Thermal, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PETER D. SOLOMON and JOSEPH R. SOLOMON, dba CATTLE VALLEY FARMS, Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 79-CE-26-SD 79-CE-28-SD 79-CE-33-SD 79-CE-34-SD 79-CE-l-IN 8 ALRB No. 59

DECISION AND ORDER

On May 7, 1981, Administrative Law Officer (ALO) Leonard M. Tillem issued the attached Decision in this proceeding. Thereafter, Respondent, General Counsel, and the Charging Party each timely filed exceptions and a 'supporting brief.

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

The Board has considered the record 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.

Acquisition of Rancho Tigre

Respondent excepts to the ALO's conclusion that it failed to bargain in good faith over the effects of its decision to acquire additional acreage. The ALO found that the acquisition required Respondent to hire additional employees, and, since Respondent had

made a lump sum economic offer during contract negotiations, the accretion to the bargaining unit would reduce the economic benefit which each unit employee would receive from Respondent's lump sum offer. The ALO then concluded that the effect of this reduction was subject to bargaining, despite the existence of a bona fide impasse over economics, prior to the date of the acquisition.

Respondent argues that the new acreage was planted in a crop which requires very little labor and therefore any new work would have a de minimis effect on the distribution of Respondent's lump sum offer. The record, unfortunately, fails to indicate what amount of new work was generated by the acquisition or the degree to which any new work affected the bargaining unit. On this record, we cannot find that Respondent's acquisition of Rancho Tigre had a sufficient effect to require negotiation over the impact of the acquisition. We also decline to adopt the ALO's finding that any increase in the size of the bargaining unit would have had a negotiable effect, because of the lump sum offer, since the parties were at impasse at the time of the acquisition. Any negative effect on Respondent's economic offer would only have deepened the impasse and, under those circumstances, would not have revived the duty to bargain over economics.

We do find, however, that Respondent's failure to provide the UFW with information regarding the acquisition or its effects, after the decision was finalized, deprived the Union of the opportunity to bargain intelligently. Respondent's total acreage, cropping patterns, and labor needs are clearly relevant to mandatory subjects of bargaining. Respondent's duty to provide such

information is equally clear, regardless of the ultimate importance of that information. We therefore conclude that Respondent has violated Labor Code section 1153(a) and (e).

Unilateral Rental Reduction to Maria Arrambide

Respondent excepts to the ALO's conclusion that it violated the duty to bargain by unilaterally reducing the rent paid by employee Maria Arrambide for company-owned housing. We find merit in Respondent's argument that a unilateral raise in compensation to one individual should be considered de minimis, absent some showing that the raise discourages or interferes with union or other protected activity or that the employer has entered into negotiations which circumvent the exclusive representative. (See, NLRB v. Fitzgerald Mills Corp. (2nd Cir. 1963) 313 F.2d 260 [52 LRRM 2174]; NLRB v. Exchange Parts Co. (1964) 375 U.S. 405 [55 LRRM 2098]; AS-H-NE Farms (Feb. 8, 1980) 6 ALRB No. 9.)

ORDER

By authority of Labor Code section 1160.3 the Agricultural Labor Relations Board hereby orders that Respondent Peter D. Solomon and Joseph R. Solomon dba Cattle Valley Farms, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing to provide the UFW with information relevant to the acquisition of additional land.

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

2. Take the following affirmative action which is deemed

necessary to effectuate the policies of the Act.

(a) Provide the UFW with information regarding the acquisition of Rancho Tigre in September 1979.

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

(c) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from September 1979 until September 1980.

(d) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its premises, the time(s) and place (s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

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

them for time lost at this reading and during the question-and-answer period.

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

Dated: August 30, 1982

HERBERT A. PERRY, Acting Chairman

JOHN P. MCCARTHY, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by refusing to provide the UFW with information regarding the acquisition of additional land at Rancho Tigre.

The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California 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 it is true that you have these rights, we promise that:

WE WILL NOT, in the future, do anything to interfere with your rights to do, or refrain from doing, any of the things listed above.

WE WILL provide the UFW with information regarding the acquisition of additional land.

Dated: CATTLE VALLEY FARMS

By: ______________________________

(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, 92243. The telephone number is (714) 353-2130.

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

Cattle Valley Farms (UFW) — 8 ALRB No. 59
Case Nos. 79-CE-26-SD
79-CE-28-SD
79-CE-33-SD
79-CE-34-SD
79-CE-1-IN

ALO DECISION

The ALO found that Respondent bargained in good faith with the Union and was not unreasonable in making a lump-sum economic offer or in providing financial information. He therefore dismissed the allegation of bad faith bargaining. Although the ALO found that the parties reached a bona fide impasse in contract negotiations, he further found that the impasse did not allow Respondent to unilaterally acquire new farm land without negotiation. He therefore found a per se refusal to bargain over the acquisition.

The ALO dismissed the allegation that Lucio Frias was discriminatorily isolated and checked excessively because of his union activity. The credited evidence did not show that Frias was any more isolated or checked more frequently than other workers.

The ALO found that Maria Arrambide was given free housing by Respondent and concluded that this change in her compensation violated the duty to bargain.

BOARD DECISION

The Board adopted the ALO's findings and conclusions with regard to bad faith bargaining and the discharge of Lucio Frias. The Board reversed as to the acquisition of additional land, finding that General Counsel failed to prove the change had a significant effect on the bargaining unit, and as to the free rent given to Maria Arrambide, finding that benefit to be an isolated merit increase with no significant effect on collective bargaining. The Board concludes, however, that Respondent had a duty to provide information regarding the acquisition of additional land and violated the Act by refusing to provide that information.

* * *

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PETER D. SOLOMON and
JOSEPH R. SOLOMON, dba
CATTLE VALLEY FARMS,

Respondents,

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Charging Party,

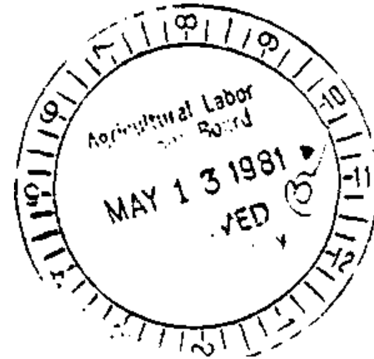
Case Nos. 79-CE-26-SD
79-CE-28-SD
79-CE-33-SD
79-CE-34-SD
79-UC-l- IN

DECISION

Warren L. Bachtel, Esq.
General Counsel for the Board

Thomas Slovak, Esq.
For the Respondent

Aggie Rose, Law Clerk
For the Charging Party



STATEMENT OF THE CASE

This case was heard before me in Indio and Palm Springs, California, on June 17, 18, 25, 26, and 30 and July 1, 15, and 16, 1980. The hearing was held pursuant to the Third Amended Complaint issued by the Regional Director of the El Centro Regional Office on June 17, 1980, upon unfair labor practice charges filed by the Charging Party, United Farm Workers of America, AFL-CIO, (hereinafter "UFW") on August 1, September 5, and October 18, 1979, and thereafter duly served upon Respondent, PETER D. SOLOMON and JOSEPH R. SOLOMON, dba CATTLE VALLEY FARMS, (hereinafter "Employer").

The Third Amended Complaint alleges the refusal of the Employer to bargain collectively in good faith in violation of Section

1153(e) of the Agricultural Labor Relations Act (hereinafter "Act") and further alleges that Employer interfered with, restrained, and coerced the exercise of its employees' rights guaranteed by Section 1153 of Act resulting in violations of Sections 1153(a), (c), (d) and (e) of the Act. During the hearing, charges alleged by Paragraph 10(e) were dismissed and Paragraphs 13 (a),(b},(c), and (d), were dismissed as to all of Employer's employees named therein with the exception of Lucio Frias. In addition, Paragraph 10(f), was striken from the Third Amended Complaint during the hearing and Paragraph 10(h), was amended to allege that on or about August 15, 1979 and September 18, 1979, the Employer terminated negotiations.

All parties were given a full opportunity to participate in the hearing and after the close thereof, General Counsel, the Employer, and the UFW each filed a brief in support of their respective positions. Upon the entire record, including my observations' of the demeanor of the witnesses, and in consideration of the briefs filed by the parties, I make the following findings of fact, analyses and conclusions of law, and determination of relief.

I

FINDINGS OF FACT

A. Jurisdiction

Employer is a general partnership of Joseph R. Solomon and Peter D. Solomon, father and son, doing business as Cattle Valley Farms. Most of Employer's land is located in Thermal and is used to grow row crops. In 1978, the Employer raised cotton, wheat, alfalfa, milo and sudan grass. Employer also operates a feed lot for between four thousand and five thousand head of cattle and is engaged in drying

citrus peel which is used as cattle feed, some of which is sold to outside customers. The Employer also does custom hay and field work when it has slack time. Employer admits it was at all times material to the charges contained in the Third Amended Complaint an agricultural employer within the meaning of Section 1140.4(c) of the Act, and I so find. I further find that the employees of Employer are agricultural employees within the meaning of Section 1140.4(f) of the Act.

B. Alleged Unfair Labor Practices

The Third Amended Complaint as further amended at hearing alleges that the Employer refused to bargain in good faith in violation of Section 1153(c) of the Act by:

(1) proposing on or about July 18 and August 15, 1979, wages which were the same or lower than the existing wage scale;

(2) claiming on or about August 15, 1979, financial inability to meet the UFW proposal on wages and thereafter, on or about September 10, 1979 and continuing to date, refusing to supply financial information duly requested by the UFW on September 5, 1979, necessary to enable the UFW to evaluate the Employer's proposal;

(3) increasing on or about July 1, 1979, the wages of Bias Gonzales and Maria Elvira Arrambide without notice to or negotiating regarding the increases with the UFW;

(4) on or about July 2, 1979, making proposals through its negotiator, Keith Sardellini, regarding hiring, seniority and grievances less favorable than those made by the Employer in May 1978, with the intent to create a false impasse by making a proposal which the Employer knew to be unacceptable to the UFW;

(5) terminating negotiations on or about August 15 and September 18, 1979, by claiming impasse based on the UFW's rejection of a predictable and unacceptable offer of a lump sum for wages and benefits; and

(6) unilaterally changing the working conditions of their employees on or about October 2, 1979, by acquiring additional property known as "Rancho Tigre" without negotiating regarding the acquisition or its effects on bargaining unit employees.

The Third Amended Complaint, as amended at the hearing, also alleges with regard to Lucio Frias, that the Employer interfered with, restrained and coerced his rights guaranteed by Section 1152 of the Act by withholding available tractor work from him because of his support for the UFW and because he filed unfair labor practices and, further, after. Mr. Frias was rehired, the Employer discriminatorily segregated him by putting him to weed cotton in a field with no other workers and that Respondent's foreman discriminated against Mr. Frias by excessively checking his work all because of his support of the UFW and because he filed unfair labor charges against the Employer.

C. Bargaining

(1) Hiring, Seniority and Grievance proposals.

The charges alleging the Employer's refusal to bargain in good faith arise out of incidents occurring subsequent to the entry into a settlement agreement by the UFW with the Employer on June 29, 1979. That settlement agreement settled Case No. 79-CE-16-1-D which charged the Employer with unfair bargaining, including but not limited to backward movement in its seniority and union security pro-

posals. Keith Bardellini was the negotiator for the Employer, in the collective bargaining sessions which took place from June 1979 through the Fall of 1979. The settlement agreement signed by Bardellini (RX-R, Tab 4) contained a provision in Paragraph 14 which reads:

> 14. The parties agree that no evidence of Respondent's Acts or conduct as set forth in the Second Amended Complaint, attached as Exhibit "0" to this agreemend, shall be used as a basis for any finding of liability in any future unfair labor practice proceeding before the Board. However this agreement shall not prevent any party from offering any presettlement acts or conduct as back-ground evidence in future proceedings for the purpose of shedding light on, providing an understanding of, or showing the motive or object of post-settlement acts or conduct. All parties reserve the right to make appropriate objections to the introduction of such evidence at any future proceeding.

Concurrently with Bardellini's negotiation of a settlement agreement containing the above paragraph, he began bargaining with Enrique Torres, the UFW's negotiator. On July 2, 1979, the Employer, through Bardellini, made hiring, seniority and grievance proposals subsequently alleged by the Third Amended Complaint to be less favorable than proposals made by the Employer in May, 1978, in bargaining. The Third Amended Complaint alleges that the proposals were made with the intention of creating a "false impasse" because the Employer knew the proposals to be unacceptable to the UFW.

On May 23, 1978, the Employer had made a hiring proposal (GCX-18) which contained no probationary period for new employees. Recall of laid-off employees was to be made under this proposal in accord with the provisions of a separate article on Seniority. On February 22,

1979, the Employer offered a different hiring article providing for a seven-day probationary period and that "[e]mployees who had seniority with the Company and who completed all available work in the preceding season shall be recalled to work by the Company as work becomes available and notice of such recall shall be in writing with a copy of such notice to the Union." (GCX-19)

The February 22 hiring proposal contained additional provisions providing for use of a central and uniform hiring facility to hire additional workers, requiring notification of the union in advance of the times Employer would accept applications for employment, requiring that applications be printed in English and Spanish, that applicants be notified within 48 hours if hired for a job, that the union be notified within 72 hours of the hire of a new employee, that the Employer notify the Union seven (7) days prior to lay-offs, and that claims by the UFW that the Employer had violated the hiring provisions be treated as grievances in accordance with the Grievance and Arbitration Procedures set out in Article V.

On or about July 2, 1980., the Employer offered a third hiring proposal containing a 5 day probationary period and adding a section (paragraph G) providing that the Employer retained the right to determine the relative qualifications of applicants and the discretion to hire the most qualified. (GCX-20) The July 2 proposal omitted the provision that an employee terminated during the probationary period would have recourse to the grievance procedure when he alleged termination based upon union sympathies or activity and provided that employees with seniority would be recalled to work pursuant to Article IV (the

seniority provision), another change from the offer made on February 22.

On May 23, 1978, the Employer made a proposal regarding seniority which provided for a probationary period of seven days for employees covered by that article and allowed access to a grievance procedure to an employee terminated during the probationary period if he alleged termination based upon union sympathy or activities. (GCX-21).

On or about July 3, 1979, Bardellini submitted a new seniority proposal which provided no recourse to a grievance procedure for an employee terminated during the probationary period. (GCX-22). This seniority proposal provided that there would be no bidding or bumping as part of the agreement while the May 1978 proposal provided that there would be bumping except as provided in other sections of the seniority article. However, Paragraph C of the July 1979 seniority article appears to provide a mechanism for bumping. It states:

> Company-wide seniority shall be applied for the purpose of fixing the order in which workers to be laid-off with Company-wide seniority are given consideration for other jobs provided the worker is able to do the work in the job available. The Company will provide a worker a reasonable opportunity to perform the work to which he/she is assigned in the event said worker has previously not performed said work. (GCX-22).

The July 1979, proposals were presented by Bardellini to Torres in a bargaining session in which Torres testified that Bardellini, when asked the meaning of Paragraph E of the seniority proposal, stated

that it meant that promotions to permanent job vacancies could be made on the basis of seniority but need not necessarily be so made. '(TR VI, 86-87). Torres testified that Dave Smith, the Employer's negotiator who had submitted the May 23, 1978, seniority proposal, had represented his understanding of that paragraph (D in the 1978 proposal) to be that all promotions to permanent job vacancies would be made on the basis of seniority. (TR VI, 86).

The negotiations in which Torres engaged with the Employer were originally commenced in 1977 with David Smith representing the Employer. Bardellini testified that he conferred with Torres in preparing the ground rules to be utilized during the 1979 negotiation sessions. (TR VIII, 89). Bardellini credibly testified, and I find that the ground rules were, that until an entire article was accepted by both the Employer and the UFW either could make changes or modifications to any sections of the article. In Bardellini's words:

> So until a full article was accepted by both sides, the entire article was on a table and could be withdrawn. It is absolutely necessary, obviously, in any attempt to negotiate. Otherwise you are afraid to put anything on the table for fear that just the good parts are going to be picked out by the other side and immediately accepted and you are stuck. You've got to have the flexibility of saying, "Wait a second. *I* give you something and myself something. And they counterbalance. And if you don't take what I give to you, what I want, then I am certainly not going to give to you. I am not going to find myself in a position where constantly you're picking out the good things."

> Compromising, its obviously the way in which all negotiations have to be conducted. And that was the understanding of the parties. (TRVIII, 95-96).

Torres, who had been negotiating with the Employer as the UFW's representative since November 1978, admitted that the proposals made by David Smith with respect to hiring and seniority and containing the grievance items which UFW claim were more favorable than proposals made by the Employer in July 1979, were never agreed to by the UFW prior to the time Bardellini offered the new proposals in July 1979. (TR VII, 73-74). Torres also admitted that under the bargaining rules utilized by the parties the UFW would have had the right to reopen negotiations with regard to an entire article if the Employer proposed something be added to an article not yet agreed on. (TR VII, 73).

Torres testified that from the UFW's point of view, the presence of a probationary period in the hiring article was unfavorable because so many entry-level jobs are for general laborers for which the UFW does not see the necessity for a probationary period. (TR VI, 80). In addition Torres testified that the UFW looks with disfavor on any proposal which allows an Employer to terminate an employee during the probationary period without recourse to a grievance procedure. (TR VI, 82-83). Torres stated that without recourse to a grievance procedure a worker could be terminated because of his union affiliation. (TR VI, 81).

I find that Torres and Bardellini agreed upon .the ground rules for negotiating on the terms of the bargaining agreement between the Employer and the UFW. I further find that the hiring and seniority articles had not been agreed to prior to the execution of the settlement agreement' between the parties in late June 1979, and that, further, David

Smith had provided Torres with a different explanation for the meaning of Paragraph D of the 1978 hiring proposal. (E in the 1979 proposal). Finally, I find that the UFW did consider Bardellini's July 1979 proposals less favorable than the earlier proposals.

When impasse was declared in August 1979, the UFW and the Employer had not reached an agreement on hiring, seniority, and the economic package to be discussed below. During negotiations between Torres and Bardellini, between June and August of 1979, agreement was reached on articles dealing with recognition, union security, health and safety, and nondiscrimination. (TR VIII, 97-98). The UFW and the Employer also failed to obtain agreement on a grievance issue involving the amount of release time to be given workers serving on the grievance committee and, on the number of workers who would obtain that release time. The union wished five workers to obtain release time and the Employer sought to give release time for one worker only. The Employer's position with regard to this issue does not evidence an intent to bargain in bad faith. Bardellini testified that because the number of personnel working for Employer could drop as low as nine, the release of five people to sit on a grievance together with the aggrieved employee and the management witness who would testify and conduct the case could produce a situation in which the Employer would effectively lose its ability to run its operations. (TR VIII, 99).

2. The Wage Proposals.

On July 18, 1979, the Employer made a wage offer to the UFW which set wages for tractor drivers at $3.80 an hour, for general laborers at $3.40 an hour, for irrigators at $3.40 an hour, and for feeders at $3.75 an hour. (GCX-5). On that date Jose Arrieta, a tractor

driver, was earning $3.85 per hour, Javier Gonzales, a general laborer, was earning $3.50 per hour, and Alfredo Hernandez and Francisco Ortega , irrigators, were earning $3-50 per hour. This wage offer was made by Bardellini in a negotiation session with Torres. The wage offer was composed during the negotiation session on July 18 at Torres' request that Bardellini make a breakdown of a previously made lump sum offer. (TR VIII, 102-6).

At the time the request was made by Torres the Employer had made an economic offer of a lump sum of $30,500.00 to be divided between wages and other economic benefits as the UFW might chose. Bardellini credibly testified that he had not come prepared to make a wage offer because he did not know whether the UFW wanted to spend all or any portion of the lump sum proposed by the Employer on wages. (TR VIII, 103). Bardellini felt that if he made a wage offer and spent all of the money on wages there would be no place to go on the other economic items that seemed important to the UFW. Id. Bardellini credibly testified he made the offer "under' protest" to help the credibility position of Torres with the employees who had attended the negotiation session. Id. Bardellini further credibily testified, that without seeing his notes and without complete information as to what the workers were earning at that point he attempted to give Torres something to show the workers. Id. Subsequent to preparing the breakdown, Torres showed it to the workers who had accompanied him and advised Bardellini that some people were making more than proposed .in the offer. (TR VIII, 106). Bardellini apologized and explained that the wages were a minimum and that nobody would take a loss by the offer.

The Employer had made a lump sum economic proposal by a

letter dated June 28, 1979, (RX-S, Tab 5) which was received by Torres on July 3, 1979 and the UFW had countered on July 3, 1979. The Employer then responded with a lump sum offer by telegram dated July 9, 1979 of $30,150.00 which provided that the amount "may be allocated in any way you deem fit as long as the true actual costs to CATTLE VALLEY FARMS does not exceed this figure." (GCX-4). It was at the July 18, 1979, meeting at which Torres requested and received the oral proposal from Bardellini in which the wages proposed were lower than those received by some of Employers' employees.

On August 15, 1979, the Employer made a new wage proposal, which, while not proposing wages lower than those being made by the employees at that time, did not contain raises for some of them. A comparison of the wages being paid by the Employer as reflected in its July 15, 1979 payroll (GCX-14) with the August 15 wage proposal, establishes, and I find, that at least three employees, Javier Gonzales, Alfredo Hernandez, and Francisco Ortega, would get no raises and that three other employees, Arturo Garcia, Edwardo Carmona, and Rosendo Arram-bide, would or would not get raises, depending on whether they were classified as irrigators or tractor drivers. Bardellini testified that from the Employer's point of view there were really no job classifications and that the classifications of tractor driver, irrigator, etc., were created for the purpose of negotiations. (TR VIII, 107). Bardellini testified that when he made the August 15 wage proposal, he knew that no one in the Employer's employ was making as much as $4.00 an hour, the top wage rate in his proposal.

The Employer's August 15, 1979 wage proposal was made at Torres' request and prepared ahead so that Bardellini would avoid proposing wages under those wages already being paid. (TR VIII, 106). The August 15 proposal, besides wages, provided for jury pay, vacation, release of absences for funerals, injury on the job, travel pay and that any amounts remaining from the lump sum amount would be contributed to the Juan De la Cruz Pension Fund. (TR VIII/ 110). Bardellini testified without contradiction that at no time during the negotiations did Torres ever respond to the Employers' lump sum offer with a breakdown of the lump sum.

I find the Employer's July 18, 1979, economic proposal was an attempt to allocate the $30,150.00 lump sum offer made earlier by the Employer and was prepared by Bardellini at Torres' insistence without benefit of documents reflecting the then existing wage rates. I further find that no wages proposed on August 15, 1979 were lower than those then being paid though some rates were the same as the rates at which some employees were then being paid.

3. Impasse.

Joseph Solomon, one of the Employers' general partners, was present at the August 15, 1979, negotiating session with Mr. Bardellini. Both Torres and Bardellini testified that an impasse was declared by the Employer at the August 15, 1979 meeting. A portion of the negotiating session of August 15 was tape recorded by the UFW and made a part of the record in this hearing. (TR VII, 106-127; TR VI, 58-60).

Considerable time was spent by Solomon and Bardellini at this bargaining session explaining that the $30,150.00 lump sum offer

could be divided up as the UFW saw fit and varying amounts applied to wages and other benefits. There was discussion about the comparability of the Employer's operation to that of other employers who had signed contracts. Bardellini stated the willingness of the Employer to discuss increased wage proposals in a year. Bardellini further stated at that session that the $30,150.00 proposal was the Employers' bottom line and refused to move upward. (TR VII, 125). When Torres suggested setting a date for the next meeting, Bardellini stated there was no reason for another meeting. Torres responded that he needed time to study the Employer's new wage proposal and Bardellini stated that that was all right but that he was telling everybody that the present proposal was the Employer's bottom line. (TR VII, 125). Bardellini then stated that if the UFW came in with a counter-offer he would be happy to look at it but that absence of a change of mind on the part of the general partners, the Employer's answer would be no. (TR VII, 126). The meeting concluded with Bardellini stating that the parties were at an impasse. (TR VII, 127)

The parties met again on September 19. Between the two dates the UFW studied the Employer's proposals but did not accept any of them. (TR VII, 15). At the September meeting, Torres made counterproposals because of a desire to reach a common ground with the Employer on wages. Torres credibly testified that Bardellini stated that the UFW could make all the proposals it wanted to but that the Employer would not give one red cent more. (TR VII, 16).

Torres testified without contradiction, and I find, that the Employer's $30,150.00 wage offer was 30% below what the other

companies in the area were paying. (TR VI, 50). He further testified without contradiction that if all the money were put into wages each employee would receive a wage increase of approximately $0.53 per hour. (TR VII, 36).

In evaluating whether the Employer's offer was comparable to other contracts in the area, Torres compared it with contracts obtained by the UFW with Ensley and Anderson Corporation and Debone Ranch Management, Inc. (TR VI, 43). Torres testified that he compared these two contracts with the Employer's offer because the major portion of these employers' employees were tractor drivers, irrigators and general laborers, but Torres also admitted that there was no employer in the area whose actual operations were comparable to those of CATTLE VALLEY FARMS. (TR VII, 71). Torres further testified that it would cost the Employer $60,000.00 to bring its employees' wages up to those of Ensley and Debone. Id. at 45. Torres also compared the Employer's offers with the contract reached by the UFW with Dunlap -which provided, as of May 17, 1979, wages of $3.55 for general laborers; $3.76 for tractor/truck drivers;' and, effective May 17, 1979, $3.76 for general laborers and $3.99 for tractor/truck drivers. (TR VII, 70-71).

4. Acquisition of Rancho Tigre.

In late August 1979, Torres was told by Lucio Frias that the Employer intended to farm additional land at a county airport in Thermal. (TR VII, 3-5). Torres asked Bardellini in late September whether this was true and was advised that as of September 21, the Employer had acquired no new property either through purchase or lease. This oral representation by Bardellini was subsequently followed by a

letter dated September 28, 1979. (GCX-23). Prior to Torres' conversation with Bardellini he had heard of this possible acquisition from Gus Olson, the manager at Tenneco West from whom the Employer subsequently acquired Rancho Tigre.

In late January 1980, Torres, in a telephone conversation with Bardellini asked him if the Employer had acquired any more property. Bardellini did not answer Torres' question in that conversation but on February 6 Torres received a letter (GCX-25) stating that Bardellini had passed the information requested on to Peter Soloman. Subsequently, Torres attempted to reach Solomon whose secretary advised him to call Solomon's attorney. On February 19, 1980, Torres sent Bardellini another letter asking for the information which was subsequently answered on February 29 by Bardellini who finally advised Torres that the Employer had indeed acquired approximately 330 acres of additional farm land on which it intended to grow wheat and cotton, a use, the letter stated, consistent with past farming practices of the Employer and having no appreciable effect on bargaining unit employees. (GCX-28). A later letter from Bardellini provided Torres with the information that the lease between the Employer and Tenneco for Rancho Tigre was dated October 2, 1979 and executed by the Employer in mid-October. (GXC-30).

Peter Solomon testified that discussions with Tenneco regarding acquisition of Rancho Tigre began in August or September 1979 and involved Gus Olson and Bob Tate, representing Tenneco and Solomon himself. (TR VIII, 27).

The Employer first started planting crops at Rancho Tigre in October, planting approximately 330 acres of wheat. (TR VIII, 28). Peter Solomon testified that additional employees were hired to work this land 4 to 6 days after the Employer began to farm it. (TR VIII,29) .

5. Refusal to Supply Financial Information.

Joseph Solomon attended the bargaining session held on August 15, 1979. At that meeting in conjunction with the Employers delineation of how its lump sum proposal for payment of $30,150.00 for Union economic benefits could be spent, Solomon made a statement regarding his inability to pay more. (TR VI, 56-59). An exerpt of that meeting made a part of the record herein, reflects that Solomon stated that he had to make a decision based on what he could afford. Id. at 58.

Bardellini testified that there were discussions between he and Torres regarding the reasonableness of the Employer's economic offer and he made a distinction between the ability of the Employer as an entity to pay and the ability of the partners personally to pay. (TR VIII, 113-14) . Bardellini testified that he stressed to Torres that it was not the position of the Employer that the partners could not, out of their personal funds, finance increases asked for by the UFW but that the entity known as CATTLE VALLEY FARMS was loosing money and would have difficulty meeting the Union's demands. Bardellini testified he informed Torres that CATTLE VALLEY FARMS' liability exceeded its assets and that it was continuing to incur liabilities at a greater rate than it was gaining assets. (TR VIII, 115). In fact, Bardellini

provided Torres with a balance sheet reflecting assets and liabilities as of January 31, 1979 (RX-X) and a schedule of income and expenses on completed crops. (RX-Y). (TR VIII, 115). Bardellini testified credibly that he offered to show Torres the documents on which the balance sheet was based but that Torres said that it was unnecessary. (TR VIII, 116).

Torres testified, when asked whether he had attached any particular significance to Solomon's August 15 statement regarding his ability to pay the wages proposed by the UFW at the August 15 meeting that "[Wlell, previously I had been told by the CATTLE VALLEY FARMS attorney he could pay it; that he didn't want to pay it. But this being the first meeting that Joseph Solomon was present, he actually told me that he couldn't afford it." (TR VI, 61).

Torres said that in an attempt to evaluate this statement he sent Solomon a letter requesting all financial information regarding Joseph and Peter Solomon "in order to evaluate Mr. Solomon's claim of inability to pay made at the August 15, 1979 meeting. (GCX-10) The letter was responded to five days later by Bardellini in a letter stating that neither Solomon had ever taken the position that they were financially unable to personally meet the UFW's wage demands but that it was the Solomons' position that they were unwilling to underwrite CATTLE VALLEY FARMS to the extent necessary to meet the UFWs wage demands. (GCX-11). Torres then by letter requested a new financial statement regarding the Solomons (GCX-12) and Bardellini again responded with a refusal. (GCX-13).

Torres admitted that Employer had maintained throughout negotiations that it was CATTLE VALLEY FARMS' profitability

which was at issue in determining the size of the Employer's economic offer. (TR VII, 105). At one point in the August 15 meeting, Torres, Solomon and Bardellini, in discussing the Employer's wage offer, had the following conversation:

> E.T.: So what are you saying? If they want more money, they should leave?
>
> J.S.: I... listen... I, I can't tell anybody what to do. That's their decision to make, right?
>
> E.T.: Yeah.
>
> J.S.: Same as I have to make a decision.
>
> E.T.: Right, you (can or can't) afford to pay more, I mean,..
>
> J.S.: Uh?
>
> E.T.: You (can or can't) afford to pay more?
>
> J.S.: I'm not going to why no, (unintelligable) I don't know where this 30,000 is coming from. It's not coming out of profits.
>
> K.B.: It's not coming from Cattle Valley Farm and you know it..
>
> J.S.: And I know it?
>
> K.B.: And he knows it. (TR VII, 118-19).

From the foregoing, I find that Torres understood that it was the position of the Solomons that they were able to pay money from their own pockets to supplement wages paid CATTLE VALLEY FARMS employees but that they were unwilling to do so and that Joseph Solomon's statement that he could not afford to pay more was not intended to reflect on his own personal position but that, in fact, it referred to his ability as a general partner of CATTLE VALLEY FARMS to make more money available to that business with which to pay its employees. This finding is supported by Solomon's statement prefactory to his comment that he could not afford to pay more, that "[A]11 I know, I'm offering money--I'm

offering money out of zero pocket, let's face it, because this thing has been a minus since we took it over." (TR VI, 58) This statement, when read in the context advised Torres that CATTLE VALLEY FARMS could not afford to pay more and not that Joseph and/or Peter Solomon, in their individual capacities, were unable to afford paying higher wages.

6. Unilateral Wage Increases to Gonzales and Arrambide.

a. Arrambide.

Maria Arrambide received an increase in wages on August 7, 1979 from $500.00 to $800.00 a month. (GCX-15; GCX-7). I find Peter Solomon's testimony regarding the reason for the change in Ms. Arrambide's salary credible. Solomon testified that when Arrambide was first employed she worked as a cowboy helper working with two other cowboys in the Employer's cattle pens. (TR VIII,15). Arrambide worked variable hours and had an agreement with the Employer that she could work part-time because she had a baby at home. Her agreement with her Employer was that if her baby was sick she could work and take off accordingly. Id. She would come in later in the morning and leave earlier in the afternoon than the two full time cowboys. (TR VIII, 15-16), Arrambide left for Mexico in the summer of 1979 and returned in early August when she was rehired to a full time cowboy position paying $800.00 a month. On her return she was one of two full time cowboys .and had the responsibilities of a full time cowboy. (TR VIII, 16).

Maria Arrambide is married to Gilberto Flores, a full time cowboy for the Employer. (TR VIII, 19). Flores and Arrambide occupy an apartment owned by the Employer for which they pay $150.00 a month rent. (TR VIII, 20). The Employer admitted that rental

on this apartment was reduced on September 1, 1979. Id. Solomon testified that the housing had been furnished to Gilberto Flores since Arrambide had not been working for CATTLE VALLEY FARMS when Flores first became employed there and that the rental on the apartment was reduced because Flores had been doing well on the job.

Bardellini admitted that he did not negotiate a rental deduction for Flores or Arrambide with the UFW. (TR VIII, 121) . Solomon admitted that he forgot to tell Bardellini about the rent reduction. (TR VIII, 22-23).

b. Gonzales.

On or about July 1, 1979, Bias Gonzales, an employee at CATTLE VALLEY FARMS, received a wage increase of approximately ten cents an hour. (TR VIII, 14). Bardellini testified he had no independent recollection of bargaining with regard to Gonzales' increase with Torres but his July 3, 1979 negotiation notes (RX-Z) contain a notation that the raise was approved for Bias Gonzales. I find Bardellini 's testimony that it is unlikely that he would have recorded that notation if he had not obtained approval to be credible. (TR VIII, 121).

Torres testified that during these negotiating sessions he had agreed to a raise for one CATTLE VALLEY FARM employee only. (TR VII, 102). Torres testified that, in fact, he may have approved a raise for Bias Gonzales. Based on the above evidence, I am compelled to find that the Employer did receive UFW approval for its raise to Bias Gonzales.

c. Lucio Frias.

Lucio Frias worked for the Employer from April 1978 until January 1979 when he was terminated. Frias testified he

was a supporter of the UFW, and a member of the negotiating committee at CATTLE VALLEY FARMS. (TR III, 116-117). He returned to work on August 13, 1979 as a result of a settlement agreement arising from an unfair labor practice charge filed by Frias. (TR VIII, 96).

Frias returned in the company of two fellow employees who had also been discharged and were being offered re-employment pursuant to the settlement agreement. The Employer did not have advance notice of the specific day of Frias' return. (TR IV, 104). The three were put to work weeding cotton.

Frias testified that from the time he began working in April 1978 until January 1979, the work he did for the Employer included cultivating cotton with a tractor, and weeding. (TR III, 96) . He testified that weeding was done by those who ran tractors as well as irrigators and that the workers were placed in a group in the field to do the work. (TR III, 97). Frias also testified that during August 1978 he worked at the Employer's airport property turning orange peels with a tractor. Frias testified that on his return he engaged in weeding for approximately a month and a half and that in August 1978 he had not been employed at weeding for this length of time. (TR III, 103-4)

Frias testified that he and the other two returning workers were placed to work in separate blocks by Jose Garcia and Sunny Sidhu. (TR III, 105). Garcia took the three workers out into the field and picked them up at the conclusion of work. Frias was unable to see the other two workers weeding in their assigned blocks. (TR III, 106) The record is unclear when Frias began doing work other than weeding but he testified that subsequent to weeding, and during the first two weeks, he was assigned to assisting with the cattle and moving irrigation pipes.

(TR III, 108; IV, 21-2, 31). Finally, he was assigned to drive a cotton picker when "the cotton season came." (TR III, 109). Frias testified that he thought tractor driving was easier work than weeding and that the former, unlike the latter, pays time-and-a-half when overtime was worked. (TR III, 109). Frias stated that time-and-a-half was paid after sixty hours for tractor work but that weeding was "straight time." (TR III, 109). The employment records of the Employer reflect that its employees received overtime for all work in excess of sixty hours in one week and ten hours in one day regardless of whether they were working at irrigation, general labor or tractor driving. (RX-M, N).

Frias testified that Sidhu and Jose Garcia both directed his work during August 1979 and that he saw one or the other of them every hour for about three weeks after his return. Frias testified supervisors did not stop to talk to him but drove slowly by the block where he was weeding in a pickup truck. Frias testified the supervision became less frequent after the first three weeks. Frias testified that when driving tractors he did not notice the frequency of supervision because he was concentrating on his work. (TR IV, 28).

Solomon testified that Frias was to return to the same job he had before his termination which consisted of doing anything that was available to be done at the ranch. (TR III, 41)

Solomon testified that prior to Frias' reinstatement he had done several types of jobs for the Employer but could only recall that he had operated a dump grinder for grinding feed for cattle. (TR III, 31). After Frias' reinstatement, Solomon stated that Frias worked doing whatever needed to be done and that in August or

September Frias weeded cotton and cared for the cattle.

Solomon testified that during August and September there was very little tractor work and at that time there were a lot of weed infested fields. The demand at that time was for labor to do weeding of the cotton crop which had to be done by hand because of the way the cotton grows. (TR III, 33-4). Solomon testified the weed problem that year was more severe than usual. (TR III, 34). Solomon also testified that the previous summer there had been times when tractor driving was slow and the Employer's entire crew, including the cowboys, would be sent to weed. (TR III, 35).

Solomon testified that when Frias returned with his two fellow workers, he advised Joe Garcia, the foreman, and Sunny Sidhu, the general manager, to be careful because the Employer didn't want more charges. (TR III, 36-39). Solomon testified as well that he did not try to keep other employees away from the three returning men. (TR III, 43). Solomon also testified that the crews sent in to weed are usually sent to different rows but that assignment to location would depend on the foreman of the crew.

Sunny Sidhu testified that the different work performed on the ranch required different forms of supervision. (TR III, 58). Sidhu checked the cowboys four times a day and tractor drivers three or four times a day. (TR III, 60). Sidhu credibly testified that general laborers would be checked between four and five times a day. (TR III, 61). Sidhu explained that he leaves it to the discretion of the foreman to determine how often to check a crew doing work in the field and that he himself will generally "ride around during the interim".

(TR III, 61). Sidhu testified that weeding is done by general laborers and others when no other work is available. (TR III, 61).

Sidhu testified that there was a "hands-off policy" with regard to supervising Frias and his two fellow workers and that he had been told to bend over backwards to give them "all the latitude possible." (TR III, 64). Sidhu testified these instructions were given him by Peter Solomon and given by Sidhu to his foreman, Jose Garcia. (TR III, 60). Sidhu told Garcia that the three men were returning to work and they should be assigned to the work available on their return. (TRIII, 60, 64-65).

Garcia testified that he and Sidhu worked together and that sometimes he would check some of the workers and that sometimes Garcia would. Id. Garcia's testimony with regard to the extent of his supervision is consistent with that of Sidhu's. Garcia also corroborated Sidhu's tesimony that tractor drivers weeded when there was little tractor work but continued to earn a tractor driver's salary. (TR III, 75, 85). He also testified that he sometimes replaced all weeders in one field. (TR III, 75). Garcia testified that the three returning employees were supervised in the same fashion as other employees, two, three or four times a day, and that there were no problems with their work. (TR III/ 78-80). It is unclear from Garcia's testimony whether each man was set alone to weed in a separate field. (TR III, 79). However, there is no other evidence in the record to indicate that isolating weeders was a common practice of the Employer.

One of the Employer's tractors, a Steiger, was driven by Garcia's son during August 1979. Frias had never driven a

Steiger tractor. (TR IV, 33). Frias testified that during August, after his return, he saw three other employees driving tractors. (TR III, 48).

Manuel Ruiz, an employee of respondent since February 1980, credibly testified that on his first day of work, Sunny Sidhu supervised him and told him to try to keep from talking with Frias because he belonged to the Union. (TR IV, 53). Sidhu admitted driving Ruiz to his work location on his first day of work but could not remember any conversation with Ruiz with respect to the UFW or Lucio Frias. (TR IV, 91).

Sidhu also came to Ruiz' house the afternoon before Ruiz was scheduled to testify at the instant hearing and asked him whether he was going to testify. (TR IV, 73). Ruiz testified he showed Sidhu the subpoena, Sidhu read it, and advised Ruiz to cut the grass in front of his company-owned housing. I find that Ruiz testified, credibly, that Sidhu did not mention a difficulty with the irrigation water, the reason Sidhu testified he made the trip to Ruiz' house. (TR IV, 88). I credit the testimony of Ruiz over that of Sidhu with regard to these two incidents and find Sidhu did advise Ruiz to avoid Frias and that he did, subsequently, go to Ruiz' house and ask Ruiz whether he would be testifying at the hearing which is the subject of this decision.

II

ANALYSES and CONCLUSIONS OF LAW

A. Jurisdiction

The Employer is an agricultural employer within the terms of

the Act, the UFW is a labor organization representing the Employer's agricultural employees within the meaning of the Act, and the employees are agricultural employees within the meaning of the Act.

B. The Bargaining

1. Hiring, Seniority and Grievance Proposals.

General Counsel has argued that on or about July 2, 1979 Bardellini made proposals regarding hiring and seniority and grievances less favorable than proposals made by the Employers in 1978 with the intent to create a false impasse by presenting proposals the Employer knew to be unacceptable to the UFW.

The UFW points to at least three factors which it and the General Counsel contend render the July seniority proposal less favorable than the first proposal. First, the second proposal contained no recourse to a grievance procedure for employees terminated during the probationary period while the first proposal provided such recourse if the employee alleged termination because of Union sympathy or activities. Second, the second proposal appeared to exclude bumping. Third, the interpretation given by the Employer's bargaining representative to paragraph D of the first hiring proposal is alleged to have differed from the less favorable interpretation given the same language by Bardellini in paragraph E of the second proposal.

The Employer made three proposals regarding hiring, one in May 1978, one in February 1979, and a third in July 1979. The chief distinction between the first and third proposals is the addition of a five-day probationary period in the second proposal and a revision retaining in the Employer the right to determine the relative qualification

of applicants with discretion to hire the most qualified. The General Counsel contends these two changes render the July 1979 proposal much less favorable than the May 1978 one. Torres testified he believed the change would enable the Employer to terminate Union sympathizers during the probationary period without recourse to a grievance procedure thereby diluting the Union's bargaining strength.

General Counsel has failed to note that while the 1978 hiring provision contained no probationary period, the 1978 seniority provision did provide for a seven-day probationary period. The Employer did not spring the proposal of a probationary period previously not suggested upon the Union. Quite simply, a really important item to the Union, the question of probation was shifted from one article to another and no evidence was presented by General Counsel to suggest that this shift was made for the purpose of rendering one article as opposed to the other less acceptable to the Union with the intention of creating an impasse.

It is possible to draw the conclusion that the 1978 hiring and seniority articles, when read together in their entirety, are more favorable from the point of view of the UFW than the later proposals. However, such a conclusion is not relevant here because I have found that the UFW and the Employer agreed to ground rules which made it possible for either side to change the term of an article which had not yet been accepted by both sides. No evidence was presented of other circumstances which would lead to the conclusion that the proposals made by the Employer in July 1979 were made in bad faith or with the intention to create false impasse. Rather, impasse was not declared by

by the Employer for another full six weeks, and as will be discussed below, was based on the inability of the parties to reach corner, ground on economic issues.

The mere fact that the UFW may have found the Employer's July 1979 hiring and seniority proposals unfavorable does not render the Employer guilty of bargaining in bad faith. It is not the role of the Board to compel agreement. The Supreme Court in Porter Co. v. NLRB, 397 U.S.99, 1970), described the role of the NLRB in giving effect to the NLRA when it stated:

> It is implicit in the entire structure of the Act that the Board acts to oversee, and referee the process of collective bargaining, leaving the results of the contest to the bargaining strength of the parties. It would be anamolous indeed to hold that while §3(d) prohibits the Board from relying on a refusal to agree as the sole evidence of bad faith bargaining, the Act permits the Board to compel agreement in that same dispute. Id_ at 107-03.

In the instant case, General Counsel is, in effect asking the Board to compel the Employer to accept hiring and seniority proposals which the Employer has the economic power to refuse. The Employer is required to bargain in good faith with the UFW but is not required to agree to its proposals. The right to union representation under the Act does not imply the right to a better deal. NLRB v. Tomco Communications, Inc., 67 F.2d 871, 377 (9th Cir. 1973).

2. The Wage Proposals

The General Counsel contends that the Employer made wage proposals in mid July and mid August 1973 for the same or lower wages than those then being paid employees thereby falling to bargain in good

faith with the UFW in violation of the Act. The Employer's July 19 wage proposal was *made* on the spur of the moment at the request, indeed the insistence, of the UFW bargaining representative. There was no documentation available upon which the Employer's negotiator, Keith Bardellini, could assure himself his proposal did not offer wages less than the employees were currently making. The evidence in the record is such as a reasonable mind would accept to support the conclusion that the Employer, in making its July 18 wage proposal did not intend to propose wages less than those currently being made by its employees but, in fact, intended to make a good faith effort to respond to a request by the UFW for a breakdown of the Employer's lump sum offer.

On August 15, Bardellini made a proposal based on calculations made prior to attendance at the bargaining session. It is clear from the record that the proposal implemented would not have given all the employees a raise. However, the proposal did contain provisions for jury pay, vacation, release for funerals, injury on the job, and travel pay which would impact all employees.

The evidence does not establish that the Employer acted in bad faith in presentation of either wage proposal. The only evidence of bad faith adduced was the fact that the second proposal did not grant all of the Employer's employees a raise and that fact by itself does not support a finding of bad faith refusal to bargain, particularly when considered in conjunction the fact that the second proposal did provide an increase in other economic benefits. Another factor which militates against any finding that the Employer's second proposal was made in bad faith is the total failure of the UFW to itself attempt a breakdown of

of the Employer's lump sum offer and to, thereby, show up the offer's inadequacies. The Employer apparently had the economic strength to stand on its proposed economic package considered very unfavorable by the UFW. That, without more, does not serve to render the Employer guilty of bad faith bargaining. See NLRB vs. Tomco Communications, Inc., supra, wherein the Ninth Circuit held that an Employer's proposal as to wages and to related economic benefit which did not offer any major improvements in wages and working conditions did not evidence bad faith bargaining.

3. Impasse

General Counsel contends that on or about August 15, 1979 and September 18, 1979 the Employer terminated negotiations and declared, based upon the UFW's rejection of what General Counsel terms the Employers "predictable unacceptable offer of a lump sum for wages and benefits." An impasse occurs when the parties are unable to reach an agreement despite their best good-faith efforts to do so. Bill Cook Buick, Inc., 224 NLRB 1094 £1976). The instant case does not present a situation in which the Employer refused outright to bargain with the UFW. Impasse pre-supposes a reasonable effort at good-faith bargaining which does not result in an agreement between the parties. It is the General Counsel's contention that a reasonable good-faith effort did not exist with regard to bargaining because the lump sum wage offer was made in bad faith, and the impasse declared by the Employer was therefore false,

Substantial evidence does not exist in the record to support General Counsel's contention. I am unable to find that the Employer's lump sum wage offers were made in bad faith and absent a find-

ing of bad faith with regard to the wage offers, there exists no basis upon which General Counsel's theory of false impasse may be constructed. In Montebello Rose, Inc., 5 ALRB No. 64 (1979), the Board found that an Employer's premature declaration of impasse was indicative of its intention to frustrate negotiations and avoid signing a contract with the UFW. In the instant case, the Respondent's declaration of impasse may have been premature as well. In the same breath in which impasse was declared, Bardelliniindicated a willingness to review the UFW's economic-offer. In fact, the UFW did make a counter offer roughly one month later, during the September 19 meeting, at which time Bardellini told Torres the Employer would not give one red cent more.

Based on the record, I am unable to find that the Employer's declaration of impasse at its August 15 session with UFW stymied further efforts to come to an agreement since the UFW did make a counter offer in September. Bardellini's declaration of impasse in August was not an attempt to frustrate negotiations at all but an effort to impress upon Torres that the Employer did not intend to increase its lump sum offer which was as much as the general partners felt it was reasonable to pay to keep CATTLE VALLEY FARMS a functioning concern. Negotiations did reach a true impasse in September when the Employer turned down the UFW's counter-offer and restated their intention of standing on their lump sum offer made by the Employer earlier. On the basis of the foregoing discussion I am unable to conclude that the Employer's claim of impasse on August 15 or September 18 was made in bad faith.

4. Acquisition of Rancho Tigre

General Counsel contends that on or about October 2, 1979 the Employer unilaterally changed its working conditions by the acquisi-

tion of Rancho Tigre without negotiating regarding the acquisition thereby failing to negotiate in good-faith with the UFW. In order to establish a §1153(e) violation, General Counsel must prove that an obligation to bargain existed at the time the Employer decided to acquire Rancho Tigre. P. & P. Farms v. Farms, 5 ALRB No. 59 (1979) . To prove that an obligation to bargain existed, General Counsel must establish that the acquisition of Rancho Tigre was, in effect, a change in working conditions for the Employer's employees. See National Car Rental Systems, Inc., 252 NLRB No. 27 (1980).

It is clear from the record that Employer was considering leasing additional farm land in August 1979, that the UFWs negotiator had become aware of negotiations for the acquisition of Rancho Tigre, and that no formal request for bargaining was made by the Employer on the matter of the acquisition. It is also clear from the testimony of Peter Solomon that the Employer was compelled to hire additional employees to work the property leased. The Employer argues that there is no obligation to bargain where an expansion of operations does not affect the continuity of those operations or the employment of its employees. Westinghouse Electric Corp., 174 NLRB No. 95 (1969). In Westinghouse, no need was found to bargain where an acquisition of a new plant did not affect the old plant. Some employees were transferred from the old plant to the new. To the extent, the Employer's argument is that the duty to bargain does not exist where there is no adverse impact on bargaining unit employees as a result of a change in working conditions, the Employer's position is consistent with the law. See National Car Rental Systems, Inc., supra. However, in the instant case, the acquisi-

tion did have an adverse impact. The Employer's economic offer consisted of a lump sum which was to be distributed between wages and other economic benefits as the Union might choose. If the lump sum offer had to be distributed among more employees there would be less money available for wage increases and other economic benefits for each employee.

The fact that at the time of the execution of the lease, the Employer was at an impasse with the UFW did not vitiate the Employer's obligation to bargain on this matter. The Employer could only make such unilateral changes in working conditions upon impasse as are within the scope of proposals already made and rejected by the UFW. American Federation of Television and Radio Artists v. NLRB, 395 F.2d 622, 628, (D.C. Cir. 1968). In the instant case, the Employer had never discussed the possibility of hiring additional employees to work the acquired property and could not, therefore, argue that the parties were at an impasse on this issue. The fact that Torres became aware that the Employer was negotiating the acquisition and failed to insist upon bargaining on the matter cannot be found to constitute a waiver by the UFW in its right to bargain. A waiver will not be lightly inferred. Alien W. Bird II, 227 NLRB No. 162 (1977). In the instant case, a finding of waiver would be particularly harsh in light of the Employer's careful efforts, as evidenced by its correspondence with Torres to avoid supplying Torres with complete information about the acquisition.

5. Refusal to Supply Financial Information

General Counsel contends that the Employer claimed financial inability on August'15, 1979 to meet the UFW's wage proposal and thereafter on September 10 and continuing to date have refused to supply financial information requested by the UFW to support the claimed inability to

pay. The record does not support the General Counsel's contention that the Employer claimed an inability to pay the amounts the UFW was asking. The general partners took the position that while the senior Solomon was more than capable of supplementing CATTLE VALLEY FARMS' lump sum offer from other income he did not choose to do so. The UFW's negotiator admitted that Bardellini had maintained throughout negotiations that the senior Solomon was a man of means but that he viewed CATTLE VALLEY FARMS as a business enterprise and that Solomon had to consider whether he wished to continue to lose money to meet the business's financial obligations. While it is true that a refusal to attempt to substantiate a claim of inability to pay may support a finding of a failure to bargain in good-faith here, there was no such claimed inability, a prerequisite to such a finding. NLRB v. Truitt Manufacturing Co., 351 U.S.149, 153 (1956). Even if there had been such a claimed inability the information regarding the personal financial status of the Solomons sought by the UFW was not proven to be either relevant or necessary to support a claim of inability with regard to CATTLE VALLEY FARMS.

6. Unilateral Wage Increases to Gonzales and Arrambide

General Counsel contends that the Employer failed to bargain in good faith with the UFW in increasing the wages of Bias Gonzales and Maria Elvira Arrambide without notice or negotiation with the UFW. There is insufficient evidence in the record upon which to base a finding of a unilateral wage increase to Gonzales. The Employer admits to reducing the rent on the company-owned housing in which Arrambide and her husband lived without negotiation with the UFW. The Employer also admits that Arrambide received a wage increase in August

1979 that was not negotiated with the UFW.

The Employer contends because the house occupied by Arrambide and her husband was rented to the husband, that a reduction in the rental rate may not be deemed an increase in wages or a change in working conditions for the wife. Arrambide lived in the housing with her husband and was also employed by the Employer. Husband and wife were a recognized team which worked as cowboys. Peter Solomon admitted that the reduction in rent was given because both Arrambide and her husband had done a good job in protecting the Employer's property from vandals. The reduction in the rental paid on the house in which Arrambide and her husband lived clearly was intended to reward Arrambide as well as her husband for a job well done. As such, it was a change in a condition of Arrambide's employment and the Employer was obligated to bargain with the UFW with regard to the change.

The General Counsel also has contended that the wage increase given Arrambide was a matter about which the Employer was obligated to bargain with the UFW. Clearly, Arrambide received the wage increase as a result of her acceptance of a full time job with the Employer. The record compells the conclusion that Arrambide did not receive a unilateral wage increase but, in fact, changed jobs to work as a full time cowboy, where previously she had worked part-time with hours sufficiently flexible to enable her to take time off to care for her baby when it was sick.

7. Lucio Frias

Lucio Frias returned to work for the Employer in August 1979 as the result of a settlement between the Employer and the UFW in which Frias and two companions were reinstated. The General Counsel

contends that the treatment received by Frias upon his return to work violated sections 1153(a), (c), (d), and (e) of the Act. General Counsel contends, available tractor work was withheld from Frias because he had filed charges against the Employer, that he was discriminatorily segregated from fellow employees by being put to weed alone in the Employer's fields and that his work was discriminatorily excessively checked by his supervisors.

General Counsel has the burden of establishing the elements which go to prove the discriminatory nature of this treatment. Lu-ette Farms, Inc., 3 ALRB No. 38, (1977). That burden was not met here. I am unable to find that the evidence, when viewed in a light most favorable to the General Counsel's case, leads to the conclusion the Employer's treatment of Frias was discriminatorily motivated.

Evidence of anti-union motivation was presented by the General Counsel in the form of testimony of Manuel Ruiz that he was advised by his supervisor, Sonny Sidhu, to steer clear of Frias, a known union sympathizer. However, the record is also replete with evidence that August is a slow season for tractor work at the Employer's ranch, that Frias was unable to operate one of the tractors, a Steiger, that the Employer had no advance notice that Frias and his two companions would return to work that specific day, and that all the Employer's employees, whether irrigators, tractor workers, or cowboys, did weeding from time to time when weeding needed to be done and other work was unavailable. It is also clear from the record that Frias did not remember for how many days he did weeding on his return though he did testify that at some time in the first two weeks after his return, he began doing tractor work.

The evidence points to one conclusion; there is no substantial evidence demonstrating that the Employer's motivation in putting Frias to do weeding on his return to work was motivated by union animous. As well, substantial evidence does not appear from the record as a whole evidencing an unlawful motive in the Employer's placing of Frias alone in a field to weed. See NLRB v. Winn-Dixie Stores, Inc., 410 F.2d 1119, 1121 (1969). In fact, the credible testimony of Sonny Sidhu was that Frias was not set to work within a block by himself but was placed to work in a field widely separated from his fellows to cut down on verbal communication. Sidhu testified that he practiced this method of separating the workers on occasion to cut down verbal communication. The record establishes the Employer increased its supervision of Frias while he was weeding. (TR IV, 103-04).

The record does not contain substantial evidence of unlawful motive in the withholding of tractor work from Frias or in the separation of Frias from his co-workers during the time he weeded in August 1979. As well, the record does not contain substantial evidence that the Employer excessively checked Frias during the time he weeded. Because the evidence does not show that the Employer discriminated against Frias because he filed charges with the ALRB and because the evidence does not support the General Counsel's contention that the Employer violated Section 1153(d) and (e), the derivative charge of violation of Section 1153(a) must fall as well. I find therefore, that the Employer's treatment of Frias did not violation Section 1153(a), (c), (d) and (e) of the Act.

8. Interrogation of Ruiz

General Counsel contends that the conversation between Manuel Ruiz and Sunny Sidhu, because fully litigated and sufficiently

related to the allegations contained in the Third Amended Complaint may be found by me to constitute a violation of Section 1153(a), (d) and (e) of the Act. Labor Code Section 1160.2 provides that whenever it is charged that an agricultural employer has engaged in an unfair labor practice there shall be served a "complaint stating the charges in that respect" upon the Employer who "shall have the right to file an answer., and to appear in person or otherwise give testimony [thereon]." In the instant case, the Employer was afforded no such opportunity and I shall make no findings with regard to the conversation between Ruiz and Sidhu. The mere fact evidence was produced at hearing regarding the conversation is an insufficient basis upon which to predict findings in the absence of the formal opportunity of the Employer to present evidence and legal argument.

III

THE REMEDY

Having found that the Employer has failed to bargain in good faith in its failure to bargain with the UFW regarding its acquisition of Rancho Tigre and in making unilateral changes in the working conditions of Maria Alvira Arrambide, all in violation of Section 1153(e) of the Act, I shall recommend that each person employed by the Employer from mid-August 1979 until such time as the Employer commences good faith bargaining, be made whole for the loss of pay and other economic benefits resulting from these unfair labor practices. The Employer's failure to timely notify the UFW of its intention to lease Rancho Tigre deprived the bargaining unit employees of their right to bargain with the Employer regarding the effect of the acquisition on the amount of

the lump sum economic offer made by Employer on the bargaining table at the time of the acquisition. The Employer's unilateral granting of a reduction in rental on the housing occupied by Arrambide and her husband ignored the Employer's obligation to notify and bargain with the UFW, prior to changing a condition of Arrambide"s employment.

Recommended Order

1. Respondent's Peter D. Solomon and Joseph R. Solomon dba CATTLE VALLEY FARMS, their officers, agents, representatives, successors and assignees, shall, cease and desist from:

a. Changing any term or condition of employment of its employees without first affording the UFW adequate prior notice and a reasonable opportunity to bargain with respect thereto;

b. Failing or refusing by general course of conduct, to bargain collectively in good faith with the UFW as a certified exclusive collective bargaining representative of its agricultural employees;

c. Failing or refusing to furnish the UFW with requested information relative to collective bargaining including, but not limited to, information pertaining to acquisition by purchase, or otherwise of agricultural property; and

d. Any other matter interferring 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 as a certified and exclusive collective bargaining

representative of its agricultural employees with respect to past unilateral changes regarding the amount of rent paid Maria Alvira Arammbide and Umberto Flores for housing provided by the Respondent;

b. Promptly furnish to the UFW all its requests, which are relevant to the preparation for, or conduct of, collective bargaining negotiations;

c. Upon request, meet and bargain collectively in good faith with the UFW as a certified exclusive bargaining representative of its agricultural employees, and if understanding is reached, embody such understanding in a signed agreement;

d. Make whole its agricultural employees for all losses of pay and other economic benefits sustained by them as a result of Respondent's failure and refusal to bargain, as such losses have been defined in Adam Dairy, 4 ALRB No. 24 (1978), for the period from August 15, 1979, until such time as Respondent commences to bargain in good faith with the UFW and thereafter bargains to contract or impasse;

e. Preserve and, upon request, make available to the Board or its Agent, for examination and copying, all records relevant and necessary to a determination of the amount due its employees under the terms of this Order;

f. Sign the Notice to Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purpose set forth hereinafter;

g. Post at conspicuous places on its premises copies of the attached Notice for 90 consecutive days, the times and places of posting to be determined by the Regional Director. Respondent shall exer-

cise due care to replace any Notice which has been altered, defaced, covered or removed.

h. Mail copies of the attached NOTICE in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from Sept. 1, 1979, to the present;

i. Arrange for a representative of the Respondent or a Board agent to distribute and read the attached Notice in appropriate languages to the assembled employees of the Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading 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. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: May 7 , 1981

Leonard M. Tillem
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing at which all sides had the chance to present evidence and state their positions, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by failing and refusing to bargain with the UFW in good faith about our employees' working conditions.

The Board has ordered us to post this Notice and to take other action. 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 in the future bargain in good faith with the UFW with the intent and purpose of reaching an agreement on a collective bargaining contract concerning your wages, working hours, and other terms and conditions of employment.

WE WILL pay all of the employees who worked for us at any time from August 15, 1979 to the present the amount of money they lost because we refused to bargain in good faith with the UFW.

WE WILL NOT delay or refuse to provide the UFW with information it needs for bargaining.

Dated:

CATTLE VALLEY FARMS

By____________________

Representative

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

DO NOT REMOVE OR MUTILATE