Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GEORGE A. LUCAS & SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 82-CE-213-D 10 ALRB No. 14 (8 ALRB No. 61)

DECISION AND ORDER

In accordance with the provisions of California Administrative Code, title 8, section 20260, Respondent George A. Lucas & Sons, Charging Party United Farm Workers of America, AFL-CIO, (UFW) and General Counsel have submitted this matter to the Agricultural Labor Relations Board (Board) by way of a stipulation of facts and have waived an evidentiary hearing. Each party filed a brief on the legal issues, which concern Respondent's technical refusal to bargain with the certified bargaining representative of its agricultural employees in order to seek a judicial review of the underlying representation proceeding in George A. Lucas & Sons (1982) 8 ALRB No. 61, and the matter of an appropriate remedy for Respondent's denial of the validity of the Union's certification.

Pursuant to the provisions of California Labor Code section 114-6, the Board has delegated its authority in this matter to a three-member panel.

The undisputed facts are these: the UFW is a labor

organization and Respondent is an agricultural employer within the meaning of the Agricultural Labor Relations Act (Act). Pursuant to a petition for certification filed by the UFW on May 26, 1981, an election was held on June 2, 1981, in which employees cast 219 votes for the UFW, 150 for No Union, and 24 challenged ballots which were not outcome-determinative. Thereafter, on June 8, 1981, Respondent timely filed objections to the election which were heard by an Investigative Hearing Examiner (IHE), who recommended that all objections be dismissed and that the results of the election be certified. Respondent timely filed exceptions to the IHE's recommended Decision and a supporting brief. On September 10, 1982, the Board, in 8 ALRB No. 61, adopted the IHE's recommendation and certified the UFW as the exclusive bargaining representative of all agricultural employees of George A. Lucas & Sons.

By letters dated September 21 and October 27, 1982, the UFW invited Respondent to commence negotiations. On November 22, 1982, Respondent advised the Union that it believed that the Board erred in certifying the Union. Specifically, Respondent contended that the election had not been properly conducted, and it would therefore refuse to bargain, in violation of Labor Code section 1153(e), in order to obtain a final appealable order of the Board pursuant to Labor Code section 1160.3.

On November 26, 1982, the UFW filed the instant unfair labor practice charge. On January 6, 1983, based on that charge, the Regional Director for the Delano Region issued a complaint,

alleging that Respondent had refused to bargain collectively in good faith with the UFW in violation of Labor Code section 1153(e) and had thereby interfered with its employees' Labor Code section 1152 rights in violation of Labor Code section 1153(a). On January 18, 1983, Respondent filed an answer to the complaint in which it stated that it refused to bargain for the sole purpose of obtaining a judicial evaluation of the Board's Order in 8 ALRB No. 61. Respondent also proposed to the parties that this proceeding be expedited by means of stipulated facts and waiver of an evidentiary hearing. All parties agreed, and this case was transferred directly to the Board on August 17, 1983.

Labor Code section 1160.3 authorizes the Board to award makewhole relief for employees' loss of pay resulting from an employer's refusal to bargain when the Board deems such relief appropriate. In J. R. Norton Co. v. Agricultural Labor Relations Board (1979) 26 Cal.3d 1, the California Supreme Court endorsed the imposition of the makewhole remedy in technical refusal to bargain cases in which the Board has determined that the employer persists in challenging the results of a representation proceeding as a means by which to delay the negotiations process and defer its obligation to bargain. Such disregard for employees' collective bargaining rights demonstrates bad faith and warrants an extraordinary remedy. The court cautioned that makewhole would not be an appropriate remedy in "close" cases where the challenge is based on an employer's "reasonable good faith belief" that employees had not freely selected the union to represent

them. Thus, the Norton standard limiting imposition of the makewhole remedy in technical refusal to bargain cases only concerns misconduct which would tend to affect the results of the election.

Respondent has presented no new evidence or legal theories not considered by this Board prior to its rejecting Respondent's objections to the election and certifying the UFW upon finding that Respondent had not established conduct which would tend to affect the outcome of the election.[1/] As Respondent

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[1/] The points raised by Respondent in its present appeal were considered and discussed in 8 ALRB No. 61, wherein we traced the history of the NLRB's "strict neutrality" rule, noting that the national Board has itself moved away from such a standard and now follows a composite approach which, on a case-by-case basis, examines Board agent misconduct in light of whether the disputed conduct tended to affect employee free choice and also whether it created an appearance of impropriety such as to impair the integrity of the Board's election processes. (See, e.g., Wabash Transformer Corp. (1973) 205 NLRB 148 [83 LRRM 1454].) Furthermore, as we explained in 8 ALRB No. 61, the "strict neutrality" standard was a product of the NLRB concept that "In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." (General Shoe Corp. (1948) 77 NLRB 124, 127 [21 LRRM 1337].) This Board has long held that that doctrine, commonly referred to as "laboratory conditions," is inapplicable in the agricultural setting where work force turnover and mobility render impractical the invalidating and rerunning of an election whenever the Board finds that a laboratory condition has been violated. (See, e.g., D'Arrigo Brothers of California (1977) 3 ALRB No. 37.) Even were we to adopt the doctrine, we would be compelled to acknowledge, as has the NLRB, that "laboratory conditions" is an ideal which is not always readily attainable. As the NLRB stated in Owens-Corning Fiberglass Corp. (1969) 179 NLRB 219 [72 LRRM 1289], " . . . elections must be appraised realistically and practically, and should not be judged against theoretically ideal, but nevertheless artificial standards." In further justification for its technical refusal to bargain, Respondent poses a

(Fn. 1 cont. on p. 5.)

has failed to prove a "close case" based on a "reasonable good faith belief that the Union would not have been freely selected by the employees as their bargaining representative had the election been properly conducted," we can only conclude that Respondent seeks to prolong this controversy as an "elaborate pretense" in order to forestall its obligation to bargain with the chosen representative of its employees and to thereby thwart the purposes of the Act. (J. R. Norton v. Agricultural Labor Relations Board (1979) 26 Cal.3d 1.) We therefore find that a makewhole award is an appropriate remedy for Respondent's bad faith refusal to honor the certification Order in 8 ALRB No. 61.

The makewhole period begins on September 24, 1982, three days from the date the UFW first mailed Respondent a request to commence negotiations. As Respondent's obligation to bargain with its employees' certified representative began upon receipt of the UFW's letter, the remedy to correct Respondent's failure and refusal to discharge that obligation should appropriately take effect as of the same date. In accordance with the terms

(Fn.1.cont.)

procedural issue in which it questions the validity of the Board's rejection of excess pages in its post-hearing brief to the IHE. That matter has been fully discussed in 8 ALRB No. 61. In any event, that action by the Board did not preclude Respondent from fully apprising us of its exceptions to the IHE's Decision nor would post-election procedures have any relevance with respect to employee-free choice.

The totality of Respondent's arguments in defense of its refusal to bargain are outside the outcome-determinative standard set forth in J. R. Norton Co. (1981) 26 Cal.3d 1. No reasonable employer would in good faith believe that the conduct at issue herein could serve to insulate him or her from the Norton, supra, makewhole remedy.

of California Administrative Code, title 8, section 20480, mail is presumed received three days from mailing (or, if the third day falls on a Sunday or a legal holiday, on the next regular business day). (See, e.g., Frudden Enterprises (1983) 9 ALRB No. 73.)

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that George A. Lucas & Sons, its officers, agents, 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 1155.2(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 employees 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 makewhole 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 September 24, 1982, until July 28, .1983, the date on which the statement of facts was first signed by one of the parties, 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 of makewhole and interest 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 September 24, 1982, 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 date of issuance 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: March 22, 1984

JOHN P. McCARTHY, Member

JEROME R. WALDIE, 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 June 2, 1981. 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 September 10, 1982. When 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. The Board has found that we have violated the Agricultural Labor Relations Act (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 September 24, 1982, 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: GEORGE A. LUCAS & SONS

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 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