American Ranches took over. However the employees who worked between January 1, 1978 and January 18, 1978 were paid with Borchard checks and John Borchard continued to manage the farm properties as before during this interim period. Later All American reimbursed Borchard for these wage payments.

At All American's first stockholders' meeting on January 13, 1979 with Jake Westra, Doris Borchard and J. Wiley Jones in attendance, Jake Westra was elected as President and Chief Financial Officer and Doris Borchard was elected as Vice-President and Secretary. Westra and Doris Borchard purchased on a 50-50 basis the 5,000 shares of authorized stock, each paying a sum of $25,000.[7/] The two officers of the corporation, Westra and Doris Borchard were authorized to enter into an agreement of employment with John Borchard for a period of two years, as general manager for the corporation. The stockholders granted to the officers of the corporation certain general powers to carry on the business and specific authorizations to lease land and equipment from Borchard and also to assume

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[7/] The $25,000 used by Doris Borchard to purchase the stock was her separate property, inherited from her parents so John Borchard had no interest in All American Ranches by virtue of his wife's ownership of stock in the corporation.

certain land and equipment leases-that Borchard had with third parties.

On January 18, 197d All American began to finance operations at the Borchard farms and John Borchard began his duties as general manager of All American.

The only land farmed by All American in 1978 and 1979 was land owned or leased by Borchard in 1977. All American owns no land. Borchard leased his own land (1,794 acres) to All American for a period from January 1, 1978 to December 31, 1979 and assigned all his rights, title and interest in the land he had leased (approximately 4,000 acres) to All American.[8/] However Borchard did not assign the leases of 1,000 acres which he had been leasing from third parties but retained it. He did not farm it himself but contracted to All American to raise crops for him on a custom basis. Consequently after January 18, 1978 Borchard no longer had any employees of his own.

All American utilized all of the agricultural equipment used by Borchard in 1977, which amounted to 143 pieces, in its farming operations in 1978. Borchard agreed to lease all his agricultural equipment to All American from January 1, 1978 to December 31, 1979 and on June 15, 1978 Borchard assigned to All American all his right, title and interest in the farm equipment that he had been leasing from Puritan Leasing Co. All American took over the payments for the leased equipment. The only pieces of equipment All American used in 1978 that

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[8/] He signed the documents in respect to this leased land on the following dates: January 8, 10, 16, 19, 20 and 25, February 6 and 10 and April 14, 1978.

Borchard had not used in 1977 were the following five machines which All American and/or Jake Westra purchased in 1978: a swather, a hay rake, a cotton picker and two hay balers.

All American raised in 1978 by and large the same kinds of crops Borchard had raised in 1977:

Borchard 1977		All American 1978	
Alfalfa	2,399	Alfalfa	2,116
Beets	392	Beets	575
Cotton	3,075	Cotton	391
Lettuce	316	Lettuce	741
Milo	211	Milo	345
Rye Grass	232	Rye Grass	563
Sudan Grass	113	Sudden Grass	101
	6,738	Cantaloupe	22
		Carrots	120
		Corn	47
		Cucumbers	50
		Onions	150
			5,221

John Borchard directed the work activities on his previous land holdings as the general manager for All American. He exercised all the prerogatives of a general manager and made the decisions in the growing, harvesting and sale of crops. As general manager, John Borchard was in charge of hiring all the employees for All American. He retained five supervisors of the seven who had worked for him at Borchard and delegated to them the task of employing workers for the new entity. He gave no instructions or policy guidelines to them in respect to the hiring of new employees but deferred to their judgment. As of February 8, 1979, 29 of the 51 All American employees had previously worked for Borchard and as of July 10, 29 of the 43 All American employees had previously worked for Borchard.

All American leased the same building for its office space as Borchard and kept the same system of payroll records.

All American merely took over Borchard's farming

operations by leasing his land and equipment for a period of two years and assuming his leases of land and equipment. All American agreed to pay Borchard $123,975 per year for the lease of his lands and $5,000 each month for the use of his farm equipment. All American assumed the obligations to make the periodic payments as they came due on the leased land and equipment.

The Crocker National Bank agreed to this arrangement but insisted that Borchard deposit all monies received for the lease of the land and equipment in a special bank account from which Borchard would make payments on his land and equipment plus property taxes. In respect to the Chapter 11 proceedings the bankruptcy court reviewed and approved the transaction since it found that Borchard had not transferred any assets to All American.

John Borchard testified that a short time after All American began its farming operations the supervisors informed him that all the employees had told them that they did not want a union.

The UFW did not request All American to recognize it and bargain until July 10, 1978. On that date Ann Smith sent a letter to All American, in which she mentioned the collective bargaining contract with Borchard and the reopening clause contained therein and requested that All American acknowledge that it was bound by the contract and demanded that it meet with the UFW to reopen the negotiations on economic issues. On July 19 All American replied by letter declining to comply with the UFW's request and asking for more time to look into the matter. The UFW continued to communicate with All

American its demand for recognition and bargaining. After various communications between the UFW and All American the latter expressly refused to recognize and/or negotiate with the UFW because as it informed the UFW it did not consider itself either the alter ego of or the successor to Borchard.

B. Analysis and Conclusion

It is important to determine whether All American is the alter ego of and/or successor to Borchard. According to NLRB precedent[9/] if All American is the alter ego it would have the duty not only to recognize and bargain with the UFW but also to assume Borchard's obligations under the current collective bargaining contract with the UFW. If All American is merely the successor, then it would only have the obligation to recognize and bargain with the union. If it is neither of the two, it would have none of these obligations with respect to the UFW.

General Counsel alleged in the complaint that All American was the alter ego of Borchard and therefore was liable for Borchard's unfair labor practices, was under a duty to bargain with Borchard, and in addition was obligated to honor the UFW's collective bargaining agreement with Borchard. Although General Counsel, in his post-hearing brief, abandoned the theory of alter ego and has based his allegations of All American's liability on the theory of successorship, I still must dispose of this issue.

9/NLRB V. Burns International Security Services, 406 US 272, 80 LRRM 2225 (1972).

Under NLRB precedent a business entity cannot avoid its obligations under the Act by simply changing its corporate form. Under these circumstances the Board finds both the wrongdoer and the wrongdoer's alter ego liable and issues the appropriate orders.

However in this case All American is not the alter ego of Borchard. Borchard possesses no financial interest in All American and Jake Westra and Doris Borchard possess no financial interest in Borchard. John Borchard is merely the general manager of All American and receives his compensation strictly in the form of a salary. Borchard and All American are two separate entities. When Borchard leased his land and equipment to All American and assigned his leases to All American of the land and equipment he had been leasing, it was a bonafide business transaction. A member of Borchard's creditors' committee challenged the transaction but the Bankruptcy Court found it to be a legitimate business transaction

In the view of the foregoing, I find that All American is not the alter ego of Borchard and I find that All American has no liability based on such a theory in respect to any of the unfair labor practices charged against Borchard in this case.

I now turn to the issue of whether All American is the successor to Borchard.

The ALRB in Highland Ranches, 5 ALRB No. 54 (1979) set forth for the first time its criteria for determining successorship in cases under the Act. It stated that if found a traditional common law approach particularly appropriate because the question of successorship is difficult, arising in extremely varied factual circumstances and legal contexts

and thus it would deal with successorship issues on a case-by-case basis.

The Board went on to say that the NLRB and the courts have established certain changes in the ownership of business structure of an employing entity upon the interests of capital and those of labor and that the first principle applied by the NLRB and the courts was that same balance is to be struck between the rights of the employers and those of employees. The Board said that this principle is no less appropriate in California agricultural than in the nation's other industries, although it may be more difficult to apply.

The Board pointed out that there is a fluid mobile labor pool in California agriculture and consequently there is a high turnover in most of the work forces of agricultural employers in California and because of that the Board decided that an approach to successorship which examines factors in addition to continuity of the work force is most appropriate. Therefore in applying NLRB precedent to this case, work-force continuity will be just one of the factors to be considered in deciding the question of successorship.

General Counsel contends that All American is the successor to Borchard by virtue of its taking over the latter's farming operation on January 18, 1978 and consequently All American's admitted refusal to bargain with the UFW is a violation of Section 1153(e) of the Act.

NLRB precedent considers an employer who takes over a business to be a "successor" to the previous employer's collective bargaining obligations where there is a substantial continuity of the enterprise. The NLRB has examined various

factors in deciding whether the new employer's operations indicate substantial continuity. However the most important factor has been the continuity in the work force i.e. whether a majority of the new employer's employees were formerly employed by the previous employer. Respondent All American contends that at the time the UFW made its demand for recognition, less than a majority of All American's employees had previously worked for Borchard. All American insists that the Burns, supra, case stands for the proposition that continuity of the work force is a prerequisite to establish a successor-ship and thus since there was not the requisite majority of employees on that date, no successorship can be found. Whether the Burns case stands for the proposition advanced by All American is beside the point since the Board in Highlands, supra, ruled out continuity of employment as a prerequisite to successor-ship and on this point declared:

> "Given the unusual characters of agricultural ownership patterns and the agricultural labor force as described above, an approach to successorship which examines factors in addition to the continuity of the work force is most appropriate. Undue emphasis on the continuity of the work force at the expense of other relevant factors would render this important protection provided employees by the successor-ship principle almost entirely ineffective. We will, therefore, not ignore this factor but will give careful attention to other factors as well."

In addition to the work force, the most important factors the NLRB takes into consideration in determining successorship in the industrial context are: substantial continuity of the business operations, similarity of plant and machinery, similarity of products, and similarity of working conditions.

In Highlands, supra, the Board took into account essentially identical facts and found a successorship since the agricultural operation itself remained almost identical and there was no significant alteration in the nature of the bargaining unit.

> "Unit employees performed the same tasks for San Clemente (the successor) since San Clemente grows essentially the same crops. The size of the unit also remained the same. Furthermore, San Clemente, is farming the same land as Highland, having acquired the lease to all of Highland's agricultural machinery which it uses in its farming operations. In these circumstances meaningful principles of successor-ship can be given effect only by finding that San Clemente is Highland's successor."

The circumstances of the Highland case are similar to the circumstances in the instant case. All American grows essentially the same crops as Borchard, cotton, alfalfa and winter vegetables. The additional venture into cantaloupes, corn, cucumbers, carrots and onions because it involved only 489 acres compared to the total acreage farmed cannot be considered a significant variant.

All American farms the same land previously farmed by Borchard: (a) growing crops on land leased from Borchard; (b) growing crops on land leased to Borchard by third parties (All American assumed the leases); and (c) growing crops on land leased by Borchard as a custom grower for Borchard.

All American uses the identical machinery that Borchard had utilized in the previous year. Virtually all the equipment used by All American was either acquired by lease from Borchard or by assignment of Borchard's leases of equipment from the Puritan Leasing Co. The five additional pieces of equipment acquired by All American in 1978 is an insignificant amount:

compared to the 143 pieces of equipment utilized by both Borchard and All American.

In addition, All American employed 5 out of 7 of Borchard's supervisors and of course John Borchard, who acted as the general manager of his sole proprietorship operation previously, continued in the same role as general manager of All American.

Accordingly, based upon all the above factors, I find that All American is the successor to Borchard.

In the Highlands case, the Board stated that although continuity of the work force was not a prerequisite for a successorship it was still a factor not to be ignored. In keeping with this admonition by the Board, I will consider this factor and in so doing, I find that there was a continuity of the work force in the instant case.

In Pacific Hide & Fur Depot, Inc., v. NLRB, 553 F.2d 609, 95 LRRM 2467 (9th Cir., 1977), denying enforcement of 223 NLRB 1029, 92 LRRM 1063 (1976), it was held that the appropriate date to determine this question of the "continuity of the work force" in respect to the majority of the employees is the date on which the union makes a demand on the new employer for recognition. Here the UFW made its demand on All American for recognition on July 10, 1978 and on that date the majority of the employees working for All American had been previously employed by Borchard. The payroll records indicate that 29 of All American's 48 employees were former Borchard employees. So in the instant case I find that even this requirement, although not necessary to my finding of successorship, has

been satisfied.[10/]

All American also argues that, even if it is the successor to Borchard's bargaining obligations under NLRB precedent, it is barred from recognizing the UFW by terms of Section 1153(f) of the Act.

Section 1153(f) provides that it shall be an unfair labor practice for an agricultural employer "to recognize, bargain with or sign a collective bargaining agreement with any labor organization not certified pursuant to the provisions of" the Act. Respondent points out that the UFW has not been certified as the representative of All American's employees and that the prohibition embodied in Section 1153(f) is therefore applicable.

The Board, in a previous case where it was also argued that the federal precedent of a successor's assumption of its predecessor's bargaining obligations was inapplicable because of Section 1153(f), rejected that contention. See Highland, supra.

In Highland, supra, the Board quoted language from a previous case[11/] where it had expressed that Section 1153(f) was aimed at preventing an employer's voluntary recognition

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10/All American in its post-hearing brief has presented a formula to determine which employees working for All American on July 10, 1978 would be counted in calculating the percentage of All America: employees who previously worked for Borchard. According to this formula, the only workers to be taken into account would be those workers employed on July 10, 1978 who worked at least three weeks in July and at least two months during the calendar year 1978. However All American cites no authority for such a formula and or argument why it should be adopted. Accordingly, *I* find that this formula is not determinative.

11/Kaplan's Fruit & Produce Co., 3 ALRB No. 28 (1977)

of a labor organization.

> "The facts in England v. Chavez 8 Cal.3d 572 (involving employer favoritism toward one of two competing unions prior to the adoption of secret ballot election procedures), are too much a part of the history leading to the enactment of the ALRA for us to consider 1153 (f) as anything but a guarantee of freedom of choice to agricultural employees through the machinery of secret ballot elections. The prohibition against bargaining with an uncertified union does not and should not preclude bargaining with a union that has been chosen through a secret ballot election.

So the Board in both the Kaplan and the Highland cases clearly states that the obvious purpose of Section 1153(f) is to prevent the voluntary recognition by an employer of a union claiming to the majority representative of the employer's agricultural employees. But in the present case any obligation to bargain placed on All American comes about because it voluntarily took over the Borchard operation and the Borchard bargaining unit with its certified Union as the employees' representative. Contrary to the assertion of All American, if the applicable NLRB conditions are present requiring a successor to bargain with the certified union, the purposes of the ALRA would be frustrated if such an employer is not here required to bargain.

It has been clearly established under NLRB precedent that a change of employers standing alone does not affect the force of an existing certification within its normal operating period. See Burns, supra. This principle is appropriately applied in the context of the present case to hold that Section 1153(f) does not operate to provide All American with a defense to charges it violated Section 1153 (e) .

In an additional argument, All American contends that

because the UFW filed with the Board a Petition Requesting Board to Amend Certification asking that the Board amend its 1976 certification of the Borchard Farms bargaining unit to include All American employees, it implicitly acknowledged that All American would be committing an unfair labor practice under Labor Code Section 1153(f) if it were to recognize or bargain with the Union prior to the Union being certified by the Board, I disagree with All American that the Union by filing this Petition implicitly acknowledged that Labor Code Section 1153(f) would prevent All American from recognizing and bargaining with the Union.

On the same day, the UFW filed the Petition it sent a letter to All American demanding recognition and negotiations[12/] which would imply that it considered All American's obligation to recognize and bargain not hampered by Section 1153(f) and that the Petition was simply an attempt to secure an official clarification from the Board that All American had succeeded to Borchard's obligation to recognize and bargain with the Union. Accordingly, I reject All American's argument in this respect.

Finally, All American asserts that it has no duty to bargain with the UFW because it had a good faith doubt that the union continued to represent a majority of All American's agricultural employees.

It is true that the Supreme Court's decision in Burns International Security Services, supra, made it clear that the

12/Despite All American's argument to the contrary, the UFW's request that All American honor the collective bargaining contract and reopen bargaining on the economic issues necessarily implies a request for recognition and negotiations.

duty to bargain would not carry over to a company acquiring a unionized business when the new employer entertained a good faith doubt as to the Union's continuing support among the majority of the employees. However there is a rebuttable presumption of continued majority status if the certification year has expired,[13/] as was the case herein. All American argues that it did have independent grounds to overcome the presumption derived from the statements of its employees to its supervisors that they no longer wanted the UFW to represent them and for the failure of the union for "seven" months to make a demand for recognition.

However to justify its refusal to bargain the employer has the burden of showing that it had good faith doubt, based on objective considerations, of the Union's continuing majority status.[14/]

The only evidence in the record as to lack of union support were hearsay statements that the employees had informed supervisors that they no longer wanted the union nor to have union dues deducted from their pay checks. This hearsay testimony falls far short of meeting the burden of showing that All American had clear and convincing proof that the union no longer enjoyed majority support of the employees. Moreover the Respondents failed to call any supervisors to testify about what the

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13/ NLRB v. Gallaro, 419 F.2d 37, 73 LRRM 2043 (2nd Circ. 1959)

14/ It is well settled that in order to raise a good faith doubt an employer must present clear and convincing evidence of loss of union support capable of raising a reasonable doubt of the union's continuing majority. NLRB v. Frick Co., 423 F.2d 1327, 73 LRRM 2889 (3rd Circ. 1970).

employees had told them concerning union support.[15/]

All American's argument that additional proof of lack of employee support was the union's delay in making a demand for recognition for seven months is not persuasive.

Firstly All American was responsible for 2 to 3 months of the delay by cooperating with Borchard in concealing the fact of the takeover until February or March of 1978. On January 18, 1978 when Barbara Macri, the UFW representative, contacted Borchard by telephone about the grievances he did not inform her of the takeover and he and Torrance acted as though Borchard were continuing in business and that the grievances would be processed. Thereafter neither Borchard nor All American informed the UFW of the All American takeover. It was only through the employees' paycheck stubs that the UFW learned of the changeover in the farming operations. So it is indeed paradoxical that All American is now utilizing the argument of "delay" as a way to avoid its duty to bargain.

Secondly, All American cannot logically claim that it had a good faith doubt about the union's majority based on the union's delay in requesting recognition and bargaining from All American. The first requisite for such a claim would be that All American had certain knowledge that the UFW knew of the All American takeover of the Borchard farming operation. Without that certain knowledge All American cannot deduce front the fact that the UFW had failed to request recognition that the

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15/Also assuming that there did exist some displeasure against the" union among the employees, perhaps it was due to the inability of the union to expeditiously process the five grievances against Borchard because of the latter's failure to comply with the provisions of the collective agreement. Consequently it would be inequitable to permit Borchard's successor to benefit from Borchard’s illegal actions in this respect.

UFW believed it no longer represented a majority of the employees since another motive for the lack of the request could be that the UFW simply was uninformed of the changeover. The UFW did find out about the changeover in February or March but All American did not present any evidence that it was aware that the UFW had learned of the takeover.

All American also argues that the UFW by its delay in requesting recognition and bargaining waived its right to bargain as to the thinning crew layoff or the Borchard shutdown or to request All American to process the grievances against Borchard Farms. NLRB precedent holds that any such waiver of the union's right to bargain must be clear and unmistakable.
CA 10 (1975) 515 F.2d 785
See NLRB v.Sweet Lumber Co.,/89 LRRM 2326. Neither Borchard nor All American ever notified the UFW about the All American takeover and in fact J. V. Borchard and Torrance dissimulated the takeover in the January 18, conversation with the UFW representative Maori. Subsequent to January 18, John Borchard, while general manager of All American, continued to receive communications from the UFW about the grievances but never replied either to process the grievances or to inform the UFW about the takeover. Under these circumstances All American cannot claim that the UFW's failure to request All American to bargain can be interpreted to mean a "clear and unmistakable waiver" of the union's right to bargain on these subjects. Accordingly, I find that waiver of the right did not occur.

As the successor to Borchard, All American had the obligation to recognize and bargain with the UFW and for the reasons set forth above, Respondent All American violated Section 1153 (e) at all times subsequent to July 11, 1978, by failing

and refusing to recognize and bargain in good faith with the United Farm Workers.

VI. Did Borchard violate Section 1153 (e) by laying off its thinning crew without notifying' and bargaining with the UFW?

A. Facts

In October 1977 a crew made up of Borchard employees was engaged in thinning and hoeing a lettuce crop that Borchard was custom growing for Merit Packing. That same month Borchard contracted with a farm labor contractor Jose Ramirez to do this work without first recalling to work former Borchard employees who had seniority with this particular crew. Ann Smith, UFW representative, contacted John Borchard about this matter and informed him that contracting-out unit work without notice to or consultation with the certified union was a violation of the collective bargaining contract.[16/] John Borchard explained to her that he was custom growing the lettuce for Merit Packing and that Merit had decided to engage that Ramirez crew and since the lettuce crop belonged to Merit, he had no control over its decision to do so. Smith informed John Borchard that despite the fact it was custom work it would still be a violation. No resolution was reached so the UFW filed a grievance with Borchard asserting that Borchard had failed to recall seniority workers and had varied a past practice by hiring a labor contractor. A meeting was held on October 24, 1977 at which Smith and John Borchard reached an agreement by which Borchard would recall the seniority workers and to later work out a formula as to how much money in

16/The collective agreement did not allow Borchard to subcontract. General Counsel Exhibit 2, Article 29.

back wages was due each seniority employee. As a result, labor contractor Ramirez and his crew were pulled out of the fields.

In November the thinning crew continued to work on this particular lettuce crop. John Borchard testified that in November it rained[17] and suddenly the lettuce "jumped" so by the middle of the month Merit notified Borchard that the lettuce was growing too fast and the thinning was not proceeding at the proper speed and that Merit would give Borchard Farming three days to correct the situation. According to Borchard, Merit threatened to take over the growing and the harvesting of the crop, if Borchard failed to comply with this ultimatum.

According to the collective bargaining agreement then in effect, the UFW was to provide Borchard with additional workers on request. John Borchard testified that he telephoned the UFW headquarters in Calexico and asked Ann Smith for additional workers. He also testified that Agustin Reyes, foreman of the Borchard thinning crew went on four occasions to the UFW headquarters in Calexico and requested additional workers but that the UFW failed to refer any workers to Borchard.

Ann Smith testified that John Borchard never called her about additional workers nor was the subject ever mentioned at the daily meetings at the UFW headquarters where such subjects were invariably discussed. Ann Smith testified that Juan Guicho was the UFW official who was in charge of sending farmworkers to employers at their request. She also testified that the UFW

17/The official records of the Watermaster of the Imperial Irrigation District indicates there was no rain in the Imperial Valley in November 1977.

kept a ledger of employees referred to employers but there was no record of a request from Borchard for any employees in November 1977.

John Borchard testified that Bernardo Vazquez, a foreman with Merit Packing, informed him on November 21 that since he had failed to hire more workers to thin and hoe the lettuce Merit Packing was taking over that operation and contracting out the work to farm labor contractor Joe Ramirez and that the services of the Borchard crew were no longer needed.

On November 21 Merit Packing contracted with labor contractor Joe Ramirez to work on the lettuce crop and on that day his crew entered Borchard fields and began such work.

On the same day, foreman Agustin Reyes informed the members of the thinning crew that there was no more work for them to do and he was laying them off but that they sould report daily at the pick-up point since their services might be needed in the future. The members of the thinning crew reported to the pick-up point on November 26th and 30th where Agustin Reyes informed them that there was still no work for them. On November 28, 1977 19 crew members sent a letter to Cesar Chavez, president of the UFW, explaining that Borchard had contracted a farm labor contractor Joe Ramirez to do the lettuce work and had thus left them without their jobs. On December 8, 1977, Manuel Zamora, one of the crew, went to Agustin Reyes' home to inquire about getting the crew's jobs back and at that time Reyes informed him that he did not know the reason for the layoff and had

washed his hands of it.[18/]

Agustin Reyes, in his testimony claimed that when he laid off the employees on November 21, 1977 that he informed them the reason was that the Merit Company decided to replace them with labor contractor Joe Ramirez' crew. Reyes denied that he had told the employees to continue to report to the pick-up point. He admitted that Manuel Zamora had visited him at his home in December and that he explained to him once again that it was Merit Packing that had decided to have Joe Ramirez' crew take over the work of the thinning crew. Reyes also testified that the workers in his crew had been working 48 hours a week up to the time of the layoff. The three members of the crew who testified said that they had not worked full time but only two to three days per week in November. The payroll records substantiate the workers' testimony in this regard.

B. Analysis and Conclusion

General Counsel contends that Borchard violated Section 1153 (e) of the Labor Code by taking a unilateral action in temporarily laying off the members of a thinning crew, refusing to rehire them and hiring replacements through a labor contractor.

It is well established that an employer has the duty to bargain with the union representing its employees when it subcontracts bargaining work. The U.S. Supreme Court held in Fibreboard Paper Products Corp. v. NLRB, 379 US 203, 57 LRRM 2609 (1964) that "the replacement of employees in the existing

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18/The findings of fact in this paragraph are based on Manuel Zamora's credited testimony (which was substantiated by notes from his diary) plus the credited testimony of his co-crewmembers Jorge Apodoca and Rafael Gonzalez.

unit with those of an independent contractor to do the same work" was a mandatory subject of bargaining.[19/]

Further to this point, the Board observed in Ozark Trailers, Inc., supra, at 161 NLRB 568, a lineal descendant of Fibreboard:

> [A]n employer's obligation to bargain does not include the obligation to agree, but solely to engage in a full and frank discussion with the collective bargaining representative in which a bona fide effort will be made to explore possible alternatives, if any, that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. If such efforts fail, the employer is wholly free to make and effectuate his decision. Hence, to compel an employer to bargain is not to deprive him of the freedom to manage his business.

Implicit in Fibreboard, however, is the qualification that a contracting-out decision attended by considerations not "suitable for resolution within the collective bargaining framework" need not be subjected to the bargaining process.

In the instant case, Respondent Borchard admits that he did not notify the UFW about laying off the members of the thinning crew and their replacement by the Ramirez crew. He argues that the decision to subcontract the work was not his but Merit's. Therefore, he contends, no amount of bargaining with the UFW would have made any difference in the ultimate result since he had no control over the decision to contract out

Respondent All American argues that Borchard was compelled to lay off the thinning crew because of its economic difficulties and this constituted a defense to its unilateral

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19/In addition, as was previously mentioned, Borchard had agreed not to contract out bargaining unit work under the terms of the collective bargaining agreement with the UFW then in effect.

action in doing so. All American goes on to explain that because Borchard was unable to provide a larger crew to work the lettuce Merit decided to terminate its contract with Borchard and take over the growing of the lettuce crop.

However Borchard admits he had three days in which to provide a larger crew for the lettuce work. He testified that Merit gave him a 3-day period at the end of which they would take over the working the lettuce crop if he failed to provide a crew of adequate size.

During that three-day period he had the opportunity to notify the UFW about Merit's ultimatum to take over and the resulting loss of bargaining-unit work unless the UFW provided a considerable amount of additional workers.

Certainly this particular problem was "suitable for resolution within the collective bargaining process" and thus according to the Fibreboard criteria Borchard had a duty to notify and bargain with the union over this particular issue.[20/]

It can be argued that Borchard's alleged conversation with Ann Smith requesting additional workers and the alleged attempts by Borchard's foreman Reyes to contract the UFW for more workers constitutes notification to the UFW about the

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20/Also in Fibreboard the Court mentioned, that the employer need not bargain over subcontracting even in cases where the considerations are suitable for resolution within the collective bargaining framework where the contracting-out was motivated solely by economic considerations, comported with the employer's traditional business operations, and established past practice, did not have demonstrable adverse impact on the unit employees, and the union had had opportunity in previous negotiations to bargain about the employer's subcontracting practices. It is clear that the subcontracting in the instant case does not fall within this exception since it did not comport with the employer's past practice and it did have a demonstrable impact on the unit employees.

imminent decision to contract out bargaining-unit work.

First of all neither Borchard nor Reyes ever informed or endeavored to inform the UFW of the overall problem with Merit and the need for Borchard and the UFW to consult concerning a solution. Their communication or attempts at communication were simply requests for more workers, and would not qualify as adequate notice since these communications in themselves would not have alerted the UFW that subcontracting was such an immediate prospect as to call for a request by the UFW for immediate bargaining in order to have an opportunity to preserve the employment of the thinning crew.

Secondly, for the reasons set forth below I discredit John Borchard's testimony concerning his request to Ann Smith for more workers and Reyes' attempts to contact the UFW, alone with his entire explanation in respect to the "November rain" which made the lettuce "jump", allegedly creating a need for additional workers in the thinning crew.

The official weather records (General Counsel's Exhibit No. 38) indicate that there was no rain in November in the Imperial Valley and Borchard's own payroll records indicate that the members of the thinning crew were only working two or three days a week up to November 21 the day they were temporarily laid off. This objective evidence discredits Borchard's testimony about the lettuce "jumping" and his foreman Reyes' testimony that the members of the thinning crew were working a six-day week up to the layoff. Consequently Borchard's explanation of the reason Merit wanted to take over the lettuce crop and this testimony about the events surrounding the decision to contract out the lettuce work to Ramirez are not to be credited.

Three additional factors discredit Borchard's testimony in regards to his alleged appeal to the UFW for more workers and his contention that the decision to contract out the lettuce work was completely out of his control.

In respect to the appeal to the UFW for more workers, Ann Smith testified that she never received any request from Borchard for additional workers and the records at the UFW office showed no request from Borchard for more employees.

In respect to Borchard not having control over the contracting-out of the lettuce crop, there is uncontroverted credible evidence that in October, one month before the November layoff, Borchard contracted-out lettuce work to Ramirez and later claimed he had no control over the decision because the lettuce crop belonged to Merit. However at the insistance of the UFW that it was a breach of the collective bargaining agreement, he was able to rectify such alleged breach by terminating the contract with Ramirez and returning the thinning crew to his direct employ. This action indicates that Borchard did have control over the management of the lettuce crop and the hiring of workers therefor.

Moreover, the testimony of the three members of the thinning crew that foreman Reyes had his crew members report back for work subsequent to the November 21 layoff is another indication that Borchard still contemplated rehiring them for the thinning crew and therefore still maintained control over hiring for the lettuce crop for some time after the layoff. In all probability, Merit eventually took over the growing and harvesting of the lettuce crop. Nevertheless Borchard has failed to present persuasive evidence that Merit took over the lettuce crop in

such a way that he had no opportunity to notify and bargain with the UFW about the layoff of the thinning crew. General Counsel has proven through a preponderance of the evidence that Borchard had control of the lettuce crop at the time of the temporary layoff of and the failure to rehire the thinning crew and that he never notified the UFW of his decisions in this respect.

Because of the reasons set forth above, I find that Borchard violated Labor Code Section 1153(e) and (a) by taking a unilateral action in temporarily laying off members of a thinning crew, refusing to rehire them and hiring a replacement crew through a labor contractor to replace it.

VII. Is Borchard liable_for violations of Section 1153(e) and (a) by refusing to process the five grievances filed by the UFW?

A. Facts

The collective bargaining agreement signed by Borchard and the UFW on September 9, 1977 provided for a grievance procedure consisting of three steps. The first step involved an informal consultation between the supervisor and the union steward. If the grievance were adjusted at that level, step two could be invoked which provided for a meeting between representatives of the employer and the union. If no agreement had been reached at step two then the third step, arbitration, could be utilized.

In November 1977, the UFW notified Borchard of five violations of the collective bargaining agreement, by mailing him copies of grievances which he received during the first half of December.[21] Later in the month, Barbara Macri, director of the

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21/Copies of the five grievances indicate that they were sent to Borchard on November 30, December 5, 6, and 13, 1977 and Borchard admitted that, he had received them in the mail.

union's arbitration division took over processing the five grievances[22/] against Borchard, for alleged violations of the collective bargaining agreement. She testified that since she understood that another UFW employee had been unsuccessful in arranging a second-step meeting to resolve the grievances, she telephoned Borchard's office on January 18, 1978. John Borchard answered the telephone and upon hearing the nature of the call had Macri talk to Virgil Torrance who, he told her, was in charge of labor relations. She informed Torrance that if the company did not want to meet on the second step regarding the grievances the union would take the grievances to arbitration. Torrance assured her that a meeting could be arranged in a day or two and he would call her back.[23/] She told him that she would send him the resumes of three arbitrators in the event the grievances were not resolved at the second step. Torrance never mentioned to her anything about All American taking over the farm operations at the Borchard premises. That same day Macri sent a letter to

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22/The five grievances were with respect to: 1 - Violation of the collective bargaining agreement by laying off J. Ortiz and L. Amezcua out of seniority; 2 - violation of seniority and vacation provisions of the contract in respect to R. Esparza, Roberto Annesola, Carl Vega and Mauro Macias; 3 - violation of seniority provision in respect o J. Lopez; 4 - violation of seniority provision in respect to Ignacio Villalobos; and 5 - violation of the seniority provision by laying off the entire thinning crew on November 21 (the same incident which is the subject of a unilateral action charge in the instant case).

23/Torrance testified that he and Macri arranged for a meeting during the telephone conversation but, for some reason he could. not remember, the meeting was not held either because the UFW cancelled it or they did not show up. However he admitted he was not sure on this point and besides the UFW letter of January 18, 1978 confirms Maori's version of the telephone conversation.

Borchard confirming the conversation and including resumes of three arbitrators.

Neither Virgil Torrance nor anyone else at Borchard's or All American ever contacted either Macri or anyone else at the UFW about the grievances.[24/] Macri testified that she understood that another UFW employee had been unsuccessful in contacting Virgil Torrance at Borchard's, so on February 1, 1978 she sent a letter to Borchard requesting arbitration. She later received a return receipt signed by Karen Cox an All American office employee.[25/] Nevertheless neither she nor the UFW ever received an answer to this letter from Borchard or All American. On July 13, 1978 the UFW filed an unfair labor practice charge against Borchard alleging a violation of Section 1153 (e) and (a) of the Act, failure to bargain with respect to the five grievances. Macri testified that in August, 1978, she received a copy of a court order which ordered Borchard to arbitrate the five grievances which according to the cover letter had been sent to Borchard. John Borchard never denied that he received the court order. Representing himself at the hearing he contended that he "personally" had not seen the court order.

Macri first learned that All American had taken over the farming operations at the Borchard premises the early pare of March 1978 when former Borchard employees informed her that their pay checks were from All American rather than Borchard. She also testified that to her knowledge no one at the UFW

24/The Respondents never presented any evidence that they had ever contacted the UFW about the grievances.

25/John Borchard admitted that he recognized the signature to be that of Karen Cox.

had ever learned bout the changeover until he had.

John Borchard testified that he did not recall whether he informed Jake Westra or Doris Borchard about these five grievances. Both Westra and Doris Borchard denied knowing anything about these grievances until later on in 1978.

B. Analysis and Conclusion

Under NLRB precedent it is well settled that "the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management negotiations during the term of the agreement." See NLRB v. Acme Industries, 385 U.S. 432, 436 64 LRRM 2065 (1967). Clearly, this duty encompasses the processing and adjustment of grievances arising under the agreement. There is no question that the subjects of the five grievances were proper subjects for discussion under the contractual grievance procedure, i.e., violations of the seniority and vacation provisions of the contract. In the instant case, other than Torrance's unfulfilled promise to arrange a meeting at the second step level, Respondent Borchard completely ignored the telephone calls, the letters and the court order he received from the UFW in respect to the five grievances over a period of eight months. In addition to ignoring the UFW's overtures it misled the UFW in respect to the resolution of grievances by not informing the union of the fact that it had gone out of business as of January 18, 1978 and that All American had taken over. No explanation was offered at the hearing by Borchard for his failure to process the five grievances or to inform the UFW of All American's take over. Finally, the collective bargaining agreement was still in existence on all relevant dates, its expiration date being December 31, 1978.

In view of the foregoing, I conclude that Respondent Borchard violated Section 1153(e) and (a) of the Act in failing and

THE REMEDY

The First Amended Complaint seeks joint and several relief against All American for unfair labor practices committed by Borchard. As explained below I find such relief to be appropriate .

General Counsel contends that All American should be held liable for Borchards unfair labor practices because it is the successor to Borchard and therefore is "chargeable with knowledge of its predecessor's unfair labor practices". General Counsel cites the NLRB precedent in Perma Vinyl Corp., 164 NLRB No. 119, 65 LRRM 1168 (1967) in which the Board held that a successor that acquires and operates the business of an employer found guilty of unfair labor practices under circumstances that charge it with notice of the unfair labor practices should be held liable for remedying them. Respondent All American in its brief simply states that neither Jake Westra nor Doris Borchard, All American's two officers, had any knowledge of the union's grievances and the alleged requests for arbitration at the time All American commenced farming coperations in January 1978.

In keeping with the reasoning in Perma Vinyl, I find that All American acquired and operated the business of Borchard under circumstances that charge All American with notice of Borchard's unfair labor practices, i.e. Borchard's refusal to bargain with the UFW over the effects of the closure of his business, Borchard's illegal unilateral act in laying off and refusing to rehire the thinning crew and Borchard's failure and refusal to process the grievances under terms of the collective bargaining contract then in effect, and consequently

All American is responsible for remedying said unfair labor practices. In Perma Vinyl, supra, the NLRB stated:

> When a new employer is substituted in the employing industry there has been no real change in the employing industry insofar as the victims of past unfair labor practices are concerned, or the need for remedying those unfair labor practices. Appropriate steps must still be taken if the effects of the unfair labor practices are to be erased and all employees reassured of their statutory rights. And it is the successor who has taken over control of the business who is generally in the best position to remedy such unfair labor practices most effectively. The imposition of this responsibility upon even the bonafide purchaser does not work an unfair hardship upon him. When he substituted himself in place of the perpetrator of the unfair labor practices, he became the beneficiary of the unremedied unfair labor practices. Also, his potential liability for remedying the unfair labor practices is a matter which can be reflected in the price he pays for the business, or he may secure an indemnity clause in the sales contract which will identify him for liability arising from the seller's unfair labor practices.

As the NLRB pointed out in this excerpt, when a successor substitutes himself in place of the perpetrator of the unfair labor practices it becomes the beneficiary of the unremedied unfair labor practices.

In this case, All American clearly became the beneficiary of Borchard's unfair labor practices. On January 18, 1973, All American through the actions of its general manager John Borchard withheld from the UFW the information that All American had taken over Borchard and thereafter Borchard either in his or All American's name failed to notify the UFW of such takeover and refused to process the grievances. The

benefit to All American because of this conduct by its general manager was the continuance of unresolved grievances which would militate against the effectiveness of the UFW to process grievances and thus disparage the union in the eyes of All American's employees.[26] The long range advantage to All American is obvious...either no union to deal with or one with reduced support from the employees. An additional benefit to All American was that the UFW unaware of the takeover, would not request Borchard to negotiate over the effects of the shutdown with the attendant repercussions against All American during the changeover nor request All American to recognize and bargain with it after the changeover.

I believe that this conduct by All American, in itself, is sufficient to find the successor "chargeable with knowledge of its predecessor's unfair labor practices". John Borchard, as All American's general manager gained knowledge about the shutdown and grievances while he was still the owner and operator of Borchard Farming and then later acted on this knowledge as All American's general manager, to frustrate the UFW's ability to negotiate about the shutdown and its attempt to resolve the grievances therefore benefitting All American.

Furthermore it is readily inferred that Westra and Boris Borchard did have knowledge of these unfair labor practices

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26/It is easy to understand why the employees complained about the union, if they actually did so, when the union was completely ineffectual in processing these important grievances dealing with the November lay-off and refusal to rehire of the thinning crew and the other grievances concerning vacation pay and other layoffs.

because of All American's actions to conceal the fact that it had taken over the Borchard farm operations.[27] In Golden State Bottling Co. v. NLRB, 414 U.S. 168, 84 LRRM 2839 (1973) the predecessor's general manager (who had effectuated the discharges alleged as unfair labor practices) became the successor's general manager and president. The administrative law judge refused to believe the successor's officers' denial of knowledge in view of other evidence that the employer had endeavored to conceal the sale of the business. The Supreme Court affirmed the Board's finding of knowledge even though the successor's officers had denied such knowledge at the hearing.

In view of the foregoing I shall recommend that All American, as successor to Borchard be jointly and severally liable for remedying the unfair labor practices committed by Borchard.

Having found that Respondent All American as the successor to Borchard, has the duty to recognize and bargain with the UFW and has refused to do so, I shall recommend that All American, be required to recognize and bargain with the UFW.

The Board has held that a make-whole remedy is appropriate affirmative relief for employer violations of

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27/The action by Borchard, as All American's general manager, on January 18th was just one incident in a pattern of concealment of the fact that All American was taking over for Borchard. Borchard, although he claimed he informed Ann Smith he was going out of business, admitted he had never told her about All American. Then from January on, All American admittedly never notified the UFW of its takeover.

Section 1153(e) whenever employees have suffered loss of pay as a result. Adam Dairy, 4 ALRB No. 24 (1978). The employees loss of pay must be presumed. Perry Farms, 4 ALRB No. 25 (1978). Having found All American to be a successor employer with an obligation to bargain in good faith with the UFW and having found that All American had not so bargained, I shall recommend that All American be ordered to make whole its employees for their losses of pay resulting from its refusal to bargain.

As provided in Adam Dairy, supra, "pay" shall include wages paid directly to employees together with all fringe benefits capable of monetary calculation. "The appropriate period for the application of the make-whole remedy is from the date of the first refusal to bargain until Respondent begins to bargain in good faith and thereafter bargain to contract or impasse."

The UFW made its initial bargaining demand upon All American by letter of July 10, 1978. I shall recommend that July 17, 1978, be used as the starting date for calculating the make-whole remedy with the terminal date to be the date upon which All American Ranches starts to bargain in good faith and continues to do so until impasse or agreement. The calculation of the make-whole remedy shall be in accord with the formula set forth by the Board in Adam Dairy, supra.

Having found that Respondent Borchard engaged in certain unfair labor practices within the meaning of Sections 1153(a) and (e) of the Act, I shall recommend that he be ordered to cease and desist from and to take certain affirmative action designed

to effectuate the policies of the Act.

Having found that Respondent Borchard unlawfully discharged and refused to rehire the thinning crew, I shall recommend that Respondents jointly and severally be ordered to make each member of the thinning crew whole for any loss of pay resulting from Borchard's unlawful act, together with the interest thereon of 7% per annum. I shall recommend that All American as the successor to Borchard, be required to offer reinstatement to the members of the thinning crew.

In Highland the predecessor refused to bargain over the impact on bargaining unit employees of its decision to close the business. The Board noted that a bargaining order standing alone could not remedy the true unfair labor practices since Highland's conduct deprived the employees of the opportunity to bargain over the effects of the transfer at a time when the union had some measure of economic strength. The Board commented since at the time of the issuance of the decision the union no longer had bargaining strength it was highly unlikely that meaningful bargaining would take place. Therefore the Board provided a limited make-whole remedy designed to create conditions similar to those that would have been present had Highland consulted with the union prior to the end of the harvest and the consumation of the transfer.

In the instant case I find that similar circumstances exist and that a bargaining order just by itself will not insure meaningful bargaining. In addition to refusing to bargain over the closure of his business Borchard refused to process the grievances. So as to create conditions similar to those that would have been present had Borchard consulted with the UFW

about the settlement of the grievances or the effects of his decision to close down just before the consumation of the transfer it would be appropriate to utilize the remedy employed in Highland and consequently I will recommend that Borchard be ordered to pay his agricultural employees their daily wages as of November 30, 1978 from five days after the issuance of this Decision until: (1) the date Borchard bargains to agreement with the UFW about the impact of its decision to close the business and the settlement of the five grievances with the exception of the layoff of the thinning crew (the remedy of which is set forth elsewhere in this decision); (2) the date Borchard and the UFW bargain to a bonafide impasse; or (3) the failure of the UFW to request bargaining within five days after Borchard's notice of its desire to bargain; or (4) the subsequent failure of the UFW to bargain in good faith. In no event shall the back pay period exceed the period necessary for the employees to obtain alternative employment.

General Counsel requests as relied an award of attorney's fees, costs of litigation and costs of investigation. According to the rationale of Western Conference of Teamsters (V.B. Zaninovich and Sons, Inc., 3 ALRB No. 57 (1977)) attorney fees would only be awarded when the Respondent's defense can be characterized as "frivoulous". Although the issues tried by Borchard and All American are not unique, their determination in most instances depended upon credibility resolutions. Respondent's versions of the acts mounted to something more than a frivoulous contention. Consequently I shall recommend that

General Counsel not be awarded an Attorney's fee, litigation costs and investigative costs.

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

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that:

1. Respondent John V. Borchard, officers, agents, successors, and assigns, shall cease and desist from:

(a) refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1155.2(a), with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of its agricultural employees in violation of Labor Code Section 1153(e) and (a), and in particular: (1) refusing to meet at reasonable times and confer in good faith and submit meaningful bargaining proposals with respect to wages, hours and other terms and conditions of employment; (2) make unilateral changes in terms and conditions of employment without notice to and bargain with the UFW; (3) refusing to process grievances under the terms of the collective bargaining agreement entered into by Respondent Borchard and the UFW on June 9, 1977.

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

2. Respondent All American Ranches, officers, agents, successors, and assigns shall cease and desist from:

(a) refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1155.2(a), with the United Farm Workers of America, AFL-CIO (UFW), as the certified collective bargaining representative of its agricultural employees in violation of Labor Code Section 1153(e) and (a), and in particular: (1) refusing to meet at reasonable times and confer in good faith and submit meaningful bargaining proposals with respect to wages, hours, and other terms and conditions of employment.

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

3. Respondent John V. Borchard and Respondent All American Ranches, their officers, agents, successors and assigns, shall jointly and severally take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the UFW with respect to the effects upon John V. Borchard's former employees of Borchard's termination of operations, and reduce to writing any agreement reached as a result of such bargaining.

(b) Upon request, bargain collectively with the UFW concerning the four grievances aforedesignated in this Decision.

(c) Pay to John V. Borchard's terminated employees their normal wages for the period set forth on page 49 of the attached decision.

(d) Make whole the following members of the thinning crew for any losses of pay and any other economic losses

incurred by them because of Respondent John V. Borchard's illegal termination and refusal to return them to work in November 1977:

Jorge Apodaca	Jose Madueno
Celia Apodaca	Juana Ocano
Magdalena Davila	Concepcion Sanchez
Javier Esparza	Blanca Tafoya
Teresa Esparza	Virginia Torres
Rafael Gonzales	Jose Zamora
Esther Gonzales	Manuel Zamora
Maria Elena Kernandez	Ramon Zamora
Rosa Lopez	Rosa Zamora
Concepcion Madueno	Trinidad Zamora

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

4. Respondent John V. Borchard, his officers, agents, successors and assigns, shall take the following additional affirmative actions deemed necessary to effectuate the policies of the Act:

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

(b) Hail copies of the attached Notice in appropriate languages, within 30 days after issuance of this Order, to all employees, employed at any time between September 1977 and January 1978 inclusive.

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

5. Respondent All American Ranches, its officers, agents, successors and assigns, shall take the following affirmative actions deemed necessary to effectuate the purposes of the Act:

(a) Offer to reinstate the members of the thinning crew, whose names are listed in Paragraph 3(d) of this Order, to their former or substantially equivalent jobs without prejudice; to their seniority or other rights and privileges.

(b) Upon request meet and bargain collectively in good faith with the UFW as the exclusive representative of its agricultural employees and, if an understanding is reached, embody such understanding in a signed agreement.

(c) Make whole those employees employed by Respondent All American Ranches in the appropriate bargaining unit at any time between the date of Respondent's first refusal to bargain on or about July 17, 1978, to the date on which Respondent All American Ranches commences collective bargaining in good faith and thereafter bargains to contract or impasse, for any losses they have suffered as a result of the aforesaid refusal to bargain in good faith, as those losses have been defined in Adam Dairy dba Rancho Dps Rios, 4 ALRB No. 24 (1978).

(d) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all

records relevant and necessary to a determination of the amounts due employees under the terms of this Order.

(e) Sign the Notice to All American Ranches employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent All American Ranches shall thereafter reproduce sufficient copies in every language for the purposes set forth hereafter.

(f) Post copies of the attached Notice on the premises for 90 consecutive days, the posting period and places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(g) Mail copies of the attached Notice in appropriate languages, within 30 days after issuance of this Order, to all employees, employed at any time after January 1978,

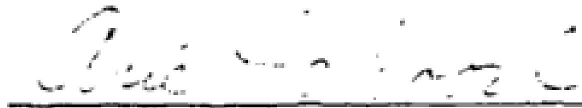
(h) Arrange for a representative of Respondent or a Board agent to read the attached Notice in appropriate languages to the assembled employees of Respondent All American Ranches on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following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

(i) Notify the Regional Director in writing,

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

It is further ordered that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative for Respondent All American Ranches agricultural employees, be amended to name All American Ranches as the Employer and extended for a period of one year from the date on which Respondent All American commences to bargain in good faith with said Union.

DATED: March 5, 1980



ARIES SCHOORL
Administrative Law Officer

NOTICE TO JOHN V. BORCHARD EMPLOYEES

The Agricultural Labor Relations Board has found that I have violated the Agricultural Labor Relations Act by refusing to bargain about the effects of my decision to go out of business, by unilaterally and without consulting with the UFW laying off members of a thinning crew and refusing to rehire them and by refusing to process grievances under the terms of a collective bargaining agreement with the UFW. The Board has ordered me to distribute this Notice and to take certain other actions. I will do what the Board has ordered, and also tell you that:

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

1. To organize themselves;
2. To form, join or help any union;
3. To bargain as a group and to choose anyone they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect each other; and
5. To decide not to do any of these things.

Because this is true, we promise you that:

I WILL, jointly and severally with All American Ranches, on request, meet and bargain in good faith with the UFW about the effects on ray employees of my decision to sell my business because it was the representative chosen by my employees.

I WILL, jointly and severally, on request, meet and bargain in good faith with the UFW concerning the four grievances, aforedesignated in the Decision and Order of the ALRB.

I WILL, jointly and severally with All American Ranches, pay to each of the employees employed by me during the period from September 1977 to January 18, 1978, inclusive, their normal wages for the period required in the Decision and Order of the ALRB.

I WILL, jointly and severally with All American Ranches, pay back pay and interest as required by the Decision and Order of the ALRB to the following: Jorge Apodaca, Celia Apodaca, Magdalena Davila, Javier Esparza, Teresa Esparza, Rafael Gonzales, Esther Gonzales, Maria Elena Hernandez, Rosa Lopez, Concepcion

Madueno, Jose Madueno, Juana Ocano, Concepcion Sanchez, Blanca Tafoya, Virginia Torres, Jose Zamora, Manual Zamora, Rarnon Zamora, Rosa Zamora and Trinidad Zamora.

Dated: JOHN V. BORCHARD

JOHN V. BORCHARD Sole Proprietor

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 ALL AMERICAN RANCH EMPLOYEES

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

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

1. To organize themselves;

2. To form, join or help any union;

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

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

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

Because this is true, we promise you that:

WE WILL, on request, meet and bargain in good faith with the UFW about a contract because it is the representative chosen by John V. Borchard employees and we are a successor to John V. Borchard.

WE WILL reimburse each of the employees employed by us after July 17, 1978, for any loss of pay or other economic losses sustained by them because we have refused to bargain with the UFW, plus interest computed as 7 percent per annum.

WE WILL, jointly and severally with John V. Borchard, give back pay plus 7 percent interest to Jorge Apodaca, Celia Apodaca, Magdalena Davila, Javier Esparza, Teresa Esparza, Rafael Gonzales, Esther Gonzales, Maria Elena Hernandez, Rosa Lopez, Conception Madueno, Jose Madueno, Juana Ocano, Conception Sar.chez, Blanca Tafoya, Virginia Torres, Jose Zamora, Manual Zamora, Ramon Zamora, Rosa Zamora and Trinidad Zamora and will offer them immediate and full reinstatement to their former positions or substantially equivalent jobs without prejudice to their seniority or other rights and privileges.

WE WILL, jointly and severally with John V. Borchard on request, meet and bargain in good faith with the UFW concerning the effects on John V. Borchard employees of his decision to sell his business because it was the representative chosen by his employees and also about settlement of the four grievances, aforedesignated in the Decision of the ALRB.

Dated: ALL AMERICAN RANCHES

By: ________________________
Representative Title

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

DO NOT REMOVE OR MUTILATE.