STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D'ARRIGO BROTHERS OF CALIFORNIA Respondent, and UNITED FARMWORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 79-CE-125-D 79-CE-143-D 80-CE-14-D 80-CE-33-D 81-CE-7-F 82-CE-2-F 9 ALRB No. 51

ERRATA

Two case numbers were inadvertently left out of 9 ALRB No. 51. The following numbers should be added to the caption: 81-CE-7-F and 82-CE-2-F.

Dated: September 29, 1983

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D'ARRIGO BROTHERS OF CALIFORNIA, Respondent, and UNITED FARMWORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 79-CE-125-D 79-CE-143-D 80-CE-14-D 80-CE-33-D 81-CE-7-F 82-CE-2-F 9 ALRB No. 51

DECISION AND ORDER

On September 30, 1982, Administrative Law Judge (ALJ)[1/] Ruth Friedman issued the attached Decision in this proceeding. Thereafter, Respondent, General Counsel and the Charging Party each timely filed exceptions and a supporting brief, and each party also filed a reply brief.

Pursuant to the provisions of Labor Code section 1146,[2/] 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 and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided

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[1/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, §20125, amended eff. Jan. 30, 1983.)

[2/] All section references herein are to the California Labor Code unless otherwise specified.

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to affirm the ALJ's rulings, findings, and conclusions, as modified herein,[3/] and to adopt her proposed Order, as modified.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent D'Arrigo Brothers of California, Reedley District No. 3, its officers, agents, representatives, successors and assigns, shall:

1. Cease and desist from:

(a) Denying United Farm Workers of America, AFL-CIO, (UFW) agents access to Respondent's agricultural employees, in reasonable numbers and at reasonable times, for purposes related to collective bargaining, as described in paragraph 2(d) below.

(b) Failing or refusing to give the UFW, at its request, any information or data relevant to any issue that may be raised during collective bargaining.

(c) Making any change(s) in the wage rates of its agricultural employees without first notifying and providing the

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[3/] The ALJ concluded that Respondent's change in its method of paying employees and its changing their rate of pay were unlawful unilateral changes. We reject Respondent's contention that no violation can be found with respect to its wage-rate changes because the issue was not fully litigated. Respondent admitted that such changes occurred and did not, in its post-hearing brief, object to the amendment to the complaint which alleged the wage-rate changes as violative of section 1153(e). While we agree that Respondent's changes in rate of pay could not be lawfully implemented without first giving the Union notice and an opportunity to bargain, the circumstances under which Respondent changed its method of payment are not sufficiently clear for us to conclude that Respondent acted unlawfully in making those changes unilaterally. We hereby reverse the ALJ's conclusion that Respondent violated the Act by changing its method of payment of wages, and have modified the ALJ's recommended Order accordingly.

UFW an opportunity to request collective bargaining, as the certified representative of said employees, about such change(s).

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

(a) Make whole all agricultural employees employed by Respondent at any time during the period from March 28, 1981, through February 12, 1982, for any losses in pay they may have suffered as a result of Respondent's unilateral wage rate changes, plus interest thereon in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(b) Promptly furnish to the UFW all information it requests which is relevant to the preparation for, or conduct of, collective bargaining negotiation.

(c) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the aforesaid employees' backpay periods and the amounts of backpay and interest due to those employees under the terms of this Order.

(d) Permit UFW representatives to speak to Respondent's agricultural employees on the property or premises where they are employed, at times agreed to by Respondent or, in the absence of such an agreement, at reasonable times and in reasonable numbers, for purposes related to collective bargaining between Respondent and the UFW.

(e) Sign the Notice to 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 set forth hereinafter.

(f) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from March 28, 1981, through February 12, 1982.

(g) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property 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.

(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural 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 and/or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(i) Notify the Regional Director in writing, within

30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: September 7, 1983

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, D'Arrigo Brothers of California, 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 making changes in the amount of your wage payments without notifying and bargaining with your certified representative. The Board also found that we violated the law by refusing to provide the Union with certain information related to collective bargaining and by refusing to allow United Farm Workers of America, AFL-CIO, (UFW) agents to take access to our property for purposes related to collective bargaining.

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 refuse to allow agents of your certified bargaining representative to enter our property at reasonable times, and in reasonable numbers, for purposes related to collective bargaining.

WE WILL NOT refuse to provide your certified bargaining representative with information relating to any issue that may be raised related to collective bargaining.

WE WILL NOT make any changes in the amount of your wage payments without first notifying and bargaining with your certified bargaining representative.

Dated: 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 627 Main Street, Delano, California. The telephone number is (805) 725-5770.

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

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

D'Arrigo Brothers of California

9 ALRB No. 51
Case No. 79-CE-125-D
79-CE-143-D
80-CE-14-D
80-CE-33-D

ALJ DECISION

Respondent, a grape and tree fruit grower, was alleged to have violated its duty to bargain in good faith with the representative of its employees. Evidence of bad-faith bargaining consisted of: (1) Respondent's failure to respond in a timely manner to the Union's letters requesting information and negotiations, and its failure for three months to provide a representative authorized to negotiate; (2) Respondent's refusal to let the Union take access without a formal agreement, and conditioning agreement on acceptance of an indemnity clause which was not reasonable; (3) Respondent's refusal to allow the Union to examine employee daily time sheets for 15 months; (4) Respondent's insistance on proposed health and safety language which was unreasonable; (5) Respondent's implementation of unilateral changes in rate and method of pay. As part of the totality of the circumstances, the ALJ noted that there were indications that the Union was not at all times doing everything in its power to reach agreement. The Union had (1) failed to follow through on its request to bargain; (2) exercised its right to access rarely; (3) failed to ask for production records until months after the Company first requested an economic proposal and then did not follow up on Respondent's proposals; (5) failed to vest sufficient authority in its negotiator; and (6) delayed in providing Respondent with requested information about medical, pension and welfare plans. The ALJ concluded that the Respondent was trying to reach agreement and that its overall good faith was evident from its bargaining table conduct.

Although finding that the Company was not engaged in surface bargaining, the ALJ did find violations for Respondent's failure to make available relevant information, its implementation of unilateral changes in method and rate of pay, and its denial of post-certification access. As a remedy she ordered Respondent to allow post-certification access in accordance with the Board's regulations for pre-petition access, to furnish the Union with all relevant information it requests, and to make whole those employees who suffered any loss of wages as a result of the unilateral changes in rate and method of pay during the period when access to the time sheets had been cut off by Respondent.

BOARD DECISION

The Board affirmed the ALJ's Decision with one exception. While it agreed that Respondent's changes in rate of pay could not be lawfully implemented without first giving the Union notice and

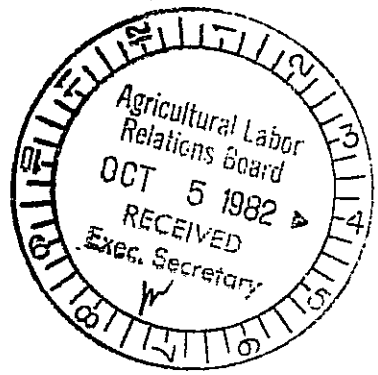
an opportunity to bargain, the circumstances under which Respondent changed its method of payment (piece rate or hourly) were not sufficiently clear for the Board to conclude that Respondent acted unlawfully in making those changes unilaterally. The ALJ's Order was modified accordingly.

* * *

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:	
D'ARRIGO BROTHERS OF CALIFORNIA REEDLEY DISTRICT #3,	Case No. 79-CE-125-D 79-CE-143-D 80-CE-14-D 80-CE-33-D
Respondent,	
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	
Charging Party.	

Appearances:

Manuel M. Melgoza of Delano
for the General Counsel

Lewis P. Janowsky, Mary R. L. Schwartz
and Jon F. Gauthier, Dressler, Ouesenbery,
Laws and Barsamian of Newport Beach
for Respondents

Chris Schneider and Clare M. McGinnis
for the Charging Party

DECISION OF THE ADMINISTRATIVE LAW OFFICER

STATEMENT OF THE CASE

RUTH M. FRIEDMAN, Administrative Law Officer: This matter, charging violations of Labor Code sections 1153(e) and 1153(a) and based on charges filed by the United Farm Workers of America, AFL-CIO ("UFW" or "Union") was heard by me in Fresno on thirteen hearing days beginning February 23, 1982, and ending March 16, 1982. The General Counsel issued a Complaint on June 10, 1980. A Second Amended Complaint was issued November 13, 1981. The Complaint was amended for a third time during hearing.

All parties were given a full opportunity to participate in the hearing. The UFW intervened, as a matter of right, pursuant to section 20266 of the Regulations. All parties filed post-hearing briefs.

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

FINDINGS OF FACT

I. Jurisdiction.

Respondent admitted in its answer that it is a California corporation and an agricultural employer within the meaning of Labor Code section 1140.4(c) and I so find. The Respondent also admitted that the UFW is a labor organization within the meaning of Labor Code section 1140.4(f) and I so find.

II. The Alleged Unfair Labor Practices.

The Third Amended Complaint charges that beginning on or about December 13, 1978, and continuing through the hearing, Respondent refused to bargain collectively in good faith with the

UFW, in violation of sections 1153(a) and (e) of the Act. The Complaint alleges that Respondent was engaged in "surface bargaining" as evidenced by the totality of its conduct during bargaining, including a delay in beginning negotiations, refusing to send the UFW information it requested relating to the subjects of bargaining, denying representatives of the UFW post-certification access to its property and making predictably unacceptable proposals at the bargaining table. The complaint also charges that Respondent unilaterally changed the method and rate of payment of its workers without first notifying the UFW and bargaining over the changes.

The Respondent generally denies that it violated the Act. As affirmative defenses, it claims that the UFW has refused to bargain in good faith with it by failing to provide a full economic proposal, by the behavior of its representatives at the bargaining table, and by failing to provide some requested information. Respondent alleges that its failure to grant the Union post-certification access is excused because the Union unreasonably refused to agree to the Company's terms. As a further defense, Respondent claims the General Counsel delayed inexcusably in bringing this matter to hearing and therefore the period of its liability, if any, should be reduced accordingly.

III. The Operation of the Company.

The Respondent, D'Arrigo Brothers of California, Reedley District #3, is an administrative division of D'Arrigo Brothers of California, which is headquartered in Salinas. In 1981, about 2000 acres of farmland in Fresno and Tulare Counties were managed from the Reedley District. In Reedley the Respondent grows, harvests,

packs, and ships summer and fall grapes for table, juice, and wine, and grows and harvests peaches, plums and nectarines. During its peak harvest season in August, the Company employs a maximum of from 250 to 400 employees, depending on the year; fewer employees work during the rest of the year.

The District Manager of Reedley #3 is Richard Binns. Binns is responsible for overall production and packaging of the Company's crops.

IV. The Bargaining Relationship Between the Union and the Company.

In an election for collective bargaining representative on October 11, 1975, the tally was UFW-92, No Union-98, and Challenged Ballots-80. Twenty-one of the challenges were overruled, including those of 18 economic strikers, and when the challenges were counted, the UFW was certified as the exclusive representative of the Respondent's employees. See D'Arrigo Brothers of California, Reedley District #3 (1977) 3 ALRB No. 34. The certification was issued on November 17, 1978.

The Company and the Union began meeting on June 26, 1979. From that date to the end of the hearing, the parties met together 44 times over a period of almost three years. All the bargaining sessions but the first were tape recorded. The recordings were transcribed and made part of the record of this case. As of the date of the hearing, agreements had been reached on some issues, and negotiations were proceeding on others.

Richard Binns, Respondent's District Manager, attended all but one of the negotiations sessions[1/] and was authorized to make

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1. This session took place during the hearing in this case. Mr. Binns was present continually at the hearing.

agreements on behalf of the Company. Attorney Jasper Hempel negotiated for the Company from June 26, 1979 through December 19, 1980. He was replaced by attorney Geoffrey Gega, who represented the Company at negotiations beginning on December 19, 1980 through the time of the hearing in March, 1982.

The Union's first negotiator was Emilio Huerta. He represented the Union at the bargaining table from June 26, 1979, until he was replaced by David Burciaga on September 26, 1980. Burciaga, in turn, was replaced as negotiator by Ben Maddock on January 6, 1982.

V. Beginning Negotiations

The UFW was certified as the exclusive representative of Respondent's employees on November 17, 1978. On December 13, 1978, César Chavez, the Union's President, wrote to the Company requesting the Union be contacted with a convenient meeting time and place and requesting that certain information be supplied within ten days. Receiving no reply, the Union again wrote on February 23, 1979, and again requested a meeting and information. Richard Binns, Respondent's District Manager, wrote to Chavez on March 5 to inform him that the February 23 letter had been forwarded to his law firm. On March 8, Don Dressler, the Company's attorney, wrote to the Union announcing the Company was "prepared . . . to commence negotiation." Dressler requested that the Union send him a copy of the information request it had sent the Company. On March 13, the Union sent the information request to Mr. Dressler and informed him that Paul Chavez, a Union negotiator, would be contacting the Company's attorneys. Paul Chavez did not contact the Company or its

attorneys. On May 29, the Union again wrote requesting negotiations. The Company's law firm answered on June 4 and proposed an initial meeting. The first meeting was held on June 26, 1979.

VI. The Tenor of Negotiations

A. June 26, 1979 through September 26, 1980

During the first period of negotiations, Emilio Huerta of the UFW negotiated with Richard Binns and Jasper Hempel, who represented the Company.

At the beginning of negotiations, the parties agreed to discuss non-economic language before turning to economic issues. The Union presented a complete language proposal which was answered by the Company. With some exceptions, the parties came to negotiating sessions prepared to discuss their proposals and each presented counterproposals on particular articles when the discussion dictated that it was appropriate. Some of the discussions were repetitive and some were hostile. On some issues, discussed in Section X below, the parties maintained strong positions in spite of seemingly endless discussion. Respondent's representatives did swear at Mr. Huerta. Mr. Huerta, on occasion was sarcastic, as was Mr. Hempel. Mr. Binns sometimes got angry. For example, at the July 24, 1979 session, Mr. Binns thought that the Union had violated the access agreement the parties had arranged and said he would not negotiate until it was straightened out. On one occasion, on October 30, 1979, while discussing the proposition that promotions should be based on merit rather than on seniority, Richard Binns, in a fit of anger, spilled a water pitcher in the

direction of Emilio Huerta, for which he later apologized.

By September, 1979, the parties had reached agreement on Modification, Savings Clause, Income Tax Withholding, Bulletin Boards, Credit Union Withholding, Location of Company Operations, Parties, and Discrimination, but they were far apart on major issues, such as seniority, hiring, and union security. In early October, 1979, the Company proposed that the Union submit an economic proposal, presumably to facilitate negotiations. The Union did not submit the proposal, in part because there was much farther to go in discussion of the language articles, but the Company kept insisting on an economic proposal and the Union promised to supply one. In December, Huerta began work on the economic proposal. On January 17, 1980, having previously promised to supply the economic proposal, he requested that the Company supply information on production per block for each ranch in production for a three-year period, along with related information, claiming that he could not make any economic proposal without the information. Discussions on the way in which this information could be supplied occupied much of the negotiations during early 1980. In April, 1980, having received no proposal from the Union and not having resolved the issue of the Company's supplying the requested information, the Company made an economic proposal and then, with the Union's approval, raised wages accordingly.

By the end of Mr. Huerta's tenure in September, 1980, the parties had also agreed to articles on Recognition, Access to Company Property, Grower-Shipper Contracts, Records and Pay Periods, New or Changed Operations, Worker Security, Management Rights,

Maintenance of Standards and Union Label.

B. September 26, 1980 to January 6, 1982

During this period, David Burciaga represented the Union and Jasper Hempel and Geoffrey Gega represented the Company.

On November 10, 1980, Burciaga submitted the union's first economic proposal. This proposal did not contain hourly rates or piece-rate wages. During the period that Burciaga represented the Union, the parties agreed on the following economic articles: Family Housing, Rest Periods, Leaves of Absence, Bereavement Pay, Travel Allowance, Jury Duty, and Witness Pay. The company did not submit counterproposals on Medical Plan, Pension Plan and Welfare Plan, claiming that the Union had not produced the evidence they needed to produce a counterproposal.

Discussion of the Union's request for production information continued. On March 28, 1981, the Union agreed to view the records in the form in which they were then available on Company property, but refused to agree that, in exchange, it would drop the pending unfair labor practice charges. The Company then refused to let the union see the records. The Union did make a proposal for hourly wages, but not for piecework rates. The Company proposed a payraise in April, 1981, to which the union agreed.

Beginning in May, 1981, the subject of interim access by the Union to the employees was discussed often, and at great length, but was not resolved and no access was allowed.

During the period that David Burciaga represented the Union, agreement was reached on Family Housing, Rest Periods, Leaves of Absence, Bereavement Pay, Travel Allowance, Jury Duty, and

Witness Pay. Discussion of the union's request for production information continued, with the union agreeing on March 28, 1981, to view the records in the form they were then available on company property, but refusing to agree to drop all unfair labor practice charges in exchange for being allowed to see the information. At that time the Company refused to let the Union see the records. Burciaga submitted an economic proposal in April, 1981.

C. January 6, 1982 to March 13, 1982

Ben Maddock came to the negotiations session on January 6, 1981, and took over negotiations on February 17. On that day there was agreement to a Grievance and Arbitration procedure and a Letter of Understanding, Supervision and a Letter of Understanding, No Strike/No Lockout and Supplemental Agreement, and a Successor Clause. The Union agreed to the Company's indemnity clause in their proposed access agreement but there was still no agreement on interim access.

VII. Post-Certification Access by Union Representatives to Company Property

A. The Access Agreements of 1979

The negotiation of an agreement by which Union representatives would have access to Company employees on Company property to get information and discuss the Union's contract proposals was the first order of business when negotiations began on June 26, 1979. Between July 9, 1979 and December 31, 1979, agreements were in effect which permitted Union access on terms defined in the agreements.

The first access agreement, dated July 9, 1979 and signed by Emilio Huerta for the Union on July 24, 1979, permitted no more

than three UFW representatives to enter Company property during the employees' lunch hour any three days a week, on the condition that the representative notify the Company office ahead of time. The first agreement contained the following "hold harmless" clause which later became the subject of controversy:

> The Union agrees to save the Company harmless from any and all liability for personal injury or property damage suffered by the Union representatives while on the property of the Company arising from conditions of property, operation of machinery or conduct of regular Company business whether or not the Company or its representatives are negligent. This does not cover intentional acts of the Company. The Union agrees that the Union representatives will enter the Company's properties solely at their own risk.

By its terms, the first access agreement expired after the first week of harvest, because the Union planned to recruit a ranch committee during that week, which would be made up of unit employees who would attend negotiation sessions. The committee was supposed to inform the other employees of the status of negotiations, as well as provide information and employee concerns to the Union negotiators. However, the ranch committee was never formed.

The first week of harvest ended August 9, 1979, which happened to be the day of a negotiating session, but the Company did not mention that the agreement had expired. Rather, when a Union representative attempted to take access after August 9, the Company refused to permit him to enter the property. In a telephone call to Huerta, Jasper Hempel the Company negotiator, offered to extend the agreement provided that the Union be allowed access only two days a week. The Union argued that more, rather than fewer than three days were needed since more employees in more crews were present during the harvest than previously. The Company refused to permit access

until an agreement was reached and so there was no access allowed during two of the six weeks of peak employment. On August 22, the parties settled on three days a week, as in the first access agreement. The second access agreement included all the terms of the first agreement. At the Company's insistence, there were two additions. The first related to the content of leaflets:

> The Union representatives may pass out leaflets during such access time provided such leaflets contain uncontroversial matter. The Union agrees that its representatives shall pick up all discarded leaflets in the Company's fields and at roadside areas adjacent to the fields and shall insure that there will be no leaflets left in the area where leafletting had taken place, except if discarded after representatives leave the field.

Second, the August 22 agreement expired on September 5, 1979, but could be extended "provided that access does not disrupt production during the harvest."

The termination date of the second access agreement was extended by consent until October 5, 1979. A third agreement was signed on October 8, to expire on December 31, 1979. The third access agreement was the same as the second one except that it provided that it would terminate immediately "upon the Union taking any economic action including a strike or other work stoppage, or upon the signing of a collective bargaining Agreement between the parties." Between July 9 and December 31, 1981, the Union took access fewer than 12 times.

Discussions about access during 1979 were at times acrimonious. On July 24, Richard Binns contended that Union field office director Humberto Gomez had come on the property without notifying a Company official and threatened to stop negotiations until he got an apology. On September 5, Binns opened the

negotiating session saying that he was going to terminate the access agreement because "apparently you people don't need it . . . we think that if the Union doesn't want to use the access agreement, the privilege of which we've given to the Union, then the Union shouldn't have the right to have it at all." Hempel, the Ccompany negotiator, agreed: "We gave you that access out of the kindness of our heart . . . . If they are not going to use access, let's revoke it."

The third access agreement was not extended when it expired on December 31, 1979.

At the hearing, Emilio Huerta testified that he objected to the terms of the three access agreements. In particular, he objected to the hold harmless clause and the clause limiting the number of organizers and number of hours of access permitted. He objected to the short duration of the access agreements which required their frequent renegotiation on potentially more onerous terms. Huerta raised objections at the first meeting, but then signed all three agreements without further objections on the record except objections to the number of days per week of access. Huerta said that he signed the agreements because he felt that if he did not, there would be no access and valuable negotiating time would be lost discussing the post-certification access. However, in early 1980, after the agreements had expired, Huerta refused to agree to the Company's hold harmless clause, though he agreed that the Union would be responsible for damages caused by Union representatives. No agreement was reached and the Company said that no Union access would be permitted.

B. Union Attempts to Take Access in May, 1981

At the beginning of May, 1981, Union field officer manager Humberto Gomez talked to some employees on Company property with the consent of their supervisor. At the next negotiating session on May 5, 1981, Geoffrey Gega, who was then negotiating for the Company, told David Burciaga, the Union negotiator, that the Company was interested in having another access agreement signed. Gega proposed that the agreement that had expired on December 31, 1979 be extended. Burciaga said he wanted to study the agreement and, if the Union legal department approved, he would sign it and return it.

During the same May 5 meeting, the Ccompany said that the "hold harmless clause" that the Union had previously agreed to was an absolute precondition of the Company's agreement. Burciaga suggested that the clause be amended to read that the Union would hold the company harmless:

> "from any and all liability for personal injury or property damage suffered by the Union representative while on the property of the Company arising from conditions of property, operation of machinery or conduct of regular company business."

The Company insisted on its language by which the Company is specifically indemnified against its negligence[2/] and rejected the proposed compromise out of hand. The Company refused to allow any access unless the Union agreed to the Company's proposed indemnity clause. The Company position on this matter did not change.

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2. In its post-hearing brief, the Company cites Vinell Co. v. Pacific Electric Rey Co. (1959) 52 Cal.2d 411, 416, for the proposition that the language it proposed was necessary to insure that the Union be responsible for negligent conduct of the Company or its representatives, conduct over which the union has no control.

Burciaga responded to the Company's proposal to extend the old access agreement by letter dated May 11, 1981. His proposal tracked the language of the Board's decision in O. P. Murphy (1978) 4 ALRB 106.

The Union's proposal, unlike that of the Company, did not limit the number of representatives or times of access, and did not contain a hold harmless clause or control the contents of leaflets. In his letter, Burciaga announced that until a new access agreement was negotiated the Union would take access in accordance with its proposal.

The Company immediately replied that it would not permit access until an agreement was negotiated. Nonetheless, on May 15, after notifying the Company, Humberto Gomez attempted to enter the property. Before he had spoken to any workers, he was apprehended by Richard Binns and Daniel Lynch, the Company maintenance superintendent, who told him to leave and announced he would be arrested if he did not. About a dozen employees were present. Gomez left.

C. Negotiations from May, 1981 to Present

Subsequent to this incident, the parties discussed the terms of an interim access agreement at almost every session up to and including the session during the hearing. The Union wanted more than the three hours of access per week initially proposed by the Company, and proposed two and a half hours per day, including an hour before work. The Company agreed to the Union's proposal for access two and a half hours a day, five days a week, but would not permit access before work. The Company proposed that leaflets not

denigrate the Company or call for a strike or work stoppage or slowdown; the Union proposed only that leaflets not denigrate the Company or "specifically call for a strike or work stoppage or slowdown." Both proposals contained a hold harmless clause, but only the Company's proposal required the Union to specifically indemnify it against the employer's negligence.

Negotiator Ben Maddock agreed to the Company's hold harmless clause on February 17, 1982, but the parties did not agree on the Union's proposal for access before work and the Company's proposal that leaflets not call for strike or work stoppages (as opposed to not "specifically" calling for strikes or work stoppages). On March 8, 1982, Gomez again attempted to take access. He notified the Company, was told he would not be permitted on the property, went to where workers were working and was told by the supervisor to leave or he would be arrested. He left.

D. Alternative Means of Union Access

The Company does not claim that the Union had a reliable means of communicating with employees short of access by the Union at the workplace. I find that the union had no reasonable alternative to workplace access.

In 1981, the Company farmed about 2000 acres scattered over ten ranches. Employees work in different blocks on scattered ranches depending on the requirements of the crops. One-third of the fields are not located near a public road, and even where a field does front a public road, organizers cannot intercept workers on their way to and from work because they cannot know where workers will enter or exit.

Employees reside in at least eight different locales scattered around Fresno County. Most have no telephone. The time lapse between the Union election campaign prior to the election in October, 1975 and the first bargaining session in June, 1979, increased the Union's difficulties in communicating with workers due both to the probable turnover in the workforce and the potential disaffection of those who supported the Union four years prior with no discernable results. The difficulties of communicating with workers are compounded by the relatively short harvest period.

The Union's attempts to assemble workers in meetings outside of work time did not prove an effective means of reaching workers and the Union was unable to assemble a ranch committee of employees to attend negotiation sessions and carry information to and from the work place.

VIII. Unilateral Changes in Rates of Wages and Methods of Pay.

A. How General Labor Wage Rates are Set

1. Background

General laborers, who constitute the bulk of the work force, cultivate and harvest the Company's grape vines and fruit trees.

Cultural practices on grape vines vary somewhat with the variety of the grape and the age of the vine. Generally, vines are pruned from mid-December through March. In April, workers sucker, or cut some of the shoots off the pruned vines. In May and the beginning of June the grapes are thinned, by removing some of the miniature bunches; tailed, by cutting off the bottom portion of the bunches; and girdled, by making a cut in the cambrium layer of the

trunk of the vine so that the plant's food remains in the leaves. (Girdling on red varieties takes place in mid-July.) In mid-July, workers "raise canes", or throw the canes that are pointing toward the ground over the top of the trellis for shade and to promote air movement. Around the same time, leaves are pulled for easier access to the grapes for picking.

The harvest begins at the end of July or beginning of August and continues throughout the fall. The peak harvest season lasts for about six weeks.

General laborers generally prune fruit trees from the middle of November until the beginning of December. Other cultivation practices are performed by irrigators and tractor drivers, not by general laborers. The harvest runs from the end of May to the beginning of August.

2. The Setting of Wage Rates

Management sets general labor rates before the beginning of each cultural practice or harvest operation. The method of pay (hourly or piece-rate) and the piece-rate may be different for different fields and may change while the work is being performed. Management continued to determine the pay method and set the piecerate after the union was certified on November 17, 1978, and continuing through the hearing.

District Manager Richard Binns sets an hourly rate when he wishes to encourage more careful and precise work. He sets a piece-rate when he wishes to encourage speed. The amount of the piece-rate is calculated to result in earnings that management considers fair to the average employee. Thus, the amount of the

piece-rate depends on the yield of the crops (more crop means lower rate), the conditions of the field and the weather (muddy fields and wet weather mean slower going and hence a higher rate), the style of pruning or girdling (more decisions and more bending mean more pay), whether it is critical that the operation be completed quickly, and the motivation of the crew and supervisors. Management might change the piece rate if conditions change, or if further examination reveals that the crop was lighter or heavier than initially believed. The practice of on-the-spot determination of pay method and piece rate is not a new practice and is used by other growers in the area.

B. Changes in Payment Methods from 1978 through 1981

Chart I records the method by which cultural operations were paid from 1977 through 1981.

CHART I

Method of Payment for Cultural Operations, 1977 through 1981

Operation	1977	1978	1979	1980	1981/82
Pruning*	hourly	piece	piece	piece	hourly
Vine-Tying	hourly	piece	piece	25% hourly 75% piece	hourly
Suckering	hourly	hourly	piece	hourly	piece
Thinning	hourly	hourly	piece	hourly	hourly
Tailing	hourly	hourly	piece	piece	hourly
Girdling	hourly	piece/ hourly	piece	piece	hourly
Raising Canes	hourly	hourly	piece	hourly	piece
Leaf-Pulling	hourly	hourly	piece	hourly	90% hourly
Harvest	hourly	mostly piece	hourly/ piece whichever higher		

*Pruning begins during December of the previous year.

Taking only changes made after certification in mid-November, 1978, pruning was changed from piece-rate to hourly in December, 1980; vine-tying was changed from piece-rate to partially hourly in 1980 and entirely hourly in 1981; suckering was changed from hourly to piece-rate in 1979, back to hourly in 1980, and back to piece-rate in 1981; thinning was changed from piece-rate to hourly in 1980; tailing was changed from hourly to piece-rate in 1979 and back to hourly in 1981; girdling was changed from partly piece-rate and partly hourly to all piece-rate in 1979 and back to hourly in 1981; raising canes was changed hourly to piece-rate in 1979, back to hourly in 1980 and back to piece-rate in 1981;

leaf-pulling was changed from hourly to piece-rate in 1979 and back to hourly in 1980.

C. The Summer 1979 Piece Rate "Experiment"

At the first negotiating meeting on June 16, 1979, the Company told the Union that it proposed to have the summer cultural practices: cane raising, leaf pulling, and girdling, performed on a piece-rate basis for a four or five day experimental period. Since negotiations had not even started, the Union representative said merely that the matter would have to be raised at negotiations first, since there would be no unilateral changes without prior bargaining. On July 7, 1979, the Company's negotiator sent the Union negotiator a letter (which was received on July 13) announcing that the changes would go into effect between July 11 and July 16. The Union negotiator reached the Company negotiator on July 16 and refused to consent; by then the "experiment" was over. However, at the July 24 meeting, the company indicated that it intended to keep the piece-rate in effect. The Union representative said, "We will go along with the experiment, but we want to guarantee that a worker will receive a daily rate, a daily sum of $3.40 an hour for 9 hours."

D. Changes in Piecework Rates

Chart II records the rates in effect per vine for cultural practice operations between 1978 and 1981. When there is more than one rate given, management selected the rate to be paid workers for a particular field depending on the factors previously articulated.

Piece-rates paid for pruning, vine tying and girdling, generally go up with each year, but without knowing why individual

rates were set, it is impossible to conclude that rates were changed for the same work under the same conditions.

CHART II

Cultural Practices Piece Rates (In Cents per Vine)

	1978	1979	1980	1981
Pruning	15-20	15-20-22-24	Not Available	Hourly
Vine-Tying	2-4-4⅓-6	4-5-6-6⅓	Not Available	Hourly
Thinning/ Tailing	Hourly	15-16-18-20	Not Available	Hourly
Suckering	Hourly	6 or hourly	Hourly	Not Available
Girdling	8-10	8-10-12	Not Available	Hourly
Raising Canes	Hourly	2-3-5	Hourly	Not Available
Leaf Pulling	Hourly	7-8-10	Hourly	Hourly

Piece-rates for pruning, vine tying and girdling, generally went up each year, but from this data, it cannot be determined whether or not rates were changed for the same work under the same conditions.

E. Harvesting Piece Rates

Many of the individual harvest piece rates changed between the 1978 harvest and the 1979 harvest, which occurred after certification and while the parties were bargaining . Management determined different rates under different conditions. For example, table grape pickers of fall varieties were paid $28 or $30 or $36 per gondola in 1978 and $17 to $35 per gondola in 1979. Juice grape pickers, bin pack, were paid $5 to $6 a bin or $3.15 an hour in 1978

and $5 or $5.50 or $6 or $8 a bin or hourly in 1979. The Company offered evidence that it changed its rates according to conditions and that this practice continued into 1980 and 1981, even though the specific wage figures for those years are not in the record. The Union was not notified of any of these changes. In two instances, supervisors changed wages without notifying the Union; in the harvest of 1980, field superintendent Pat Patterson changed the rates paid employees without notifying his superior, let alone the Union, and on another occasion, Dan Lynch, who supervised truck drivers, changed a wage from an hourly rate plus an incentive to a straight hourly rate. These are single instances of an overall pattern of adjustment of rates by management according to conditions.

IX. Union Requests for Information; A Settlement Offer

In its initial request for negotiations on December 13, 1978, the Union requested certain information, including a list of current employee benefits, names, classification and wages of employees, and production data. The production data was to be supplied on a chart provided by the Union, which had columns for the number of acres of each variety of crop, the total number of units produced, the total hours worked and then, for each variety, the total amount paid per unit, the rate per unit, the units per acre and the average hourly rate. With this information, the Union hoped to ascertain the average hourly earnings of piece rate workers so they could gear their economic proposals accordingly.

The Company did not provide the information when first requested in December, and the Union renewed its requests several

times. The Company mailed the requested information to the Union a week before the first negotiation session, which took place on June 26, 1979. On the chart for production data for 1978, the Company reported the names of each variety, the total number of acres of each variety, and the tonnage of each produced. However, the Company did not provide information from which the Union could derive the relative productivity of the workers by variety[3/] because the number of hours worked per variety was not available by computer and piecework rates were not paid that year.

Between June 26, 1979 and January 11, 1980, the Union's negotiator, Emileo Huerta, did not comment on the adequacy of the production information supplied by the Company. At the first meeting on June 26, however, he did request other information, including piece rates on certain harvesting operations. All the information requested was provided. More information was requested on July 24, 1979, and it was also provided.

At the meeting of January 11, 1980, Huerta presented the Company with a five point written request for information.[4/] The fifth point requested "Copies of actual production records for the

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3. The Union's chart does not allow for other variables that might affect productivity, such as the age of the vines, weather conditions, pruning methods, etc.

4. The Company provided information requested in the first four points at the negotiating session of February 6, 1980. The Union had complaints and noted some inaccuracies. Within 48 hours, the Company corrected the errors noted by the Union as well as others it discovered. The Company met the Union's complaints by first explaining that the information requested was not available by computer printout. When the Union insisted on the information in the form it desired, the Company had the information compiled manually.

following operations: a) Harvest of grape by varieties, b) pruning of vines and trees, c) tying, d) girdling, e) leaf pulling, f) lifting cane, for 1977, 1978, and 1979."

At the meeting, Huerta explained that he was not satisfied to derive his wage proposals from the list of piece-rates that the Company had provided, but rather needed to examine the actual production records. He admitted that he was requesting new information that had not been requested previously.

In a follow-up letter on January 14, 1979, he said that he expected production records would show rates paid, hours worked in each operation, the number of people who worked in each operation, the tonnage produced per acre per variety and the number of units produced or paid for in 1977, 1978 and 1979.

At subsequent meetings the parties discussed the request for production information at great length. The Company insisted it could not present the information in the form requested. Meanwhile the Company continued to request that the Union present it with an economic proposal. The Union insisted that it could not make any economic proposal at all short of an entire package and could not provide a package without a piece rate proposal that could only be derived from the information requested.

The Company's first reaction to the request was that the information was not available from the computer in the form requested. Operations were not accounted by blocks and piecework rates were not separated from hourly rates, so the Union could not derive yield per block for a given year. The Company also told the UFW it did not need to have production and wage information by block

because Union proposals traditionally request uniform wage rates with other area contracts or other Union desires regardless of whaat individual piece rates for various operations were prior to Union certification. The UFW representative insisted that he intended to propose piece rates tied to the particular operation of the Company.

As an alternative to providing the tables of information initially requested, Huerta requested that Company to provide him the daily crew timesheets filled out by each crew foreman for each day's work for a three year period. Each time sheet contains the ranch and block numbers worked and the name, hours worked, and pay rate of each employee. The foreman writes a description of the work done, such as truck loading, forklift driving, picking gondolas, etcetera. When the form is turned into the office, the office staff lists an account code for each operation. Company representatives testified that the foreman's description of the work done may or may not correspond to the account number by which they are coded. For example, all harvest operations in a particular variety might be charged to one account number, but the foreman would describe more than one harvest operation, like loading and hauling, and might be working on more than one grape variety during the same day. The account numbers are not intelligible without assistance from Company office staff. Some of the information from the time sheets is coded into a computer and may be retrieved.

The Company estimated that 2000 to 2500 daily crew time sheets were produced each year, so that Huerta's three-year request involved 6000 to 7500 time sheets, some of which contain more than a single piece of paper.

The Company refused to release its original records for analysis by the Union at Union headquarters. It refused the Union's request that the Union be provided with photocopies of the records, first, because copying the records would be expensive and second, because the time sheets would not copy well. The Union never seriously entertained the idea of having the copies made at its expense or even splitting the costs.

At a series of meetings in the first months of 1980, the Company made various suggestions for giving the Union the information without turning over copies of the records. The Company negotiator offered to attempt to summarize the records and allow the Union to spot check. At one time, Huerta appeared to accept this idea, but later insisted on being provided all the records. Meanwhile, the Company produced all other information requested.

At some point during February or March, 1980, the Company offered to let Huerta come to the Company office to view the records for himself. Huerta refused the invitation on the grounds that he did not have time.

The Company continually reiterated its offer to make the records available to Huerta, along with office staff to interpret them. At the hearing, Huerta maintained that the Company invited him to go to its office to see the number of time sheets that existed in order to persuade him that it was impractical for the Company to copy them. The transcripts of the negotiating sessions reveal otherwise. The Company made the time sheets available to Huerta or Union representatives at their convenience. Huerta did not avail himself of the opportunity and continued to insist that

the records be copied and brought to him.

On March 18, 1980, while the parties were discussing Huerta's request that the Company provide copies of the time sheets, the Union filed an unfair labor practice charge alleging that the Company had refused to provide information. Other charges had been filed previously. The Board issued a complaint on June 10, 1980, and originally set the present case for hearing on August 26, 1980. In August, 1980, an attorney for the ALRB contacted the Company's attorney and suggested that the case be taken off calendar. The ALRB attorney suggested that the Company propose a settlement agreement in which the Company would agree to provide the timesheets and the pending unfair labor charges would be dropped. Apparently, the ALRB, relying on the Union, was under the impression that the Company refused to produce the time sheets in any form. In early September, 1980, the Company attorney drafted a proposed agreement which incorporated the Company's offer to Huerta, adding that the Company would supply a private office for the Union's convenience in viewing the records. The proposal required that all pending charges, not only the one relating to information be withdrawn. Two months later, at a call received during a negotiating session, the ALRB's regional director told the Company negotiator that the Board would not settle the charges unless an agreement could be reached at the table, presumably about the settlement of the unfair labor practice charges.5/ When questioned by the Company negotiator, David Burciaga, who was then negotiating for the Union, said that he

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5. In other words, the General Counsel would not consider a unilateral settlement over the Union's objection.

had not seen a copy of the proposed settlement, but indicated he would "study" it. Burciaga asked questions about the settlement proposal at subsequent meetings. Finally, on March 28, 1981, Burciaga rejected the settlement proposal on the ground that the Union would not ". . . give you something in return for information that by law the Company is supposed to provide." In the same letter, Burciaga wrote that the union no longer requested that the information be copied, but rather stated that the Union would send people to the Company office to extract the information it needed. Burciaga clarified the request by stating that the Union was only requesting information in its present form and the request would not be continual.

When the Company received the letter from Burciaga rejecting the settlement and offering to view the records at the Company office, the Company withdrew its standing offer to make the records available. Between March 28, 1981 and January 29, 1982, the Company refused to let the Union see the time sheets at all.

On January 29, 1982, shortly before the hearing in this case was about to begin, the Company's attorney informed the Union's legal department that commencing February 2, 1982, daily time sheets for the years 1977 through 1981 would be available for the Union's inspection in a rented trailer.

About three weeks after the Company made the time sheets available, Humberto Gomez, the Union field representative, examined them on three occasions. UFW negotiator Ben Maddock examined the records on one occasion. On the final day of hearing, the UFW submitted a piece rate proposal which did not propose specific

rates, but rather proposed a procedure in which piece rates for each block would be set jointly by the Union and the Company prior to the beginning of the pruning, thinning and harvest seasons, with a guaranteed minimum earning rate.

X. The Claim that the Company's Proposals Were "Predictably Unacceptable"

A substantial portion of both the negotiation sessions and the unfair labor practices hearing was devoted to discussion of the parties' positions on issues in which agreement was difficult. On some of these issues, the General Counsel alleges that the position of the Company was predictably unacceptable to the Union. By inference, the claim is that the Company's position was taken only because the Company knew that the Union would be unable to agree and therefore no contract would be signed. In order to assess whether the Company was engaging in bargaining with the view toward a compromise agreement or was going through the motions of bargaining in order to avoid agreement, it is necessary to ascertain whether or not the Company's positions on controversial issues were sincerely held to further legitimate business interests of the Company.

These are the areas in which the General Counsel contends that the Company submitted predictably unacceptable proposals: union security, hiring, seniority, discipline and discharge, maintenance of standards, records and pay periods, health and safety, zipper clause, and wages. Each will be considered in turn.

A. Union Security (Article 2)

Two issues relating to Union security initially separated the parties: dues check-off and good standing. On check-off, the Union proposed that the Company agree to deduct Union dues,

initiation fees and assessments from each worker's pay. On good standing, the Union proposed that "the Union shall be the sole judge of the good standing of its members" and any worker who fails to remain in good standing would be discharged by the Company. The Company's initial proposal did not include a check-off provision. It proposed that all employees become members in good standing of the Union, but that the sole criteria for good standing be the "timely payment or tendering of dues and initiation fees to the Union, in amounts customarily and regularly charged by the Union."

The Union and the Company thoroughly discussed their positions on good standing throughout the 1979 meetings. The Company representatives objected to the Union's good standing proposal because they felt that requiring the employer to discharge employees solely at the discretion of the Union would give the Union too much control over employees. The clause that the Company proposed restated the good standing clause permitted under the National Labor Relations Act.6/ At the time of the 1979 negotiations, an amendment to conform Labor Code section 1153(c)

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6. The Company proposed this clause:

> It is agreed by the parties hereto that the timely payment or tendering of dues and initiation fees to the Union, in amounts customarily and regularly charged by the Union, shall constitute the sole criterion for "good standing", as issued in this Agreement."

Cf. NLRB, Section 8(a)(3), second proviso, which prohibits an employer from discriminating against a nonmember of a labor union "if he has reasonable grounds for believing that membership was denied or terminated for reasons other that the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

to NLRB section 8(a)(3), its NLRB analog, had been passed by the Legislature and was on the Governor's desk. (It was subsequently vetoed.) The Company pointed to a number of other UFW contracts where good standing language similar in concept to the Company's proposed language had been incorporated into contracts signed by the Union.

The Union contended that an employee's good standing in the Union was solely an internal Union affair which did not concern the Company. The Union contended that workers were adequately protected against abuses by procedures mandated in the Union's constitution.

On December 4, 1979, the Company proposed acceptance of the Union's good standing and dues deduction language upon the Union's agreement to the Company's positions on management rights clause and hiring. The Union rejected this package. In June, 1980, the Company agreed to the Union's dues check-off proposal in exchange for the Union's agreement to the principle of hiring by the Company rather than by the Union.

The Company remained adamant on its good standing language but, in its proposal of September 1, 1981, changed its language to conform to the language of other UFW contracts.

B. Hiring (Article 3)

On hiring, the Union initially proposed that all new employees be hired through a Union hiring hall upon notice from the Company two weeks in advance that employees would be needed. The Union proposed that the Company be allowed to hire only if insufficient employees had been hired by the day work was to begin. The Company initially proposed that it hire by seniority, or if new

employees were needed, that it hire whomever it wanted, giving notice on a bulletin board, and giving preference to friends or family members of present employees. However, the Company initially proposed that its hiring article would not be in effect when the Company has a work force of less than 400 workers. Richard Binns testified that the Company never has a work force of more than 400 workers, so the proposal actually bound the Company to nothing.

Although the Company's initial hiring proposal offered the UFW nothing, the proposal was modified on August 22, 1979, to eliminate the clause making the proposal inapplicable when there were fewer than 400 employees.

In June, 1980, the Union agreed to the Company's concept that the Company do the hiring without using a Union hiring hall. The Union submitted a proposal for hiring by the Company in November, 1980 which served as the basis for bargaining up until the time of the hearing in February and March, 1982. By the time of the hearing, the parties had agreed to the entire article except a section proposed by the Union requiring the Company to notify the Union of changes in the estimated starting days of work, a section requiring the Company to make available all hiring records when requested, and a proposal that supervisors give workers a reasonable time to meet job requirements.

C. Seniority (Article 4)

The Company's initial proposal on seniority gave employees only illusory benefits since it said that seniority would apply to layoffs, recall, and filling vacancies "provided, however the employee is able to do the work," which the Company would determine

and "promotions may be made . . . without regard to seniority." However, by its third proposal on October 30, 1979, the Company had agreed that "filling of vacancies, layoffs, or recall from layoffs shall be on the basis of seniority." The parties quickly agreed on definitions of seniority and breaks in seniority and, in the course of negotiating, agreed on many other minor seniority issues.

The two most difficult issues were the notice to be given employees of the starting dates for recall and the role of seniority in promotions.

The Company proposed that it notify workers as it had in the past, primarily by word of mouth. The Union proposed written, mailed notification to seniority workers two weeks before the approximate starting date.

By the hearing date, the parties had gone through a series of 12 proposals each on this subject. On April 15, 1981, the Company agreed to mail notices of recall by first class mail two weeks prior to the estimated starting date and allow a reasonable time to report. On May 20, 1981, the Company further agreed to notify workers in advance of the actual starting date by posting notices of recall on the Company's bulletin board and providing the information to those workers who call the Company's office. On October 27, 1981, the Company agreed as well to the Union's proposal that the Union office be notified of the starting date after recall. As of the date of the hearing, the Company had not agreed with the Union's proposal that the Company send the Union a list of names of all workers being recalled within a week prior to the start of work.

The central difference between the parties on the seniority

article was the relationship between seniority and promotions of general laborers to the better paid and more highly skilled classifications of truck driver, equipment operator, irrigator, and other such jobs that arose. The Company wished to maintain its discretion to choose whomever it wanted to hold these jobs. The Union wanted to require the Company to promote by seniority from the general labor pool with the stipulation that the worker who was promoted be capable of handling the job. In order to insure that seniority general laborers had the required skills, the Union proposed to require the Company to institute and maintain a training program for high seniority workers. Each side had a deep philosophical commitment to its position, which it maintained in extensive discussions throughout the course of negotiations.

As stated above, the Company started from the position that "promotions may be made without regard to seniority." The Union proposed that a training program be established for unskilled workers. On August 30, 1979, the Union proposed that vacancies be filled by seniority with promoted employees being given a fair opportunity to learn the job. On November 14, 1979, the Union proposed that those desiring to be trained sign lists. On February 6, 1980, the Union proposed that in new jobs and positions "preference shall be given to the workers with greater seniority provided they can perform the job under normal supervision and that training opportunities be provided." It also proposed that opportunities for promotion be posted.

Up until its proposal of October 27, 1981, the Company retained its original language that "promotions may be made by the

Company without regard to seniority." However, in its fifth proposal on this subject, which is undated and appeared between the proposals of March 3 and March 21, 1980, it proposed added language permitting it to promote on the basis of seniority as follows:

> The filling of vacancies, layoffs, or recalls within each classification shall be made on the basis of seniority. For vacancies or new jobs in job classifications higher than general labor, preference may be given, to fill such vacancies or new jobs, to workers with higher seniority within the lower classifications, provided that, if given a preference, the seniority worker is able to perform the higher classification tasks within a reasonable time, not to exceed ten working days.

The Union rejected the Company's approach of choosing candidates for promotion on the basis of merit. On April 29, 1980, the Union adopted the Company's proposal that a worker be given up ten days to prove he or she could perform the new job, but continued to insist that the Company provide training opportunities for general laborers.[7/] In the meeting of June 6, 1980, for example, Union negotiator Huerta maintained that all promotions must be by straight seniority with the most senior worker being offered the opportunity to be promoted whenever there was an opening. The Union proposed that the top seniority worker be offered the opportunity to try the work of the higher classification regardless of the Company's prior assessment of his qualifications and let his initial experience in the job serve as an examination to see if he could perform the work. The Company replied that in the case of the operation of equipment a person who did not know what he was doing

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7. The Union watered down its training proposal in its proposal of November 7, 1980 to require the Company to "provide seniority workers with on-the-job training when the time and resources allow," but the Company still was not willing to agree.

could damage a crop or growing area in fifteen minutes, and besides, trial runs would be expensive for the Company in wasted labor costs.

The Company's next change in this area came in its proposal of October 27, 1981, where it modified the language in its March, 1980 proposal, supra, by placing a period after "classifications" in the last sentence, and then substituted this language:

> Preference will be given to workers with higher seniority where, in the Company's sole discretion, the Company determines that the ability, skills, and experience of seniority workers is equal.
>
> If given a preference, the seniority worker must be able to perform the higher classification tasks within a reasonable time, not to exceed five working days.

The Company made some stylistic changes in this clause on February 17, 1982 and added, "Such discretion shall not be exercised arbitrarily by the Company."

The Union continued to maintain that the Company's position was unacceptable because the Company did not bind itself to allow a worker with top seniority to try to perform any job.

D. Discipline and Discharge (Article 6)

The Union and the Company had a difference in the Discipline and Discharge article that was discussed at length and persisted up until the date of the hearing. The Union proposed that the contract contain the language, "No worker shall be disciplined or discharged except for just cause." The Company agreed with the concept that discipline and discharge be limited to that which is done for just cause, but wanted the term "just cause" defined. In its proposal of September 5, 1979, the Company proposed that:

> Just cause shall be defined as a violation of any established work rule, as well as dishonesty, flagrant insubordination, intoxication, possession or use of alcoholic beverages on Company property or equipment, or the use of drugs.

The work rules the Company had in mind were a list of 22 (later pared to 20) rules that Richard Binns, the District Manager said had been established and written down prior to the beginning of negotiations.[8/]

The Company also proposed that it be permitted to establish work rules, provided they did not conflict with the contract.

Union negotiators Huerta and Burciaga vehemently objected to any definition of just cause, and particularly objected to the incorporation of the Company's work rules into the contract. In response, on May 20, 1981, the Company abandoned its concept of including the work rules in the contract and instead proposed this sentence:

> "Just cause shall include, but is not limited to: assault or fighting on Company premises, violation of the no-strike clause, an act of gross indecency on Company premises, dishonesty, flagrant insubordination, intoxication, possession or use of alcoholic beverages or drugs on Company property or equipment, willful falsification of Company records including payroll records, possession of firearms or dangerous weapons on Company property, willful abuse or destruction or damage or defacing or theft of Company or employee property, or conduct specifically prohibited elsewhere in this Agreement."

The Union refused to move from its initial proposal that

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8. The General Counsel established that the rules had been unilaterally established by management personnel without employee input. He challenged whether they had been distributed to employees in their written form or enforced. The General Counsel attempted to establish that the work rules had not been distributed to employees in written form and that the rules had not been enforced, but objections to this evidence were sustained on the ground that the evidence was not relevant.

the standard for discipline or discharge be "just cause", without any further definition.

E. Maintenance of Standards (Article 10)

In their initial proposals, both the Company and the Union proposed that all conditions of employment relating to wages, hours and working conditions which provide benefits to employees shall be maintained at their current levels or better. However on June 20, 1980, the Company proposed that, in addition, all management rights should remain in effect. The meaning of this proposal is unclear, since, in signing a contract, the Company is by definition giving up some management rights. However, regardless of the Company's strategy in making the proposal, there was no lasting harm since the "management rights" portion of the Company's Article 10 proposal was dropped the next month, on July 18, 1980, and the article was signed off by both parties.

F. Records and Pay Periods (Article 13)

The Company's proposal of September 5, 1979, permits the Union to examine a grievant's timesheet and other records only if the grievance is payroll related. The proposal fails to permit the Union access to records of employees other than the grievant, which the Union could use to determine if there was disparate treatment. In November, 1980, the Company agreed to the Union's proposal, requiring it to produce all records that might be necessary for the processing of a worker's grievance, not merely to the time sheets of the grievant.

The General Counsel contends that the Company's position was not taken in good faith and the Company was stalling by spending

so much time on the matter.

G. Health and Safety (Article 14)

After the UFW rejected the Company's proposal for a health and safety article that would consist simply of a statement that "the Company agrees to comply with all Federal, State, County or other local agency laws, rules and regulations relating to the health and safety of Company employees," the Company proposed more specific health and safety language. One of the Company's proposals,[9] which the General Counsel charges was predictably unacceptable and offered in bad faith, reads as follows:

> No employee shall be required to work in any operation which is actually hazardous to his health of safety. An employee who has notified the Company of the existence of such a condition shall not be discharged because he has refused to work in such conditions.[10]

The Union proposed that the contract read, "No worker shall be required to work in any work situation which would endanger his health and safety." The Union objected that the "actually hazardous" language would require a worker to refuse to work in a potentially dangerous situation at peril of discipline because until he tried it, he could not know if it was "actually" hazardous. The Union also objected that the Company's proposed language that an

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9. The Union and Company also disagreed and had acrimonious discussions on the Company's proposal that it determine what equipment is required and charge workers for equipment that is broken, not returned, or has excessive wear and tear. In its brief, the General Counsel has abandoned its claim that the Company's proposals in this regard were made in bad faith.

10. On February 2, 1982, the Company changed its proposal to read, "No worker shall be required to work in any work situation which would endanger his health or safety. A worker must notify the Company of the existence of such a condition." The change of language does not change the meaning.

employee would not be discharged for refusing to work after reporting an actually hazardous condition implied its opposite; that an employee could be discharged if he did not report a condition that turned out to be hazardous or if he refused to work in a situation that the Company believed was not actually hazardous.

At the hearing, the Company's negotiators explained that the section did not mean that an employee would have to prove that the situation was actually hazardous in order to justify a refusal to work. Instead, according to Gega, the Company's concern was to subject questions of whether a condition was hazardous to the grievance procedure and to insure the Company was notified of dangerous working conditions. Negotiator Hempel said he adopted the language from a decision of the United States Supreme Court [Whirlpool Corporation v. Marshall, 445 U.S. 1] which he claimed contained the language he proposed.

H. Zipper Clause (Article 45A)

On September 1, 1981, after more than two years of negotiations, Company negotiator Geoffrey Gega proposed a standard zipper clause. The proposal states that the contract contains the sole agreement between the parties and that during negotiations, each party had an unlimited opportunity to make proposals in areas within the subject matter of collective bargaining. The proposal states that each party waives the right to bargain during the life of the contract on all subjects, including those subjects not covered by the agreement.

At the hearing, Gega testified that the zipper clause was introduced as a trade-off for the Company's proposal of a

mechanization clause on the same date. Prior to this time, it was the Company's position that mechanization had been resolved by the management rights clause, Article 1A, which had been signed off in June, 1980 and provided specifically that the Company retained the right "to decide the nature of equipment, machinery, methods, products or processes used; to introduce new equipment, machinery, methods, products or process, and to change or discontinue existing equipment, machinery, methods, products or processes . . ." Between June, 1980 and September, 1981, the Company's position was that the contract should not contain a separate article on mechanization.

In its mechanization proposal of September 1, 1981, the Company proposed that in the event that it mechanizes, it would meet with the Union to discuss the placement of displaced workers in other jobs with the Company.

The Union responded on November 11, 1981 with a proposal that the Company agree not to utilize harvesters or introduce any type of machinery or mechanical device other than those in use at the signing of the agreement which would displace workers unless the Union agreed.

In negotiations (and also at hearing) the Union contended that zipper clause proposal was regressive because it was introduced late in negotiations and required the Union to give up legal rights, including the right to charge the Company with refusing to bargain in good faith. The Company's position was that the introduction of the clause was a compromise; the Union wanted a mechanization clause and the Company wanted a zipper clause. Gega explained at the hearing that the reason the zipper clause had not been

introduced previously was that previously the Company had not seen a need for a zipper clause; when the need arose, the proposal was made.

I. Wages

The Company pays an hourly wage to tractor drivers, truck drivers, irrigators and shop mechanics. General laborers, who constitute the great majority of the work force are paid either piece rate or an hourly wage, at the option of the Company. In addition, tractor drivers receive a piece rate per box during the harvest season if the piece rate yields more money than their regularly hourly wage.

Beginning in October, 1979, the Company requested that the Union present it with an economic proposal. At first, the Union did not do so, in part because the parties had agreed to discuss non-economic language proposals first; then negotiator Huerta promised imminent proposals and then took the position that he could not present any economic language until the Company had provided him with three years of time sheets. Negotiator Burciaga presented economic language in November, 1980, but no wages; later the Union presented proposals for hourly wages, but not for piece-rates, which they claimed had to be derived from the time sheets which, after March 28, 1981, the Company refused to provide. The Union first presented a formal piece-rate proposal in March, 1982.

In April, 1980, the Company made an economic proposal in which it proposed to raise hourly rates. The Union consented on the representation by the Company that the proposed raise was based on past practice and would not interfere with bargaining. In

December, 1980, the Company proposed another increase. In April, 1981, the Company proposed that the December, 1980 wage offer be implemented, again representing that there was historically a raise in that amount in April. The Union consented. At that point, general laborers were earning $4.00 an hour; the three classifications of tractor drivers earning $4.25, $4.55 and $4.70 and irrigators were earning $4.60 an hour. The Company's "new" wage proposal for December 2, 1981 proposed the same rates employees had been earning since April, 1981. At the time of the proposal, while D'Arrigo general laborers were earning $4.00 an hour and the Company was proposing to continue to pay them $4.00 an hour on the execution of an agreement and $4.15 an hour effective on April 18, 1982, employees at Metzler Brothers, an employer in the same area, growing the same crops, with access to the same work force, was paying $4.50 an hour to be raised to $4.90 on May 23, 1982. (The UFW was asking for $5.00 an hour.) Since the Company had taken the position that the April 1980 and April 1981 wages were historical and did not represent a wage raise at the time, the Company was offering the Union little or nothing on wages. In addition, in its wage proposals, the Company did not incorporate the incentive piece rate option for truck drivers who hauled fruit during the harvest season. During the past harvest seasons, the five truck drivers often made more money than the Company was proposing to pay them in the future.

The Company did not propose specific piece-rates. Its piece-rate proposal throughout was as follows:

> The Company shall continue its past practice of establishing piece rates, which are consistent with the grape and tree fruit industry practices in the area.

The Company shall establish piece rates for each operation for each crop at the time such operation commences, taking into consideration the following factors:

1. Yield
2. Foliage
3. Structure of vine or tree
4. Ground condition
5. Variety of crop
6. Type of activity.

The UFW's piece-rate proposal, which it presented during the hearing in March, 1982, and was modeled on its agreement with Metzler Brothers, a grape grower in the same area, proposed that piece rates be negotiated jointly by the Company and the Union by block at the beginning of each operation. By the Union's proposal, the workers would be guaranteed a minimum average hourly wage in the case there was no agreement on the wage. The Company had previously said it was opposed to the idea of a minimum guarantee.

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DISCUSSION, ANALYSIS AND CONCLUSIONS OF LAW

I. The Bargaining Issues:

Section 1153(e) of the Act makes it an unfair labor practice for an agricultural employer "to refuse to bargain collectively in good faith" with a labor organization certified by the Board as the exclusive bargaining agent of its agricultural employees. The content of the duty to bargain is set out in Section 1155.2(a) as:

> The performance of the mutual obligation of the agricultural employer and the representative of the agricultural employeees to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession.

In their operative language, both provisions are the same as their National Labor Relations Act counterparts and have been the subject of an enormous body of NLRB and court case law over the past 45 years.

The law recognizes two main categories of bargaining violations: (1) so-called per se violations, which constitute a failure to bargain regardless of motivation and (2) bad-faith bargaining, which involves a determination by the trier of fact, after consideration of the entire record, that the conduct of the party, both at the bargaining table and away from it, is, taken as a whole, inconsistent with its statutory duty to bargain with an open mind and "with a bona fide intent to reach an agreement if agreement is possible." (Atlas Mills (1937) 3 NLRB 10, 21, 1 LRRM 60.) This case involves allegations of both per se and bad-faith violations.

II. Respondent's Conduct Prior to the First Negotiation Meeting

The Union first requested negotiations on December 13, 1978. The Company did not offer to begin negotiations until March 8. On March 13, in response to a letter from the Company's attorney, the Union wrote that it would contact the employer. It did not do so until May 29, at which time it received a prompt answer and a date was set for an initial meeting. After March 8, delay in meeting is attributable to the Union. However, the Company delayed in responding to the Union's request for a meeting and supplying a negotiator from December 13, 1978 until March 8, 1979, a period of four months. This conduct is evidence of a refusal to bargain. Montebello Rose Co., Inc./Mount Arbor Nurseries, Inc. (1979) 5 ALRB No. 64, affirmed 119 Cal.App.3d 1; Masaji Eto dba Eto Farms (1980) 6 ALRB No. 20, aff'd in part, 122 Cal.App.3d 41, remanded. In addition, the Respondent did not supply the information requested by the UFW on December 13, 1978, until shortly before the negotiations meeting of June 26, 1979, in spite of repeated requests to do so. This failure to provide the information within a reasonable time after the requests were made constitutes a violation of sections 1153(e) and 1153(a). Masaji Eto dba Eto Farms, supra at p. 19.11/

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11. Even though these events occurred more than six months prior to the filing of the UFW's first unfair labor practice charge on October 18, 1979, evidence is not barred by the statute of limitations, Labor Code Section 1160.2. In the first place, Respondent did not object to the admission of this evidence, and so waived objections. As-H-Ne Farms, Inc. (1980) 6 ALRB No 9 at 16-17, as modified by Order dated March 10, 1980. Second, the evidence can be admitted as evidence of bad faith. Third, the limitations period begins to run only when the charging party acquires actual or constructive notice of the Respondent's bad faith, which had not occurred prior to filing the first charges. (Montebello Rose Co., Inc./Mount Arbor Nurseries, supra at 14.)

III. The Company's Position on Access as Evidence of Bad Faith

In the case of O. P. Murphy (1978) 4 ALRB No. 106, the Board held that in order to protect rights granted to employees by Labor Code section 1152,[12/] and in order for a certified labor organization to perform its duty to fairly represent all employees in the bargaining unit, a certified bargaining representative is entitled to take post certification - pre-contract access at reasonable times and places for any purpose relevant to its duty to bargain as the representative of the employees. See also O.P. Murphy (1979) 5 ALRB No. 65 at 15; Bruce Church, Inc. (1981) 7 ALRB No. 20; As-H-Ne Farms, Inc. (1980) 6 ALRB No. 9. The employer may deny access only if the union has an alternative means of communicating with the employees. The Board held that it would "evaluate the extent of the need for such access on a case-by-case approach" and "will look at the facts of each case to determine the extent of the need for post-certification access." O. P. Murphy, supra,4 ALRB No. 106, p. 8.

In its O. P. Murphy decision granting unions access to employees before a contract is signed, the Board states that this access is not a mandatory subject of bargaining. (O. P. Murphy, 4 ALRB No. 106, at p. 9.) If a legal subject of bargaining is not

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12. Labor Code Section 1152 reads in part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaiing or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. . . .

mandatory, it is permissive. The parties may negotiate if they chose. N.L.R.B. v. Wooster Division of the Borg-Warner Corp. (1958) 356 U.S. 342, [42 LRRM 2034].) However, even though the Board says in effect that the parties may refuse to negotiate about access without for that reason violating section 1153(e), the Board "expect[s] the parties to resolve any problems concerning union access without delaying the contract negotiations" and "Where a party's conduct causes delays, as well as where an employer refuses a labor organization reasonable access to the employees it represents, such conduct will be considered as evidence of a refusal to bargain." O.P. Murphy, 4 ALRB No. 106, at p. 9.

In this case there is no dispute about the union's need for access. The union did not have an alternative means of reaching the employees. (See Section VII D above.)

The questions to be resolved are first, whether the Company fulfilled its obligation to grant access by its willingness to negotiate with the Union while refusing to permit access until agreement was reached and second, whether the Union waived its statutory rights either, by taking access infrequently when an access agreement was in effect.

By declaring that access is not a mandatory subject of bargaining and also that the union has right to access, the Board has declared that the union is entitled to reasonable access, subject to the conditions that it notify the employer and not disrupt work, even if the union refuses to talk about it. Therefore, an employer is not entitled to impose preconditions to access unrelated to the interference with production. The

Company's insistence that there be no access whatsoever until all related issues are resolved is evidence of a refusal to bargain.

The Company's insistence that the union indemnify the Company and its agents against their own negligence is further evidence of bad faith. A property owner is liable for its negligence or that of its agents toward persons who enter the property, whether invited or not. (Witkin, Summary of California Law, Vo. 4, p. 2353; Civil Code Section 1714.) The Company insisted that the Union give up one statutory right in exchange for its exercise of another statutory right, the right to access under Labor Code Section 1152. The Company did not present evidence that this condition was placed on other business visitors. It is significant that the Company did not insist on an indemnification clause for access during a contract.13/

The Company's actions prior to December 31, 1979, when the access agreements expired, are not evidence of bad faith. The Union agreed to the terms the Company proposed. It was free, to refuse the Company's terms and rely on the rights enunciated by the ALRB. The Board should not second guess the Union's decision to comply with the Company's terms in order to facilitate negotiating on other subjects. The Union did not file charges objecting to denials of access until May 15, 1981, although it filed a series of other charges beginning as early as October, 1979.

From January 1, 1980, until the date of the hearing, the company refused to allow any access absent an agreement which

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13. The parties agreed to access during a contract on November 14, 1979; the article does not mention indemnification.

included an indemnity clause. This is evidence of bad faith bargaining.

The Union did not waive its right to access. The fact that it exercised this right sparingly is not a defense to action against the Company unless it were evidence that the Union could communicate with the employees outside the work place; that is not the evidence here. The Union did not adopt the Company's legal theory by agreeing to talk about access; in O. P. Murphy, supra, the Board said it "expect[ed]" the parties to seek agreement over the terms of access. Attempts at cooperation should not be seen as a waiver of rights.

The Complaint does not charge access violations as separate and independent violations of Section 1153(a). However, since the matter was fully litigated without objection, and since the same facts relied on by the General Counsel as evidence of a violation of section 1153(e) support a violation of sections 1153(a), I find that Respondent has violated section 1153(a) of the Act by refusing to allow post-certification access to UFW representative Humberto Gomez and other UFW representatives, Bruce Church Inc. (1981) 7 ALRB No. 20.

IV. The Company's Legal Responsibility to Make Time Sheets Available to the Union.

Between at least as early as March 3, 1980, and March 28, 1981, the Company offered to allow UFW representatives to come to its property to examine daily crew time sheets. During this period, it refused to provide information that could be derived from the time sheets in a form desired by the Union and refused to provide the Union, at Company expense, photocopies of the timesheets.

Between March 28, 1981 and January 29, 1982, the Company refused to permit the UFW to view the timesheets unless, in exchange, the UFW agreed to withdraw all pending unfair labor practice charges. The legal questions for decision are first, did the Company have an obligation to provide the information to the union; second, if so, was it required to provide the information in the form requested or provide copies; and third, if there was an obligation to provide the information, did the obligation continue after March 28, 1981, and if so, could it be made conditional on withdrawal of unfair labor practice charges.

A. The Company had a Duty to Provide the Union with the Production Information that Could be Derived from the Time Sheets.

The Union's request for the daily crew time sheets was relevant to its need to prepare a wage proposal that would take into account current and past earnings of employees. The employer emphasized that cultural and harvesting conditions varied from season to season, from variety to variety, and among the same variety depending on such factors as the age of the vine, soil conditions and weather. Therefore, the Union's requests to see all of the daily time sheets was reasonable. O. P. Murphy (1979) 5 ALRB No. 63 at p. 14. Summaries were not an adequate substitute. Where information requested concerns terms and conditions of employment within the bargaining units, its relevance and necessity are presumed. Curtis Wright Corporation v. N.L.R.B. (3rd Cir. 1965) 347 F.2d 61, [59 LRRM 2433]. The information must be disclosed unless it plainly appears irrelevant. N.L.R.B. v. Yawman & Erbe

Manufacturing Co., (2nd Cir. 1951) 187 F.2d 947, 949, [27 LRRM 2524].

The Union is not required to show how the data would be relevant to bargaining. By showing that the Union submitted an overall procedure for setting piecerates rather than proposing specific rates for specific operations, the Company has not necessarily shown that the Union did not use the information. Nonetheless, the Union would not waive its right to the information by submitting a wage proposal without using it. Sun Oil of Pennsylvania (1977) 232 NLRB 7, [96 LRRM 1484], N.L.R.B. v. Fitzgerald Mills (2nd Cir. 1963) 313 F.2d 260,]52 LRRM 2174]. Here the information was relevant and the Respondent had a duty to disclose it.

B. Up Until March 28, 1981, Respondent Fulfilled its Obligation to Make the Records Available to the union.

The employer is not obligated to provide the information in the form requested by the union, as long as it is provided in a clear and understandable form. Food Employer Council, Inc. (1972) 197 NLRB 651 [80 LRRM 1440]. The company is not required to copy the records for the union, as long as the records are available at a reasonable time and in a reasonable place. Kawano, Inc. (1981) 7 ALRB No. 16 [ALO Decision at p. 43]; Pacific Mushroom Farm (1981) 7 ALRB No. 28 [ALO Decision at p. 16]; United Aircraft Corp. (1971) 192 NLRB 382, 389-90, [77 LRRM 1285], aff'd in part, (1975) 534 F.2d 422, [90 LRRM 2272].

In this case, between the time of the original request for the records and March 28, 1981, when the Union rejected the Company's settlement proposal, the Company met its obligation to

provide the information to the Union. The Company offered to give the Union time and space and to provide personnel to make the information clear and understandable. The Company was not obliged to photocopy all the records and give them to the Union, particularly since the costs were substantial and the quality of photocopies was questionable.

On several occasions during negotiating sessions Union negotiators Emilio Huerta and David Burciaga made statements indicating that they believed they would not be given full access to the time sheets at the Company office. On the other hand, the Union negotiators told the Company that although Union staff was available at Union headquarters for the mammoth job of analyzing the records, they did not have the time to look at the records at Company headquarters. This indicates that they were aware of the offer to examine the records. Since it is clear to me that the Company did offer the Union an opportunity to study the records, I hold the Union responsible for what may have been its misunderstanding of the clearly stated Company terms. At the least, a Union representative should have arranged to examine the records at least once to determine whether the Company's offer would meet their needs. Since prior to February, 1982, the Union never attempted to see the records, there is no basis for a finding that the Company would have limited adequate access to information.

C. The Company Violated Section 1153(e) by Refusing to Provide Access to the Timesheets Between March 28, 1981, and January 29, 1981.

After March 28, 1981, the Company conditioned bargaining on the UFW's withdrawal of its unfair labor practice charges against

the employer.

The National Labor Relations Board has often held that conditioning bargaining on the union's abandoning unfair labor practice charges is an indication of bad faith. See, for example, Kit Manufacturing Co. (1963) 142 NLRB 957, [53 LRRM 1178], enforced in relevant part, (9th Cir. 1964) 335 F.2d 166, [56 LRRM 2988], cert. denied (1965) 380 U.S. 910, [58 LRRM 2496]. The Company's conditioning access to information on withdrawal of unfair labor practice charges is evidence of bad faith.

Although the Company might not be required to hold open its offer to let the UFW see the documents indefinitely, under these circumstances, it cannot be said that the UFW waived its rights to the information by failing to take advantage of the Company's previous offer. In the first place, a fair reading of the record indicates that the Union's first negotiator incorrectly believed that the law required the Company to copy the records for his convenience. He did not knowingly waive any rights. Second, there is no indication that the Company office staff would be inconvenienced by having the Union view the records later rather than earlier. And third, the fact that the Company withdrew its offer to let the Union see the records at the very moment that the Union accepted the offer raises at least a suspicion about the Company's good faith. Since the Union was legally entitled to see the time sheets, the Company's failure to allow access to them is evidence of bad faith.

V. The Company's Proposals and Demands Do Not Reveal that it was Bargaining in Bad Faith.

The General Counsel alleges that in certain areas,

Respondent's proposals were predictably unacceptable and proposed with an end to hinder rather than further agreement. As detailed below (and with one exception), I find that the Company engaged in hard bargaining with respect to certain issues about which it felt strongly, as did the UFW. The Company did not adopt a take-it-or-leave-it position, made concessions designated to meet Union objections and, generally speaking, did not take positions only for the purpose of delaying or frustrating negotiations. See Pacific Mushroom Farm (1981) 7 ALRB No. 28, ALO decision at 23.

A. Union Security: Good Standing and Check-Off

The Company used its position on check-off as a bargaining chit and agreed to the Union's position in the course of bargaining.

The Company's position on good standing was neither "predictably unacceptable," since the Union had accepted it elsewhere, nor unreasonable. The Company's concern that it would be forced to discharge an employee because the Union had expelled a member for reasons unrelated to his employment cannot be said to be merely a sham to avoid agreement with the union. Cf. Queen Mary Restaurants Corp. v. N.L.R.B. (9th Cir. 1977) 560 F.2d 403, 96 LRRM 2456.

B. Hiring

The Company's initial proposal, that its hiring article not be in effect when there were fewer than 400 workers, was abandoned early in negotiations and so could not be said to evidence an intent not to reach agreement. Although the proposal could be seen as cute or hostile, a straightforward proposal that hiring be reserved as a management right would not be legally objectionable.

Once the Union abandoned its proposal for a Union hiring hall, progress was made on the hiring article. Although the parties had not signed off on a complete article at the time of hearing, there is no evidence that the employer's proposals in this area were made in bad faith.

C. Seniority

The Company's objection to being required to offer the top seniority general laborer an opportunity to fill any opening for skilled work is not evidence of surface bargaining. It is understandable that the Union would seek opportunities for promotion for its members, but equally understandable that, particularly in a first contract, the employer would desire to be able to choose which individuals would operate expensive machinery and perform sensitive crop operations. The Company's concessions toward the union's position were not illusory and contained the type of language common in first contracts or in contracts where new issues are raised. The Company's reasons for its proposals were based on its experiences and in its perceptions of its business needs. Although the Company's proposals might be "predictably unacceptable" in the sense that it could have figured out that the Union would not like them, its proposals were not of the sort that no self-respecting union could accept.

D. Discipline and Discharge

The Union's objections to defining just cause were first, that in other contracts, the definition of just cause is left to the arbitrator and second, that the Company's definitions are vague. Novelty is not a ground for finding bad faith; on this subject it

was the Union, not the Company, that refused to consider alternatives. The Company's proposed definitions are less vague than the Union's proposal. The Company's various proposals defining just cause include items which any arbitrator would agree are cause for discipline. It was the Union's refusal to discuss the Company's proposals as much as the Company's position that precluded agreement.

E. Maintenance of Standards and Records and Pay Periods

Agreement was reached on both these articles, contradicting the general counsel's argument that the employer was taking an adamant position for the purpose of avoiding agreement. On this record, in light of the large number of painfully long discussions promoted by the union, I am unwilling to find the employer solely responsible for possible delays cause by discussions that in hindsight appear unnecessarily long.

F. Health and Safety

Of all the Company proposals challenged as predictably unacceptable by the General Counsel, the Company's insistence on its language that an employee shall not be required to work in any operation that is "actually hazardous" and shall not be subject to discharge if the condition is actually hazardous is the most suspect.

At hearing, Respondent's negotiator Gega defended the proposal by stating that it did not mean what it seems to say. Negotiator Hempel said that he derived the language from the decision of the United States Supreme Court in Whirlpool Corp. v. Marshall (1980) 445 U.S. 1. However, the Company initially proposed

the "actually hazardous" language on August 22, 1979, and the Whirlpool case was not decided until February 26, 1980. The regulation approved by the Supreme Court, which is claimed to be the source of the "actually hazardous" language actually allows an employee to refuse to work if a reasonable person would conclude that under the circumstances, "There is a real danger of death or serious injury."[14/] Unlike the Company's proposal, the regulation approved in Whirlpool is based on the employee's reasonable belief that a condition is dangerous. This is different from the "objective" standard of an actual hazard.

If the Company believed it was proposing the Whirlpool language, it is curious that it did not amend its proposal to meet that language. Similarly, it is peculiar that, after March 21, 1980, when the company's negotiator explained that its proposal complied with the latest Supreme Court decision,[15/] that the Union

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14. Title 29, CFR Section 1977.12 (1979) reads:

> If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition. (445 U.S. at 2, note 3.)

15. At this session, the negotiator claimed that by the Whirlpool decision "the employee takes the risk. If the employee determines that the condition is hazardous and it is later proven that it was not, then he is completely out of wages, job, the whole shot." The regulation approved, quoted in the previous footnote, does not say this.

negotiator did not look up the decision and propose its language. It is clear from the discussions that the OSHA regulation approved in the Supreme Court decision would have met the Union's objections. Yet the Company spent countless sessions insisting that it would not change its language. It is difficult to conclude that the Company was bargaining in good faith on this item.

F. Zipper Clause

The mechanization proposal that the Company offered in exchange for a zipper clause gave the Union nothing it would not have by operation of law. On the other hand, there is nothing particularly devious about introducing a zipper clause late in negotiations when the parties have had an opportunity to discuss most of the issues and agreement to a zipper clause can be made intelligently. The General Counsel and Union are simply wrong by stating that the zipper clause requires the sacrifice of protected rights. Besides, the Union is not required to agree to the clause.

A zipper clause in the form offered is such an ordinary part of a collective bargaining agreement that its proposal cannot be said to be regressive or predictably unacceptable.

G. Wages

At the time of the hearing, the parties had not had much negotiation about wages. The Union's first piece-rate proposal came during the hearing.

With the exception of the harvest truckdriver rates,16/ the

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16. During the harvest, truck drivers had a choice of an hourly rate or piece rate per truckload of food, whichever was higher. Often the piece rate resulted in more pay. The company's initial wage proposals proposed an hourly rate for truckdrivers and did not mention a piecerate option.

Company's wage proposals were precisely what employees would have made if the Union had not been certified and there were no collective bargaining negotiations.

On this record, there is no basis for finding that the employer's wage proposals were motivated by a desire to frustrate negotiations rather than by a desire to strike the best bargain possible. The General Counsel's argument that the Company's piece-rate proposal was illusory and offered nothing is refuted by the fact that the piece-rate proposed by the union also involved establishing rates on the spot, albeit with mutual, rather than unilateral decisions and guaranteed minimums for workers. The employer is at least indicating that earnings will not be lower than before. Although it is possible that further negotiations on wages would have revealed bad faith and that there would have been further negotiations had the employer provided production information via the time sheets after March 28, 1981, this is entirely speculative and cannot be the basis for a finding against Respondent. The General Counsel has not met its burden of proving that the negotiations on wages were conducted in bad faith.

VI. The Company's Unilateral Changes Constitute a Per Se Violation of the Act

A. The Company's Changes in the Method of Payment and the Piece-rates Paid General Laborers were Changes in Wages.

After certification of the Union, and continuing through the hearing, the Company changed the method of payment of general laborers from piece rate to hourly and from hourly to piece rate and changed the rate of the piece rate as conditions warranted. The Company continued to set wages as it had in the past. The Company's

practices in setting wages did not change because the employees were represented by the Union.

Even though the Company's past practice of setting wages on the spot was not altered after union certification, the changes were still changes in wages. District Manager Binns testified that the Company retained full discretion over the timing and amount of wage changes.

Where the Company has discretion over the timing and amount of changes, the Board does not consider the changes to be part of a "dynamic status quo". N.L.R.B. v. Katz (1962) 369 U.S. 736, 59 LRRM 2177; N.A. Pricola Produce (1981) 7 ALRB No. 49; George Arakelian Farms (1982) 8 ALRB No. 36; Kaplan's Fruit and Produce Co. (1980) 6 ALRB No. 36.

The NLRB has considered employer change in piece rates made after union certification without bargaining with the union. In Crystal Springs Shirt Corp. (1979) 245 NLRB 882, [102 LRRM 1404], a manufacturer of men's and boys' shirts made its usual changes in piece rates paid workers in response to changes in styles, seasons, materials, and customers' requests. The employer argued that it would be chaotic for its managers to consult the union every time a minor change was made in one of its thousands of piece-rates in response to a change in an established operation. The Board said that "[w]hile this argument may have some surface appeal, it is clear that Respondent cannot lawfully follow its previously established procedures in the setting of rates as it did prior to certification of the Union, because the changes obviously affect the wages received by its employees." 245 NLRB at 885. This is a

different situation from that in N.L.R.B. v. Phil-Modes, Inc. (5th Cir. 1969) 406 F.2d 556, [70 LRRM 2247], enforcing and reversing 162 NLRB No. 136, [64 LRRM 1303], cited by Respondent, where shifts from piece rate to hourly pay had been made every year triggered by the shift from production work to sample work. In this case, like Crystal Springs Shirt Corp., the employer retained discretion over the amount and timing of the changes.

B. The Changes in the Method of Payment and the Amount of Piecerates were Unilateral.

The Union was notified of proposed wage changes only once, in July of 1979, and was on this occasion, the Union was notified of a decision already reached.17/ In response to the Union's request, the Company provided some wage information from which the Union negotiators could have inferred that wage changes had taken place in the past, but the Union was not given the opportunity to bargain about changes before they took place.

At any rate, notification of proposed changes in wages alone does not constitute a defense to a charge of unilateral wage changes. The NLRB has rejected the approach of the Fifth Circuit in cases cited by Respondent.

In Winn-Dixie Stores (1979) 243 NLRB No. 145, [101 LRRM 1534], the NLRB noted the Fifth Circuit's position and then explained why it refused to adopt it:

> We conclude, however, that the requirement that the parties reach impasse before a unilateral change may be lawfully implemented, rather than merely discuss a proposed change, is in accord with the basic tenets established by the Court in N.L.R.B. v. Katz, as quoted above, and by Congress in enacting Section 8(d) of the Act.

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17. Other than the raises in hourly wage rates in April, 1980 and April, 1981, to which the Union consented.

> Indeed, under the Fifth Circuit Court of Appeals' interpretation of the bargaining obligation, an employer would be entitled to change unilaterally any term or condition of employment, regardless of the status of negotiations with its employees' collective-bargaining representative, as soon as the representative was notified of the intended change and given an opportunity to discuss it. By utilizing this approach with respect to various employment conditions seriatim, an employer eventually would be able to implement any and all changes it desired regardless of the state of negotiations between the bargaining representative of its employees and itself.
>
> We do not believe that this method of "bargaining" satisfies the definition of the duty to bargain collectively stated in Section 8(d) of the Act as "the performance of the mutal obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Instead, under this approach, form, rather than substance, becomes the determinative factor in deciding whether the bargaining obligation has been fulfilled. In consequence, meaningful collective bargaining is precluded and the role of the bargaining representative is effectively vitiated. We cannot endorse an approach so clearly in disparagement of the collective-bargaining process. (101 LRRM at 1535.)

C. Was the Fact that the Parties did not Bargain About Piece Rates Wholly Attributable to the UFW?

The Union's failure to discuss or request discussions on changes in method of payment for cultural practices and harvesting in 1980 and 1981 do not constitute waiver of their right to bargain about wage changes before they are instituted. The Union continued to insist that it needed to examine production information before proposing a piece rate and was not notified about specific changes. No waiver was clearly and unequivocally conveyed. Caravelle Boat Co. (1977) 227 NLRB 1355 [95 LRRM 1003], Chatham Manufacturing Co. (1968) 172 NLRB 1948 [69 LRRM 1228].

The changes in wages were unilateral and making them constitutes a per se violation of section 1153(e).

VII. Summary of Evidence on Surface Bargaining

The evidence that Respondent was not meeting its legal duty to negotiate in good faith with the representative of its employees can be summarized as follows:

1. Respondent failed to answer the Union's letters requesting negotiations and failed to provide a representative authorized to negotiate from December 13, 1978 until March 8, 1979.

2. Respondent failed to answer the Union's initial request for information for a reasonable time following the request on December 13, 1978 until June 20, 1979.

3. Respondent refused to let the UFW take access to employees without a formal agreement, and conditioned its formal agreement on acceptance of an indemnity clause, which was not a reasonable condition, from January 1, 1980 through March, 1982.

4. Respondent refused to allow the UFW to examine employee daily time sheets from March 28, 1981 through June 29, 1982, unless the UFW agreed to withdraw all pending unfair labor practice charges. The Union was legally entitled to the information and the condition was illegal.

5. The Company's insistence on its proposed language in the health and safety article that an employee be required to work unless conditions were "actually hazardous", and the equivalent language proposed is evidence of bad faith.

6. The Company instituted unilateral changes in wages.

In deciding whether the Company was attempting to reach agreement if agreement was possible, or if the Company was delaying, posturing, and otherwise going through the motions of bargaining

with no intention to reach agreement and every intention of avoiding agreement, it is appropriate to examine the tone of the negotiations.

An examination of the transcripts of the bargaining sessions leads to the conclusion that the Company's negotiators were trying to reach agreement. Over the course of the three years of bargaining, there were hostile exchanges, sarcastic comments, expressions of exasperation and frustration and profanity. But the dominant feeling from the record is that the Company was working hard at the negotiating sessions. Virtually all of the conversation concerns the substance of the proposals. The Company explained its proposals and explored alternatives. Difficult items went through many drafts in attempts to reach agreement. Where the Company chose to stand on principle, the principles were backed by reasons that reflected the Company's view of its own best interests.

Respondent's bargaining behavior is not of the order found to have violated the Act in Board decisions such as O.P. Murphy Produce Co., Inc. (1979) 5 ALRB No. 63, Montebello Rose Co., (1979) 5 ALRB No. 65, McFarland Rose Production (1980) 6 ALRB No. 18, and Masaji Eto (1980) 6 ALRB No. 20. Once meetings began, they continued without interruption. Rescheduling was mutual and the Company's negotiators were available. What rudeness there was was directed toward the issues, not toward condemning the Union and the negotiating process. The Company's representative was thoroughly familiar with Company operations and had authority to agree. The Company did not put any artificial restrictions or conditions on bargaining. On most issues, the Company made an effort in some

direction toward the Union's position. The Company submitted timely proposals. It did not attempt to wait out a certification year and stop bargaining when it had passed. It did not offer ultimatums or make take-it-or-leave-it offers. The Company accepted the premise that it was obligated to provide information and, with one notable exception, compiled and explained data. In short, there is every indication that had the Union been willing to agree to the Company's terms, there would have been a contract. The content of the terms is a matter determined by perceptions of the relative economic positions of the parties and not by the legal obligation to bargain.

In discussing the totality of circumstances, it is appropriate to look at the Union's behavior as well. Although there is no sign that the Union was purposely avoiding agreement, there are indications that the Union was not at all times doing everything in its power to reach agreement. The Union failed to follow through on its request to bargain between March 13 and May 29, 1979. During the first five months of bargaining, it exercised its right to access rarely. It did not ask for production records until months after the Company first requested an economic proposal and then did not follow up on the Company's initial offer to see the time sheets. On some substantive items, such as right of seniority workers to be promoted and hiring, the union bargainined hard, as was its right, but cannot thereby fault the Company with failing to quickly agree. Union negotiator Burciaga frequently picked up company proposals and responses to Union proposals on the way to a meeting and was not prepared to discuss them. Union negotiators sometimes took the position that they could not make an agreement without checking with

someone else, a procedure which consumed a lot of time. The Union delayed in providing the Company with information about their proposed medical, pension, and welfare plans, and certainly did not go out of their way to search for and compile information that might have facilitated discussion or even agreement. At times the Company's expressions of frustrations, far from indicating a desire to delay, indicated their desire to progress toward agreement.

On this record, considered as a whole I do not find that the Company engaged in surface bargaining. Although, some of the actions of the Company, particularly the denial of access and refusal to let the Union examine the time sheets after March 28, 1981 are evidence of bad faith, the record as a whole does not support the inference that the Company was purposely attempting to hinder agreement by any means.

VIII. The Remedy

I have found that the Company violated section 1153(a) by refusing post-certification access and violated section 1153(e) and (a) by failing to make available relevant information in its possession, and implementing unilateral wage changes.

Labor Code Section 1160.3 provides in part that the Board may order a person who has committed an unfair labor practice to make "employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will effectuate the policies of this part."

On this record, it is impossible to determine whether Respondent's unilateral wage changes resulted in a loss of pay to

employees. However, if they did, it would be appropriate to award back pay for the loss of pay that resulted from the unilateral changes.[18/] See San Clemente Ranch (1982) 8 ALRB No. 29.

In N.A. Pricola Produce (1981) 7 ALRB No. 29. The Board refused to award make-whole where an employer had committed unilateral wage changes because it found that Respondent was willing to bargain and the UFW was primarily responsible for delays in bargaining. In George Arakelian Farms (1982) 8 ALRB No. 36, however, the Board awarded make-whole where the only violation was a unilateral change because it found that there the employer, who had never met with the union, was solely responsible for failure to negotiate and reach agreement about wages.

The facts of this case lie in bettween Pricola and Arakelian. The employer was willing to bargain, but, beginning on March 28, 1981, was not willing to give the UFW access to information the UFW reasonably needed to engage in meaningful bargaining about piece-rate wages. Therefore, an appropriate remedy is to order the employer to pay employees for any losses in pay that resulted from unilateral wage changes that occurred between March 28, 1981, when the Company cut off access to the time sheets and February 12, 1982. This cut off date for make whole is two weeks after the employer made the time sheets available and would give the UFW an opportunity to submit a wage proposal based on information it

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18. It is not appropriate to award make whole for other losses in pay, such as medical benefits. The employer did not offer proposals in the major areas of fringe benefits, but the union contributed by failing to provide necessary information and failing to request bargaining in these areas.

had received.

The General Counsel has requested that the UFW be given expanded access as a remedy for Respondent's denial of access. Since the Board has not defined what access would be required in every case there is no standard from which access can be expanded. It is not deemed appropriate in this situation to leave the matter to negotiation since, at least at the time of hearing, attempts to negotiate the amounts and timing of access have not succeeded. Therefore, I am ordering that the Respondent allow the UFW to take access in accordance with that portion of the Board's regulations, sections 20900(e)(3) and (e)(4) that defines the number of organizing period, until such time as a collective bargaining agreement is reached or the UFW is no longer the certified representative of the employees. This order is based in part on the fact that as of this date, seven years have passed since the election that resulted in the certification of the UFW and therefore the UFW require more opportunity communication with employees than it would if the certification election was recent. See O.P. Murphy (1979) 4 ALRB No. 106.

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

ORDER

Respondent D'Arrigo of California, Reedley District #3, its officers, agents, representatives, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to provide access to UFW representatives and

agents in reasonable numbers and at reasonable times, as described below,

(b) In any manner refusing to give the UFW upon request information relating to any issue that may be raised during collective bargaining,

(c) Making changes in wage rates and the form of payment (hourly or piecerate) without first notifying and then bargaining with the representative of the employees.

2. Take the following affirmative action:

(a) Make whole those persons employed by Respondent at any time during the period from March 28, 1981 through February 12, 1982 for any losses in pay they have suffered as a result of Respondent's unilateral wage changes, plus interest thereon in accordance with the formula enunciated in Lu-Ette Farms (1982) 8 ALRB No. 55,

(b) Promptly furnish to the UFW all information it requests which is relevant to the preparation for, or conduct of, collective bargaining negotiation,

(c) Permit UFW representatives to speak to all employees no fewer than three days per week under terms no more restrictive than those defined in Title 8, Cal. Admin. Code Section 20900(e)(3) and 20900(e)(4), until such time as a collective bargaining agreement is reached or the UFW is no longer the certified representative of the employers,

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

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

(f) Post at conspicuous places on its premises copies of a Notice to be provided for 90 consecutive days, the times and places of posting to be determined by the Regional Director.

(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. Upon request of the Regional Director, notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

IT IS FURTHER ORDERED that allegations contained in the Third Amended Complaint not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

Dated: September 30, 1982

AGRICULTURAL LABOR RELATIONS BOARD

By: Ruth M. Friedman
RUTH M. FRIEDMAN
Administrative Law Officer

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by refusing to allow UFW organizers and other union agents to take access to our property in order to speak to employees and to obtain information relating to collective bargaining issues. The Board has also found that we violated the law by making changes in your wages and forms of payment without notifying and bargaining with your certified representative. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

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

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

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT refuse to allow agents of your certified bargaining representative to enter our property at reasonable times so that they can talk to the employees;

WE WILL NOT refuse to provide your certified bargaining representative with information relating to any issue that be raised related to collective bargaining;

WE WILL NOT make any changes in wage rates or form of payment without first notifying and bargaining with your certified

bargaining representative.

DATED:

D'ARRIGO BROTHERS OF CALIFORNIA,
REEDLEY DISTRICT #3

By _____
Representative Title

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 93215. The telephone number is (805) 725-5770.

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

DO NOT REMOVE OR MUTILATE