STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GROW-ART, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 82-CE-39-SAL 9 ALRB No. 67

DECISION AND ORDER

On January 28, 1983, Administrative Law Judge (ALJ)[1/] Michael K. Schmier issued the attached Decision in this proceeding. Thereafter, Respondent, General Counsel, and the Charging Party each timely filed exceptions and a supporting brief. General Counsel filed a reply brief to Respondent's exceptions, and Respondent filed a reply brief to the exceptions of General Counsel and the Charging Party.

Pursuant to Labor Code section 1146,[2/] the Agricultural Labor Relations Board (Board or ALRB) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions, supporting briefs and reply briefs, and has decided to affirm the ALJ's rulings, findings

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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.

and conclusions only to the extent consistent herewith.

Background

Pursuant to a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW or Union) this Board conducted a representation election on August 2, 1980 among Respondent's agricultural employees. The tally of ballots was as follows:

UFW	21
No Union	6
Unresolved Challenged Ballots	66
Total	93

Respondent challenged the ballots of sixty-five packing shed employees on the basis that they were not agricultural employees within the meaning of the Agricultural Labor Relations Act (Act or ALRA). Respondent also timely filed objections to the election, and the following objections were set for hearing: (1) the disenfranchisement of fifty employees of a labor contractor who worked for Respondent; (2) the improper inclusion of packing shed employees in the bargaining unit; and (3) alleged threats, intimidation, and coercion against employees by the UFW and its agents which resulted in the election being conducted in an atmosphere of fear.

On November 17 and 18, 1980, an Investigative Hearing Examiner (IHE) conducted a hearing on the objections and challenged ballots. In his Decision, which issued on April 20, 1981, the IHE recommended that the challenges to the ballots of the packing shed employees be overruled, and that Respondent's

objection to the inclusion of the packing shed workers in the bargaining unit be dismissed. He found no evidence that an atmosphere of fear existed at the time of the election and recommended dismissal of this objection. The IHE also found that 51 members of a labor contractor's crew who worked for Respondent had been disenfranchised.

On August 7, 1981, the Board affirmed the IHE's decision on the challenged ballots and objections, and ordered the Regional Director to open and count the challenged ballots. (Grow-Art (1981) 7 ALRB No. 19.) The revised tally of ballots was as follows:

UFW	80
No Union	12
Unresolved Challenged Ballots	1
Total	93

Based on the election results set forth in the revised tally of ballots, the Board determined that the disenfranchisement of 51 employees could not have affected the outcome of the election and, on October 9, 1981 certified the UFW as the collective bargaining representative of Respondent's agricultural employees. (Grow-Art (1981) 7 ALRB No. 32.)

Soon after the Board issued its certification, Respondent met with its attorney, Arnold B. Myers, to discuss how to respond to the certification. They decided to wait until the UFW made a request to bargain.

On December 4, 1981, the UFW sent Respondent a letter requesting it to bargain and to provide certain information

necessary for bargaining. On December 16, 1981, Respondent informed the UFW that it would bargain, and sent general information on its operations to the UFW on January 8, February 23, and March 9, 1982. The first negotiating session was set for February 12, 1982.

At the February 12 meeting, Respondent informed the UFW, for the first time, that it questioned the validity of the Board's certification, that it had not made up its mind about whether to refuse to negotiate in order to test the certification in court, and that it wanted to negotiate but did not know what to do. Respondent raised three issues: (1) threats made by UFW agents in light of the Triple E decision issued by the California Court of Appeals, Third District, on January 4, 1982,[3/] (2) the inclusion of the packing shed workers in the bargaining unit, and (3) the disenfranchisement of 51 workers employed by a labor contractor. Respondent stressed that it was not refusing to negotiate but was looking for options. Respondent raised the fact that H & T and Hibeno (neighboring agricultural employers) each had a contract with the UFW which excluded packing shed employees, and asked the UFW to reconsider its position regarding the packing shed employees. Respondent hoped the UFW would come to the conclusion that if it carved out the packing shed employees from the bargaining unit, Respondent would be willing to negotiate. The UFW representatives told Respondent

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[3/] Triple E Produce Corp. v. Agricultural Labor Relations Board (1981) 127 Cal.App.3d 404 (Triple E), affirmed by California Supreme Court on November 21, 1983 ___ Cal.3d ___.

they were not aware of any problems with the certification and would have to look into the matter. The UFW then presented Respondent with two separate contract proposals prior to ending the meeting.

At the second meeting, which occurred on March 11, 1982, the UFW representatives informed Respondent that the Union was appealing the Triple E decision and had an obligation to represent the packing shed employees. Respondent told the UFW that it wanted to reevaluate its options in light of the Union's refusal to exclude the shed workers and would give the UFW a written response in two weeks. Respondent reassured the Union's representatives that it was not refusing to bargain.

When Respondent did not give the UFW a written response as promised, the UFW sent Respondent a letter on April 13, 1982, requesting a response to its position. The UFW sent another letter on April 26, 1982, again requesting a response and also asking for a negotiations meeting. Respondent replied on April 28, 1982, stating that it could not meet until May 17, 1982, but that it was still not refusing to bargain at that time.

At the last meeting, which occurred on May 17, 1982, Respondent gave the UFW a letter stating that it was refusing to bargain in order to test the validity of the certification.

We are mindful of our proscription against relitigating previously resolved representation issues in subsequent related unfair labor practice proceedings, absent a showing of newly discovered or previously unavailable evidence or other extraordinary circumstances. (Grant Harlan Farms (1983)

9 ALRB No. 1; Ron Nunn Farms (1980) 6 ALRB No. 41.) Each of Respondent's reasons for refusing to bargain was fully litigated in the representation proceeding.

This case is not a technical refusal-to-bargain case, as described in the J. R. Norton case.[4/] Throughout the period from December 4, 1981 until May 17, 1982, Respondent repeatedly told the UFW it was not refusing to bargain. Respondent also provided information requested by the UFW which was necessary to the bargaining process and met with the UFW for the purpose of negotiating a collective bargaining agreement. Such actions, superficially, were consistent with Respondent's duty to bargain and indicated Respondent's willingness to recognize the UFW as the certified bargaining representative of all of its agricultural employees except the packing shed workers. The exchange of information and the negotiations meetings were premised on the assumption that Respondent accepted the Board's certification of the UFW. An employer who embarks upon bargaining negotiations with a certified union has implicitly abandoned any objections it may have raised with regard to the validity of the certification. (See Screen Print Corp. (1965) 151 NLRB 1266 [58 LRRM 1641].) Thus, an employer that wishes to test the validity of this Board's certification must refuse to bargain with the certified bargaining representative in a timely manner. (See San Justo Ranch (1983) 9 ALRB No. 55.)

Such a rule regarding the timing of an employer's

[4/] J. R. Norton Company, Inc. v. Agricultural Labor Relations Board (1979) 26 Cal.3d 1.

decision to engage in a technical refusal to bargain is necessary in order to ensure the integrity of the Board's process and the judicial process. The employer's right to test the validity of the certification must be balanced against the need for stability in agricultural labor relations, which the Legislature sought to insure when it enacted the ALRA. To allow an employer to delay its challenge to the validity of the Board's certification would vest in the employer the power to nullify the bargaining process. It would be unconscionable to permit an employer to lead the certified bargaining representative through months of negotiations or delay and then nullify the process by challenging the validity of the certification from which all bargaining rights and duties arose. (Screen Print Corp., supra, 151 NLRB 1266.) Thus we shall analyze this case as a bad faith or surface bargaining case.

A finding of bad faith or surface bargaining is based upon the totality of a respondent's conduct, determined from the record as a whole.[5/] (McFarland Rose Production (1980) 6 ALRB No. 18; Paul W. Bertuccio (1982) 8 ALRB No. 101.)

In this case, Respondent waited over five months after it received the UFW's request to bargain before it actually refused to bargain. Respondent inexplicably waited over two months after the UFW made it clear that it would not exclude

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[5/] Surface bargaining occurs where a respondent goes through the motions of engaging in a dialogue or actual give-and-take negotiations with the collective bargaining representative of its employees without a bona fide intent to reach an agreement if an agreement is possible. (Paul W. Bertuccio (1982) 8 ALRB No. 101; As-H-Ne Farms (1980) 6 ALRB No. 9.)

the packing shed workers before it informed the Union that it was refusing to bargain in order to test the validity of the certification. The unexplained two-month delay is a further indication of Respondent's bad faith. (Grant Harlan Farms (1983) 9 ALRB No. 1; Ron Nunn Farms (1980) 6 ALRB No. 41.)

Additionally, Respondent's desire to have the UFW voluntarily exclude the packing shed workers from the bargaining unit is contrary to the purposes of the Act. After a full hearing, the Board specifically included the packing shed workers in the bargaining unit,[6/] and the UFW has a duty to represent all the agricultural employees in the bargaining unit as certified by this Board. Thus, we find further evidence of bad faith in Respondent's attempt to delay or condition bargaining in order to secure an unlawful concession from the Union.

Based on our review of the record as a whole, we find that Respondent did not bargain with a bona fide intent of reaching an agreement that included the packing shed workers. Respondent did not prepare any proposals for negotiation, nor did it respond to the Union's proposals. Respondent repeatedly stated that it was not refusing to bargain but delayed the bargaining process by seeking to exclude the packing shed workers from the bargaining unit. Thus, Respondent merely gave the appearance of bargaining but had no intention of reaching an

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[6/] The mandate of section 1156.2 precludes the Board from excluding agricultural workers from the bargaining unit. (Interharvest (1975) 1 ALRB No. 2; J. J. Crosetti (1976) 2 ALRB No. 1.) The parties are similarly not free to exclude workers from the bargaining unit when the unit has been certified by the Board.

agreement. By refusing to bargain in good faith with the certified bargaining representative of its employees, Respondent violated section 1153(e) and (a). (Robert H. Hickam (1978) 4 ALRB No. 73.)

Alternatively, if we were to analyze this case as a technical refusal-to-bargain case, we would find that Respondent violated section 1153(e) and (a) and impose a makewhole remedy because Respondent acted in bad faith when it delayed seeking judicial review of the Board's certification.[7] (J. R. Norton Co. v. Agricultural Labor Relations Board (1979) 26 Cal.3d 1.)

Based upon the totality of Respondent's conduct, we find that it never intended to bargain in good faith with the UFW, but merely went through the motions of engaging in negotiations until May 17, 1982, when it announced that it would refuse to bargain in order to test the validity of the Board's certification. We therefore shall impose the makewhole remedy from the date Respondent received the UFW's request to bargain.[8]

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Grow-Art, its officers, agents,

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[7] Even if Respondent's litigation posture was reasonable, we would still impose a makewhole remedy because it acted in bad faith.

[8] In the absence of proof of the date Respondent received the UFW's request, we presume that it was or should have been received three days after it was sent (December 7, 1981). (San Justo Farms (1943) 9 ALRB No. 55.)

successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith, as defined in section 1152.2(a) of the Act, with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of its agricultural employees.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees and, if an agreement is reached, embody the terms thereof in a signed contract.

(b) Make whole its present and former agricultural employees for all losses of pay and other economic losses they have suffered as a result of Respondent's failure and refusal to bargain in good faith with the UFW, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55, the period of said obligation to extend from December 7, 1981, until October 7, 1982, the date of the hearing in this case, and continuing thereafter, until such time as Respondent commences good faith

bargaining with the UFW which results in a contract or bona fide impasse.

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

(d) 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.

(e) 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.

(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 December 4, 1981, until the date on which the said Notice is mailed.

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

(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 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.

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

Dated: November 28, 1983

ALFRED H. SONG, Chairman

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

A representation election was conducted by the Agricultural Labor Relations Board (Board) among our employees on August 2, 1980. The majority of the voters chose the United Farm Workers of America, AFL-CIO (UFW), to be their union representative. The Board found that the election was proper and officially certified the UFW as the exclusive collective bargaining representative of our agricultural employees on October 9, 1981. When the UFW asked us to begin to negotiate a contract, we refused to bargain. The Board has found that we have violated the Agricultural Labor Relations Act by refusing to bargain collectively with the UFW. The Board has told us to post and publish this Notice and to take certain additional actions. We shall 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, on request, meet and bargain in good faith with the UFW about a contract because it is the representative chosen by our employees.

WE WILL reimburse each of the employees employed by us at any time on or after December 7, 1981, during the period when we refused to bargain with the UFW, for any money which they may have lost as a result of our refusal to bargain, plus interest.

Dated: GROW-ART

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 112 Boronda Road, Salinas, California, 93907. The telephone number is (408) 443-3161.

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

GROW-ART

9 ALRB No. 67
Case No. 82-CE-39-SAL

ALJ'S DECISION

The Board certified the United Farm Workers of America, AFL-CIO (UFW) as the exclusive bargaining representative of Respondent's agricultural employees on October 9, 1981. On December 4, 1981, the UFW sent Respondent a letter requesting bargaining. At the first meeting, on February 17, 1982, Respondent expressed its concern about the validity of the Board's certification. Respondent outlined three areas of concern (1) the inclusion of its packing shed workers in the bargaining unit; (2) the disenfranchisement of 51 workers; and (3) threats made by UFW agents against workers (relying on the Court of Appeal's Decision in Triple E Produce Corp.). On May 17, 1982, Respondent submitted a letter to the UFW which stated that it was refusing to bargain in order to test the validity of the certification.

Applying the J. R. Norton two-pronged test, the ALJ found that Respondent's litigation posture as to all three areas of concern was reasonable and that it acted in good faith in seeking judicial review of the certification. Thus, the ALJ found that Respondent violated section 1153(e) and (a) of the Act, but did not impose a makewhole remedy.

BOARD DECISION

The Board treated this case as one of bad faith bargaining rather than as a technical refusal to bargain. Respondent did not timely assert its right to test the validity of the Board's certification. Instead Respondent repeatedly told the UFW it was not refusing to bargain and engaged in activity which, superficially, was consistent with its duty to bargain and indicated Respondent's recognition of the UFW as the certified bargaining representative of its agricultural employees. Respondent waited over five months before actually refusing to bargain with the UFW. Throughout those five months, Respondent never intended to reach an agreement with the UFW over the wages, hours and working conditions of its packing shed employees. The Board found that Respondent's attempt to exclude the packing shed employees from the certified bargaining unit was contrary to the purposes of the Act, especially in light of the Board's specific finding that those employees were part of the unit.

The Board found that, alternatively, if the case were treated as a technical refusal-to-bargain case, it would impose a makewhole remedy because Respondent acted in bad faith in refusing to bargain in order to seek judicial review of the Board's certification.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD[1]

In the Matter of:	) Case No. 82-CE-39-SAL
GROW-ART,	)
Respondent,	)
vs	)
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)
Charging Party.	)

Christine Bleuler
of Salinas, California
for the General Counsel

Abramson, Church & Stave
by George E. McInnis
of Salinas, California
for the Respondent

DECISION

STATEMENT OF THE CASE

MICHAEL K. SCHMIER; Administrative Law Officer: This case was heard by me on October 7, 1982, in Salinas, California.

1. Herein called the "Board" or alternatively, the "ALRB".

Respondent and General Counsel were represented by counsel. An unfair labor practice charge was filed by the United Farm Workers of America, AFL-CIO ("UFW" or, in the alternative, the "Union") on May 18, 1982. The Regional Director issued a complaint on July 7, 1982, based on the charge alleging that Respondent had refused to bargain with the UFW, the certified bargaining representative of its employees, in violation of section 1153(e) and (a of the Agricultural Labor Relations Act("ALRA" or, in the alternative, the "Act" or, also herein, "Labor Code"). Copies of the charge and the complaint were duly served on the Respondent. The parties were given the opportunity at the hearing to introduce relevant evidence, to examine and cross-examine witnesses and to argue orally. After the hearing, written briefs in support of their respective positions were filed by the General Counsel and Respondent.

Upon the entire record, including my observation of the demeanor of the witnesses and after consideration of the arguments and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Grow-Art is engaged in agricultural operations in Monterey County, California. It employs workers. Accordingly, I find that Respondent is an agricultural employer within the meaning of section 1140.4(c) of the Act.

At all times material to the proceedings, the UFW was a labor organization within the meaning of section 1140.4(f) of the Act.

II. Respondent's Operations

Grow-Art's operations are based in Salinas, California and consist of five separate ranches in the area. Arthur Panziera is the President of the corporation. Grow-Art grows lettuce, celery, broccoli, cauliflower, mixed greens, green onions and spinach. Grow-Art packs mixed greens and green onions. Its packing shed is located at 650 Ranch View Lane, Salinas, California on one of the five separate ranches.

III. The 1980 Election

The UFW petitioned for certification on July 31, 1980. Said petition alleged the existence of a strike situation at Grow-Art. At the pre-election conference on August 1, 1980, Respondent presented two employee lists, as required by the ALRB rules: one including farm labor contractor employees and field workers and excluding packing shed workers, and a second, comprised of the former but, in addition, including the packing shed workers. Concern was expressed by Grow-Art's president about the ability of the farm labor contractor employees to vote. It was suggested by Respondent that a second polling site be arranged in Soledad, approximately thirty (30) miles away, to accommodate to the expected election date locale of the labor contractor employees (a site not owned by Respondent). There was no final response to the suggestion at the pre-election conference. After the conference had ended, the Board agent decided to arrange an election site in Soledad; however, he did not notify the Respondent until 6:30 the following morning, half an hour before the election. The Board agent did not notify many of the farm labor contractor employees, but claimed that he had

tried. Respondent immediately telegrammed its objections to the Board and requested that the election be rescheduled. The request was denied.

The Board approved the eligibility list, which included the packing shed workers despite Respondent's claim that its packing shed was a commercial shed and should not have been included in the voting unit.

On August 2, 1980, a representation election was conducted among Respondent's employees. The UFW received 21 votes and "No Union" received 6 votes. There were 66 challenged ballots which had been cast by Respondent's packing shed employees who, as indicated, Respondent contended were not agricultural employees and were therefore ineligible to vote.

IV. Objections, Challenges and Certifications

On August 8, 1980, Respondent filed objections to the election and a hearing was held before an Investigative Hearing Examiner ("IHE") on Respondent's challenges and on two of Respondent's objections. These two objections were: 1) that inadequate notice procedures had resulted in the disenfranchisement of 51 labor contractor employees, and 2) that threats and intimidation caused the election to be conducted in an atmosphere of fear. IHE found that 51 farm labor contractor employees were disenfranchised by inadequate notice procedures. However, the IHE recommended that the packing shed employees be deemed agricultural employees within the meaning of Labor Code section 1140.4(b) and that their votes be counted.

The IHE recommended a procedure for further resolution of the matter, to wit: if, after tallying the ballots of the

packing shed employees, the 51 disenfranchised labor contractor employees could have been outcome determinative, then he would set aside the election. If the 51 votes could not be outcome determinative, he would overrule the objections presumably as moot. Respondent excepted to this procedure claiming that the defective notice required setting aside the election even if, after tallying the packing shed votes, the 51 labor contractor votes would not be outcome determinative. Respondent argued that the public confidence in the integrity of the election and campaign processes requires as much. The Board subsequently affirmed the IHE's conclusion that the packing shed workers were agricultural employees and ordered that their ballots be opened and counted and rejected Respondent's exceptions. Grow-Art (1981) 7 ALRB No. 19 (Grow-Art I).

The amended tally revealed that 80 votes were cast for the UFW and 12 votes were cast for "No Union". There was one unresolved undeterminative challenged ballot. The Board, affirming the IHE's conclusions as to the remaining two election objections, certified the UFW as the exclusive bargaining representative of Respondent's agricultural employees on October 9, 1981. Grow-Art (1981) 7 ALRB No. 32 (Grow-Art II).

V. Post Certification Communications, Bargaining And/Or Refusal to Bargain

On December 4, 1981, UFW representative David Martinez sent a letter requesting Respondent to commence negotiations with the UFW and to provide certain information necessary for bargaining. On December 16, 1981, Respondent through its attorney, Arnold B.Myers, responded by letter to the UFW's

request, informing Martinez that "the employer will be pleased to meet with you with the objective of bargaining in good faith and reaching a mutually acceptable contract." Myers also wrote that Respondent was compiling information in response to the request for information and asked Martinez to suggest dates for a first meeting. On January 8, 1982, Myers sent general information on the company operations to Martinez.

The parties then scheduled their first negotiating meeting which was held on February 17, 1982. Oscar Mondragon and Mary Mecartney represented the UFW, while Myers represented Respondent. Arthur Panziera, president of Grow-Art, also attended. Mondragon and Mecartney presented the UFW proposals, consisting of a completed contract with a neighboring grower, H & T Packing Company, and, as an alternative, an initial "boiler plate" contract used previously by the UFW.

Myers stated at the outset that Respondent had problems with the UFW's certification. Myers told Mondragon about Respondent's three legal questions about the election--(1) the failure to notify the labor contractor employees, (2) the alleged threats by the UFW and (3) the status of the packing shed workers. Myers indicated that Respondent could go to court to test the certification, but sought an easier solution through mutual agreement. Because of the considerable risk of Respondent being held liable for a Board ordered "make-whole" order while an attempt to resolve these issues through mutual agreement was undertaken, Myers informed the UFW that Respondent was not "refusing to bargain", but rather was weighing its options.

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Myers referred to a recent appellate court decision, Triple E Produce Corp. v. ALRB (1982) 127 Cal.App. 3d 404, which had reversed a Board certification decision involving threat during an election campaign and which had issued after Grow-Art II Myers indicated that this holding would support Respondent in having the Court of Appeal overturn the Board, sustain Respondent' election objection concerning threats and nullify the election results.

Myers also stated that Respondent disagreed with the Board's ruling as to the packing shed workers. Myers then told Mondragon that having to bargain about the packing shed workers put Respondent at a competitive disadvantage with neighboring packing shed operations, such as Hibino Farms and H & T Packing Company, which were not under UFW contract. Myers said that Respondent employed about 26 field workers and 40 packing shed workers. Myers proposed to resolve the issue by mutual agreement. He said that if the UFW was willing to exclude the packing shed employees from the unit and not bargain over these workers, Respondent was willing to waive its right to seek court review of the certification. However, should the union refuse to exclude the packing shed workers, Respondent would have to decide whether to go to court on its election objections.

This was Respondent's first indication to the UFW that it was considering challenging the certification in the Court of Appeal. Respondent's previous written and telephone communications had not raised any questions regarding the certification. Mondragon responded that he would consult with legal counsel on the issue of threats and the impact of Triple

E Produce Corp., supra, and that he was unprepared to take a position on the packing shed employees at that time. Mondragon indicated that he would present the UFW's position on the issues raised by Myers at the next meeting.

On February 23, 1982, Myers sent a letter to Mecartney giving information on the company operations. He repeated Respondent's position that the packing shed workers should be excluded because inclusion was not in accordance with NLRA precedent and would put Respondent at "a definite competitive disadvantage to other companies with UFW contracts whose shed workers are excluded." Myers sent additional information on March 9, 1982.

The parties held the second negotiation meeting on March 11, 1982. Mondragon gave the UFW's position on the issues raised by Myers at the first meeting. He said that the UFW believed that the Triple E Produce Corp., supra, was wrongly decided and that the Union was going to appeal the decision to the California Supreme Court. He also stated that the UFW's position was that it was legally obligated to represent the packing shed employees and therefore it refused to agree to exclude these packing shed employees from the unit. Myers replied that Respondent would have to consider its options and would advise the UFW of its position in two weeks.

On April 13, 1982, Mondragon sent Myers a letter requesting Respondent's position on bargaining about the packing shed employees. On April 26, 1982, Mondragon sent another letter repeating the request and suggesting April 24, 30, or May 3 meeting dates. On April 28, Myers sent a letter to Mondragon, stating

that Respondent was still considering its position and was not refusing to bargain. Myers' letter indicated that Triple E Produce Corp., supra, "has raised more questions and has complicated the Employer's analysis of the law." Myers wrote that he would be available on May 17.

The parties met on May 17. Myers submitted a letter to Mondragon, which stated that Respondent was refusing to bargain and listed the reasons substantially the same as previously indicated. Myers referred to all three election questions--(1) the inadequate notice of the election to the labor contractor employees, which he contended warranted the setting aside of the election even though the votes would not have been outcome determinative, (2) that the packing shed employees were non-agricultural under NLRA precedent, and their inclusion was at odds with the general custom in the area putting Respondent at extreme competitive disadvantage and (3) the threats during the election campaign, already objected to but overruled by the Board, were arguably valid objections according to recent higher authority The parties did not meet again.

DISCUSSION AND ANALYSIS

Since May 17, 1982, Respondent has refused outright to bargain with the UFW, with the stated reason of seeking court review of the UFW's certification. Unless the Board were to reconsider the UFW's certification and withdraw it, by refusing to bargain with its employees' certified bargaining representative, Respondent has violated Labor Code section 1153(e) and

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(a).[2/] There are two issues in this case:

1. Whether Respondent engaged in unlawful bad faith bargaining from the time of the Union's first request to bargain until Respondent's outright refusal to bargain, and

2. Whether Respondent had a reasonable good faith belief that the Board's certification decision would be overturned upon judicial review.

This case is not a typical technical refusal to bargain case where an employer, upon receiving a request to negotiate

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2. The ALRB has adopted the National Labor Relations Board ("NLRB") policy of refusing to relitigate at the unfair labor practice stage issues that could have been or were raised during the underlying representation proceeding, absent previously unavailable or newly discovered evidence or extraordinary circumstances. Perry Farms, Inc. (1978) 4 ALRB No. 25, rev'd. on other grounds (1978) 86 Cal.App. 3d 448; Charles Malovich (1980) 6 ALRB No. 29, review den. by Ct. App., 5th Dist., June 18, 1981. Nevertheless, at the discretion of the ALRB, whose composition may vary from one period to another, the ALRB could decide to reconsider a matter it or its predecessor decided in a representation matter in a subsequent unfair labor practice matter whether or not subsequent circumstances or appellate court holdings or modifications so mandated.

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from a certified union, immediately refuses to bargain in order to seek judicial review of the certification. In this case, the UFW requested Respondent to negotiate on December 4, 1981. It was not until May 17, 1982, more than five months later, that Respondent expressly and formally refused to negotiate. The General Counsel argues that Respondent delayed notifying the UFW of its intent to test the certification which delay is evidence of bad faith and thereby forms the basis of an independent violation of Labor Code section 1153(e). General Counsel relies on Holtville Farms, Inc. (1981) 7 ALRB No. 15; Robert H. Hickman (1978) 4 ALRB No. 73 to support the contention.

The General Counsel urges that Respondent's conduct during this interim period strongly supports a finding of bad faith. From the UFW's first bargaining request on December 4, 1981 until the parties' first meeting on February 17, 1982, Respondent did not express that it was contemplating refusing to bargain in order to seek review of the certification. Respondent had given preliminary bargaining information to the UFW in two separate letters.

Respondent asserts that there was a need for a "face-to-face" meeting with the UFW negotiators because the UFW representatives were probably not familiar with the packing shed issue. Respondent indicates that it wanted to point out to the UFW that inclusion of the Grow-Art packing shed workers was contrary to the UFW's position of excluding these workers at neighboring farms.

At the first negotiation meeting on February 17, 1982, Respondent proposed that the UFW agree to exclude the packing shed

employees. The General Counsel's contention that Respondent conditioned negotiations on the exclusion of unit employees and thereby violated Labor Code section 1153(e) requires analysis. Respondent was contemplating testing the certification and so indicated at the first negotiating meeting. Respondent at all times was well aware of the potential liability of incurring the make-whole remedy. Respondent sought to negotiate an acceptable solution. No authority disposing of this question has been cited to me nor am I aware of any. It appears to me then that the purposes of the Act are fostered by negotiation of such a dispute for many reasons. Not least important, the parties may reach an accord acceptable to each, the public is spared the friction and the Board is relieved of the difficult and costly task. I do not see unreasonableness nor any lack of good faith in pursuit of such a resolution.

From February 17 until its formal refusal to bargain on May 17, by letter and in meetings, Respondent repeatedly told the UFW that it was trying to decide on its course of action but that it was not refusing to bargain. After the UFW's March 11 rejection of Respondent's proposal to agree to exclude the packing shed employees, two more months elapsed before Respondent finally informed the Union of its intent not to bargain in order to seek review of the certification.

Respondent could have raised these concerns immediately after the Union's request to bargain and could have thereupon and forthwith refused to bargain in order to test the certification. Respondent certainly did not expedite the matter. General Counsel urges that Respondent's conduct shows not only an uncertainty about

the merits of its objections, but also a lack of diligence in collective bargaining matters which delayed for five months its final determination of its position.

The issue at this point is whether this delay indicated an unlawful refusal to bargain on the one hand, or, whether, under the circumstances, the employer's conduct was reasonable and in good faith. No conclusive authority is cited to me, nor am I aware of any, indicating that under the circumstances, the employer's conduct was unreasonable and not in good faith. This appears to be an area of discretion vested in the Board and reviewable by the courts of appeal. Although my intention is not to usurp the Board's discretion, I understand my mandate to be to provide the Board with my framework for analysis which the Board is free to accept or not. Given the arguable changing state of the law in the pertinent areas, and given the Respondent's risk of considerable liability for "make-whole", I am not persuaded that Respondent's proposal to negotiate a solution, despite the fact that it took longer than it should have, violated the Act. The question is close, but I am not satisfied that General Counsel has surmounted the burden.

General Counsel urges that Respondent conditioned negotiating on the UFW's exclusion of the packing shed employees from the unit. As indicated, this is not so. Respondent, in my view, sought to negotiate the matter by offering to trade away its right to appeal the matter. The packing shed workers, as well as the labor contractor employees, are arguably persons in "noncontiguous geographic areas" where the appropriate unit may be changed at the discretion of the Board, cf. R.C. Walter & Sons (1976) 2

ALRB No. 14.

The General Counsel urges that the record also contains evidence showing that the presentation of the proposal by Respondent to the UFW was in bad faith because the overwhelming majority of employees voted for the UFW and as the Board had already decided to include the packing shed employees, the submission of this "predictably unacceptable" proposal to exclude them further indicates Respondent's bad faith. The submission of this proposal impresses me as neither predictably unacceptable nor unreasonable. This argument does not appreciate the practical attempt to seek an overall solution through negotiation--a concept fundamental to the reason for the Act.

General Counsel contends that this is a case of bad faith or surface bargaining which warrants the application of the make-whole remedy which is routinely awarded in all bad faith or surface bargaining cases under the ALRA.[3/] McFarland Rose Production (1980) 6 ALRB No. 18; AS-H-NE Farms, Inc.,

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3. Unlike the NLRA, the ALRA provides a make-whole remedy for an employer's refusal to bargain. Labor Code section 1160.3 reads in part: "[T]he board...shall issue...an order requiring such person [who has violated the Act] to cease and desist from such unfair labor practice, to take affirmative action, including reinstatement of employees with or without backpay, and making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employee's refusal to bargain, and to provide such other relief as will effectuate the policies of this part."

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(1980) 6 ALRB No. 9, review den. by Ct. App., 5th Dist., Oct. 16, 1980, hg. den., Nov. 12, 1980; O.P. Murphy Produce Co., Inc. (1979) 5 ALRB No. 63, review den. by Ct. App. 1st Dist., Div. 4, Nov. 10, 1980, hg. den., Dec. 10, 1980. General Counsel contends that, even when analyzed as a technical refusal to bargain, this case warrants the imposition of the make-whole remedy.

In J.R. Norton Company (1980) 6 ALRB No. 26, review den. by Ct. App., 4th Dist., Div. 1, January 7, 1980, hg. den. March 14 1981, the Board developed a two-pronged test for the applicability of the make-whole remedy in technical refusal to bargain cases. This development was in response to the California Supreme Court's decision in J.R. Norton Company v. ALRB (1979) 26 Cal.3d 1, in which the Court held that the make-whole remedy may not be applied automatically in all technical refusal to bargain cases. The Court balanced the conflicting considerations arising from the application of the remedy, one being the need to prevent unnecessary delay in the bargaining rights of agricultural employees by discouraging frivolous challenges to the certification, the other being the interest in fostering judicial review of meritorious election challenges. The Court held that the applicability of the make-whole remedy should be determined on a case-by-case basis, and that the remedy could be imposed except when it appears that the employer reasonably and in good faith believed the appeal could change the results of the decision under appeal.

Applying this language, the Board fashioned a two-pronged test. It would first determine whether the employer's litigation posture was reasonable at the time of its refusal to bargain. If it was unreasonable, the Board's inquiry would end

and the make-whole remedy would be applied.

If the Board determined that the litigation posture was reasonable, the Board would then determine whether the employee had acted in good faith in seeking judicial review of the certification. If the employer had acted reasonably but in bad faith, the make-whole remedy would be applied. J.R. Norton Company, supra, at 3 of slip opinion; Holtville Farms, Inc. (1981) 7 ALRB No. 15.

Respondent asserts as its reasons to seek judicial review the three election objections which had been set for hearing, litigated, and decided by the Board in Grow-Art I and Grow-Art II, and an arguable change in the law.

In Grow-Art I, the IHE, after a lengthy discussion of the facts, concluded that the notice given to the 51 labor contractor employees was inadequate. He therefore recommended that the election be set aside if these 51 votes proved to be outcome determinative. In Grow-Art II, after the amended tally of ballots had issued, the Board concluded:

> "As the inadequate notice of the second polling site did not involve a sufficient number of voters to tend to affect the outcome of the election or render it nonrepresentative, we shall not set aside the election on that basis. Lu-Ette Farms (September 29, 1976) 2 ALRB No. 49; Verde Produce Company (May 16, 1980) 6 ALRB No. 24; Carl Joseph Maggio, Inc. (January 16, 1976) 2 ALRB No. 9; Grow-Art,

supra, 7 ALRB No. 32, at 2 of slip."

Opinion.

As 80 votes had been cast for the UFW and 12 had been cast for "No Union", with one unresolved challenged ballot, it is clear that the UFW would have won the election, even if all 51 labor contractor employees had voted against the UFW. Nevertheless, Respondent argues that even though 51 (disenfranchised) votes for the Respondent would not have affected the outcome of the mechanics of the tally at that point in time, public policy requires that proper notice and other procedures be accorded so that the perception as well as the fact of fair and due process is fulfilled. This argument is not without support in logic and law, cf. Pacific Farms, 3 ALRB No. 75, Cal. Gas Redding, Inc., 241 NLRB No. 39, 100 LRRM 1486. Moreover, it is arguable that proper and timely notification to the 51 labor contractor employees may have changed the political campaign, which in turn could have influenced the way in which all of the ballots were cast.

Next, General Counsel argues that seeking judicial review of the Board's dismissal of the objection that threats resulted in an atmosphere of fear is unreasonable. In Grow-Art I, the IHE found that, before the election, one employee was threatened by strikers with physical harm, and later by a UFW representative with job loss, if he refused to join the strike. He heard that he could be fired if he did not vote for the Union. This same employee, however, was subsequently told that he would not be fired if the Union won. He testified that he had voted with the assurance that his job would not be in jeopardy if he voted against the Union. Another employee testified that, on the first day of

the strike, he was threatened by strikers and later by a UFW representative if he refused to join the strike. The IHE found that, since one of the workers stated that threats had not affected his vote, the only evidence was that "one worker might have had some reluctance to vote against the union because of the threats." The IHE found no other evidence that workers were intimidated into voting contrary to their desire and no evidence that the election was conducted in an atomosphere of fear. He therefore recommended that the objection be dismissed. In Grow-Art II, the Board affirmed the IHE's conclusion that the objection was not supported by sufficient evidence.

General Counsel argues that given her claimed insubstantial nature of the objection and the wide margin of victory for the UFW in the election, the record evidence does not support a reasonable belief that "misconduct occurred which affected the outcome of the election." J.R. Norton Company, supra, at 2 of slip opinion. In technical refusal to bargain cases where the Board in the underlying representation proceeding has dismissed election objections dealing with employee or union misconduct during the campaign, the General Counsel argues that the Board will award the make-whole remedy. C. Mondavi & Sons (1980) 6 ALRB No. 30; George Arakelian Farms, Inc., supra. Nevertheless, a reviewing court might reject the Board's conclusion as to impact and refuse to enforce the bargaining order.

Respondent argues that the appellate court decision in Triple E Produce Corp. v. ALRB (1982) 127 Cal.App. 3d 404, 411, indicates that appeal to the courts has a precedent for success and therefore is not unreasonable. Clearly in cases involving

objections which raise complex or novel questions of statutory interpretation under the ALRA, appeal is reasonable. Moreover, pursuit of judicial review is reasonable in cases involving the interpretation of a provision in the ALRA which has no counterpart in the NLRA and which has not been judicially decided. Charles Malovich (1980) 6 ALRB No. 29; High & Mighty Farms (1980) 6 ALRB No. 31.

In Triple E Produce Corp., supra, the Board found that UFW organizers taking access in excess of that provided by the access regulation told at least ten employees in different conversations that they would lose their jobs if they did not vote for the UFW. The Board concluded that the statements there would be viewed as campaign propaganda and that, as only a small number of employees heard the statements, they did not affect the employees in their choice of a representative. The Board therefore dismissed the objection. On appeal, the court, reversing the Board, found that there was "undisputed evidence of widespread intimidation" on the record and that there was insufficient evidence to support the Board's finding that the workers viewed the statements merely as ineffectual campaign propaganda. Triple E Produce Corp. v. ALRB, supra, 127 Cal.App. 3d at 413, 414. Perhaps, in the instant case, there was less evidence of widespread intimidation--it seems that two workers may have been affected by threats--but a respectable argument to the Court of Appeal can be made.

The General Counsel argues that seeking judicial review of the Board's dismissal of the objection that the packing shed employees were non-agricultural is unreasonable.

In Grow-Art I, the IHE discussed the facts involving this objection at length. Briefly, he found that Respondent's packing shed operations processed only the vegetable produce raised on Respondent's own farm. In 1980, Respondent entered into an agreement with T. W. Slaughter whereby Slaughter purchased, before planting, 20% of Respondent's crops. Slaughter would assume the risk of financial loss and reimburse Respondent for expenses incurred in raising that portion of the crop. Slaughter could control the means and methods of production utilized by Respondent's employees. Respondent would receive a set fee per acre and per carton of vegetable packed, and Slaughter would be entitled to any profit from the crop above and beyond Respondent's expense and fees. The agreement provided for Slaughter to decide the variety of seeds to be planted and the fertilizer, herbicide and pesticide programs to be used. Slaughter, however, actually chose to perform none of these managerial functions. Respondent performed these functions instead.

The IHE analyzed the status of the packing shed workers according to the secondary definition of agriculture set forth in section 3(f) of the Fair Labor Standards Act:

> "Agriculture includes...any practices ...performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

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The IHE concluded that Respondent's packing shed operation fit within the secondary definition of "agriculture", since Respondent packed only those and mixed vegetables that it produced on its own farm, eighty percent of which it owned outright and twenty percent of which it raised for Slaughter. The IHE also concluded that the percentage of crops which Respondent arranged to protect from risks of ownership was irrelevant to the finding that the packing shed operation was agricultural.

Upon appeal, the Board agreed with the IHE's conclusion that the packing shed employees were agricultural. However, the Board specifically rejected the IHE's conclusion that the percent of crops arranged to be protected from the risks of ownership was irrelevant to the status of the packing shed employees. The Board set forth its own analysis:

> "Rather, we find, on viewing the total situation and avoiding the mechanical application of any rule or percentage, that [Slaughter] chose not to exercise any of the rights guaranteed him in the contract between himself and the Employer that may have caused him to act as an independent grower. Therefore, Grow Art neither packaged nor processed any agricultural commodity for an independent grower. Bonita Packing Co. (Dec. 1, 1978) 4 ALRB No. 96; D'Arrigo Brothers (1968) 171 NLRB 22, 23; Maneja v. Waialua Agriculture Co. (1955) 349 U.S. 254.

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Grow Art, supra, 7 ALRB No. 19 at p.2, fn. 2 of slip opinion.

The Board thus concluded that Slaughter did not function as an independent grower. This conclusion however, may not be accepted by the courts. There is sufficient authority both in the courts and elsewhere, supra, to support arguments contrary to the Board's legal conclusion that the packing shed workers were agricultural employees, cf. Carl Joseph Maggio, Inc., 2 ALRB No. 9, McFarland Rose Production, 2 ALRB No. 44, Associated Produce Distributors, 2 ALRB No. 47.

CONCLUSIONS

As indicated, inquiry has been made as to whether Respondent's litigation posture is reasonable. For the reasons set forth above, and mindful that this is a judgment call for which I am only offering a suggested analysis and conclusion for the Board, which body clearly has the discretion to accept or reject same, it appears to me that the factors here resulted in a "close [case] that [raises] important issues concerning whether the election was conducted in a manner that truly protected the employees' right of free choice." J.R. Norton Co. v. Agricultural Labor Relations Bd., supra, at 39. Under these circumstances, it is my impression that Respondent's litigation posture is reasonable.

Furthermore, despite my impression that it took longer for Respondent to make its decision to test the certification and to announce said intent than it need have or should have taken, it is my assessment that the record does not reveal that Respondent

acted in bad faith in seeking judicial review of the certification Therefore, because the totality of the circumstances indicates to me that Respondent's litigation posture is reasonable and undertaken in good faith, I would find that imposition of the make-whole remedy is not warranted in this case, and therefore I would not include it in the following recommended:

ORDER

By authority of Labor Code section 1160.3, the Agricultura Labor Relations Board hereby orders Respondent, Grow Art, its officers, agents, successors, and assigns, to:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code section 1155.2(a), with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of its agricultural employees.

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

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

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

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

(c) Post copies of the attached Notice for 60 consecutive days at places on its premises, the times and places of posting to be determined by the Regional Director.

(c) Provide a copy of the Notice to each employee hired by the Respondent during the 12-month period following the day of issuance of this Decision.

(e) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed at any time during the payroll period immediately preceding December 6, 1981, and to all employees employed by Respondent at any time from and including December 6, 1981, until compliance with this Order.

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

(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, Respondent shall notify him or her periodically thereafter in writing as to what further steps have been taken in compliance with this Order.

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

DATED: JANUARY 28, 1983

MICHAEL K. SCHMIER
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

A representative election was conducted by the Agricultur Labor Relations Board (Board) among our employees on August 8, 198 The majority of the voters chose the United Farm Workers of America, AFL-CIO ("UFW"), to be their union representative. The Board found that the election was proper and officially certified the UFW as the exclusive collective bargaining representative of our agricultural employees on October 9, 1981. Some time after the UFW asked us to begin to negotiate a contract, we refused to bargain so that we could ask the court to review the election. After a hearing, at which all parties had the opportunity to present evidence, the Board found that we have violated the Agricultural Labor Relations Act by refusing to bargain collectively with the UFW. The Board has told us to post and publish this Notice and to take certain additional actions. 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

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

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

DATED:

GROW ART

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 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3161.

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

DO NOT REMOVE OR MUTILATE.