Clovis, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D. PAPAGNI FRUIT CO., and D. P. FARMS, CO., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 84-CE-19-F 11 ALRB No. 38

DECISION AND ORDER

This matter has been submitted to the Agricultural Labor Relations Board (Board) by Respondent D. Papagni Fruit Company and D. P. Farms Company, and Charging Party United Farm Workers of America, AFL-CIO (UFW or Union), pursuant to Board Regulation 20260 (Cal. Admin. Code, tit. 8, § 20100, et seq.). Under that Regulation, the parties have filed a stipulation of facts and have waived an evidentiary hearing before an Administrative Law Judge (ALJ). The case involves a "technical" refusal to bargain[1/] engaged in by Respondent in order to obtain judicial review of the validity of the certification obtained by the Union in case number

[1/] An ALRB certification of a bargaining representative is not subject to direct judicial review because it is not considered a "final order" under Labor Code section 1160.8. A party may obtain indirect review of a certification by "technically" refusing to bargain with the union and having an appellate court examine the underlying certification as part of its scrutiny of the Board's "final order" that an unfair labor practice (i.e., a refusal to bargain with the certified representative) has been committed. (Nishikawa Farms, Inc. v. Mahony (1977) 66 Cal.App.3d 781.

83-RC-21-F, issued by the Board on June 27, 1984 in 10 ALRB No. 31.

Each party has filed a brief on the legal issues in the case, which essentially involves whether to impose the makewhole remedy according to the dictates of J.R. Norton Co. v. ALRB (1979) 26 Cal.3d I.[2/]

Pursuant to the provisions of Labor Code section 1146,[3/] the Board has delegated its authority in this matter to a three-member panel.[4/]

The undisputed facts in this matter are as follows: the Union is a labor organization within the meaning of the Agricultural Labor Relations Act (Act); Respondent is an agricultural employer. Pursuant to a petition for certification in case number 83-RC-21-F, filed by the Union on September 19, 1983, an election was held on

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[2/] The complaint issued herein by the General Counsel did not include, in its prayer, a request that makewhole relief be awarded. After the complaint itself issued, but prior to the transfer of the matter to the Board, the Union wrote to the Regional Director and to the General Counsel, respectively, asking for a statement of reasons in support of the failure to include a request for makewhole relief in the complaint. The Union also wrote the Respondent's representative on February 14, 1985 informing him that it would seek a makewhole award in the instant unfair labor practice matter. In the brief to the Board filed by the Union, the Union requested that makewhole relief be applied in this case.

Subsequent to the Union's filing its brief, Respondent filed a brief opposing the Union's effort to obtain makewhole in which it fully treated the issues of whether makewhole can be awarded in the absence of a request for it in the complaint, and assuming arguendo that it could, whether makewhole relief should be awarded in this case.

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

[4/] The signatures of Board members in all Board Decisions appear with the signature of the chairperson first (if participating), followed by the signatures of the participating Board members in order of their seniority.

September 24, 1983, among all of Respondent's agricultural employees. As revealed by the Tally of Ballots, the election resulted in 230 votes cast for the Union, 187 votes for "no union," and 20 challenged ballots, out of a total of 490 names which appeared on the election eligibility list.

On September 30, 1983, Respondent filed its "Petition Setting Forth Objections to Conduct of Election...," enumerating some 62 separate allegations of conduct claimed by Respondent to have affected the results of the election. On November 28, 1983, the Executive Secretary issued an Order dismissing all but two of Respondent's objections, and requesting additional information regarding a third.

Respondent sought reconsideration of the Executive Secretary's Order. After the Board ruled on this request,[5/] Respondent again sought reexamination by the Board of 31 of the dismissed objections. This additional request was denied by the Board.

On February 6, 1984, a representation hearing was scheduled for the purpose of considering whether the objections[6/] set for hearing would, if proven, warrant setting aside the

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[5/] The Board granted the Respondent's request regarding objections based on allegations of threat of loss of employment and/or physical violence, thus setting these matters for the representation case hearing, but otherwise affirmed the prior ruling of the Executive Secretary.

[6/] The objections were as follows:

1. Whether Union organizers misrepresented to employees that company buses would take them to the immigration authorities

[fn. cont. on p. 4]

election. As detailed in D. Papagni Fruit Co. (1984) 10 ALRB No. 31, after Respondent's motion to present evidence in support of its dismissed objections was denied by the Investigative Hearing Officer (IHE), Respondent refused to present any testimonial evidence on the three objections which were set for hearing[7/] on the grounds that a fair hearing could not occur unless all of its objections were heard. The Board's Decision issued thereafter, affirming the IHE's conclusion that Respondent, who bore the burden of proving its objections, had failed to sustain that burden, and had additionally waived its right to a further hearing regarding them. Accordingly, the Board certified the Union as the exclusive representative of Respondent's agricultural employees.

On July 26, 1984, the Union formally requested that Respondent commence collective bargaining negotiations. By letter dated August 3, 1984, Respondent informed the Union that it was rejecting the Union's request for bargaining in order to obtain "administrative and/or court review over the validity of the ALRB's

[fn. 6 cont.]

rather than to the polls, and if so, whether such misrepresentation tended to affect the outcome of the election.

2. Whether the polls opened late at the Madera voting site and, if so, whether the late opening disenfranchised a sufficient number of voters to have affected the outcome of the election.

3. Whether Petitioner threatened employees with loss of employment if they failed to vote for the Union and/or threatened employees with physical violence if they failed to support the Union, and if so, whether such conduct affected the outcome of the election.

[9/] Respondent attempted to introduce declarations which referred to the three objections in question. The IHE ruled that the declarations constituted uncorroborated hearsay "whose admission would deprive the petitioner of its right of confrontation and cross-examination." (IHE Decision at p. 4.)

recent certification of the UFW...."[8/]

The Union filed charge number 84-CE-19-F on August 13, 1984, alleging that Respondent was engaging in a refusal to bargain in violation of section 1153(e) of the Act. The General Counsel issued a complaint in this matter on September 16, 1984, incorporating the substance of this charge. As previously noted, however, the complaint did not contain a request for makewhole relief. On February 26, 1985, the parties agreed to submit the matter to the Board by way of stipulated record.

Respondent contends that since makewhole relief was not requested by the General Counsel in the complaint, it cannot be awarded as a remedy by this Board. It argues that the complaint should have included "factual allegations to support the award of makewhole," and further contends that should an award of makewhole be considered, it be allowed the opportunity, on remand, to present "evidence opposing the imposition" of the award. We reject both arguments.

First, in arguing that particular relief may not be applied where not initially requested in a complaint, without General Counsel's amending the complaint itself, Respondent overlooks the role of the Board in remedying unfair labor practices. It is the Board - not the General Counsel - which has the ultimate

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[8/] In the interim between July 26 and August 3, Respondent asked that the Union commence negotiations with it "conditionally," i.e., engage in negotiations while Respondent was judicially testing the certification. The Union rejected these requests. Respondent's representative also wrote to the General Counsel and the members of the Board on August 22, 1984, stating its position regarding "conditional" negotiations.

authority to determine the appropriate remedy in a given case, requests or recommendations by the General Counsel not withstanding. (Harry Carian Sales v. ALRB (1985) 39 Gal.3d 209; see also Truman Medical Center (1980) 247 NLRB 396 [103 LRRM 1168].)

This issue was squarely met by the California Supreme Court in the Carian case, where the Court approved the Board's imposition of a bargaining order despite the fact that General Counsel did not "... specifically request a bargaining order remedy." The Court stated "... [t]he Board has broad discretion in choosing the most appropriate remedy and there is nothing to suggest that the Board may grant only those remedies specifically requested in the prayer for relief." The Court went on to note that "... [w]hile the general counsel does have final authority with respect to the investigation and prosecution of unfair labor practice charges, it is the Board's responsibility to decide the merits of the case and to fashion the appropriate remedy." (Harry Carian Sales v. ALRB, supra, 39 Cal.3d at 233, 234.) Imposition of the makewhole remedy herein may therefore be considered.[9/]

Respondent's next argument is that once having determined that makewhole may be imposed, we must now take evidence on the propriety of awarding it. This contention ignores the fact that the appropriateness of awarding makewhole in a technical refusal to bargain case of this type is essentially a legal determination, not a

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[9/] Other similarities exist between Carian and the instant case. There, as here, the remedy was considered by the Board at the instigation of the charging party. Likewise, the respondent there had ample notice that the remedy was being sought. The court found no merit in Carian's due process argument that it had inadequate notice that the remedy might be imposed. (Id.)

factual one.[10/] (See J.R. Norton Co. v. ALRB, supra, 26 Cal.3d 1.) The cases decided by this Board upon remand following the Supreme Court's Norton decision reflect that, in determining whether to award makewhole, the Board applies a legal standard to already established factual matters arising out of the underlying representation case. (See, generally, J.R. Norton Co. (1980) 6 ALRB No. 26; D'Arrigo Bros, of California (1980) 6 ALRB No. 27; George Arakelian Farms, Inc. (1980) 6 ALRB No. 28; C. Mondavi & Sons, dba Charles Krug Winery (1980) 6 ALRB No. 30; High & Mighty Farms (1980) 6 ALRB No. 31; Kyutoku Nursery (1980) 6 ALRB No. 32.)

With these preliminary contentions disposed of, we turn to the merits of the case. It is clear that Respondent has violated section 1153(e). This Board has long applied the National Labor Relations Board (NLRB) proscription[11/] against relitigation of representation issues in unfair labor practice proceedings in the absence of any newly discovered or previously unavailable evidence or a claim of extraordinary circumstances. (D'Arrigo Bros, of

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[10/] The Norton case, as will be more fully discussed below, resulted in a two-pronged test utilized by the Board to determine the appropriateness of makewhole relief in a technical refusal to bargain situation. (See J.R. Norton Co. (1980) 6 ALRB No. 26.) The second prong of the test, whether an employer was not acting in good faith, generally, when it chose to contest an underlying certification, would arguably require factual support regarding the employer's conduct. However, this particular aspect of the test is applied only after it has been shown that an employer's "litigation posture" in challenging the certification was reasonable. (Holtville Farms, Inc. (1981) 7 ALRB No. 15.) The instant case, as discussed infra, does not present a situation warranting a determination of the employer's good faith as the reasonableness of Respondent's litigation posture is determinative on the makewhole issue.

[11/] See Pittsburgh Plate Glass v. NLRB (1941) 313 U.S. 146 [8 LRRM 4.25].

California (1978) 4 ALRB No. 45; Julius Goldman's Egg City (1979) 5 ALRB No. 8; Ron Nunn Farms (1980) 6 ALRB No. 41; Adamek & Dessert, Inc. (1985) 11 ALRB No. 8; George Lucas & Son (1984) 10 ALRB No. 14.) As Respondent has not shown any such evidence or claimed extraordinary circumstances to exist, we conclude that Respondent has violated sections 1153(a) and (e) of the Act by failing and refusing to meet with the UFW in collective bargaining negotiations. (See generally, J.R. Norton, Company (1978) 4 ALRB No. 39, affd. in pertinent part, J.R. Norton v. ALRB, supra, 26 Cal.3d 1.)

The issue thus remains whether to impose the makewhole remedy for Respondent's refusal to bargain. When a certification is contested in a "technical" refusal to bargain case, we must distinguish between attacks upon any certification which are designed to forestall the collective bargaining process and those which raise bona fide issues regarding the integrity of the election process. Following J.R. Norton, we have applied a two-pronged test to determine whether a refusal to bargain serves the purpose of the Act. "... [I]t must appear that the employer reasonably and in good faith believed [the conduct asserted as objectionable] would have affected the outcome of the election." (J.R. Norton v. ALRB, supra 26 Cal.3d at 39.) We thus impose makewhole in technical refusal to bargain cases when the employer's litigation posture is "not reasonable," or the employer is not acting in good faith in challenging the certification. (J.R. Norton Co., supra, 6 ALRB No. 26 at p. 2.) Utilizing this standard as a guide, we initially examine Respondent's conduct to ascertain whether it maintained a "reasonable litigation posture" as of August 3, 1984, when it

refused to bargain with the certified union.

Respondent's "litigation posture" may be ascertained from its answer to the instant complaint, Respondent's "Brief to the Board in Opposition to the Charging Party's Motion to Amend the Complaint," and the position it adopted during the representation case which gave rise to the Union's certification. In its answer, Respondent asserted numerous "affirmative defenses" to the refusal to bargain allegation, all of which assert in one way or another that by dismissing some of Respondent's objections to the election, the Board violated Respondent's right to have a hearing on its objections pursuant to Labor Code section 1156.3(c) and federal due process standards. In its brief filed with the Board, Respondent further asserted that by limiting the hearing to only three objections the Executive Secretary, the Board, and the Investigative Hearing Officer "... failed to consider the cumulative effect of all misconduct, as a whole [sic], which occurred during the election." Respondent additionally asserted that it believed "in good faith" that all of the misconduct affected the outcome of the election and further believed "in good faith" that the "... union would not have been freely selected ... as bargaining representative had the election been properly conducted." In sum, Respondent's "litigation posture" is based upon the contention that it had the right to a hearing upon all of its election objections, not just those set for hearing, and that it should have been permitted to argue that the "cumulative effect" of such alleged misconduct had an ultimate impact on employee free choice.

This argument was rejected by the Supreme Court in

J.R. Norton Co. v. ALRB, supra, 26 Cal.3d 1, which held that the Board has the discretion under Labor Code section 1156.3 to summarily dismiss election objections without conducting a hearing: "We hold that the Legislature did not intend 1156.3, subdivision (c),[12/] to be construed so broadly that it requires the Board to hold a full evidentiary hearing in cases in which the objecting party has failed to establish a prima facie case for setting an election aside." (J.R. Norton v. ALRB, supra, 26 Cal.3d at 9.)

The Supreme Court specifically approved the Board's Regulation implementing section 1156.3(c) (Section 20365) as a permissible exercise of the Board's rule-making authority set out in Labor Code section 1144.. Regulation section 20365 "... sets forth the threshold prerequisites that must be met before an objecting party will be entitled to a formal evidentiary hearing." (J.R. Norton v. ALRB, supra, 26 Cal.3d at 12 and fn.) Essentially, declarations supporting a party's election objections must establish prima facie proof of that party's claims[13/] before a hearing is ordered. The regulation further empowers the Executive Secretary to dismiss objections in the absence of such proof, which dismissals are reviewable by the Board. Adequate additional safeguards ensuring due process exist in the examination by an appellate court in

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[12/] That section provides that "upon receipt of a petition" objecting to the conduct of *a* representation election, "the Board, ..., shall conduct a hearing to determine whether the election should be certified."

[13/] Regulation section 20365(c) states that accompanying declarations, in order to constitute adequate proof of objections, must set forth facts "within the personal knowledge of the declarant" "which, if uncontroverted or-unexplained, would constitute sufficient grounds for the Board to refuse to certify the election."

a technical refusal to bargain case, when that court reviews the underlying certification.

Lastly, the Norton Court expressly concurred (J.R. Norton Co., supra, 26 Cal.3d at 17) in the appellate court's language in Radovich v. Agricultural Labor Relations Bd. (1977) 72 Cal.App.3d 36, 45, regarding the establishment, by Board administrative regulation, of legal prerequisites to the setting of an issue for an election objections hearing: "Otherwise, naked assertions of illegality unclothed with the raiments and accouterments designed to protect against an onslaught of inconsequential or frivolous or dilatory acts unsupported by even the undergarments of a prima facie case would frustrate the state policy as set forth in Labor Code section 114.0.2."

In the face of all the foregoing explicit and well established Supreme Court pronouncements, Respondent herein insists that its challenge to the exercise of discretion by the Executive Secretary and the Board in reviewing and dismissing its election objections, or "litigation posture," is "reasonable." This Board has held that maintaining a litigation posture which conflicts with well-established precedent is generally unreasonable and warrants the imposition of makewhole relief. (Leo Gagosian Farms (1984) 10 ALRB No. 39; Ranch No. 1 (1980) 6 ALRB No. 37; Ron Nunn Farms (1980) 6 ALRB No. 41.)

The representation case record reveals that Respondent's objections, as filed, were duly considered and ruled upon once by

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the Executive Secretary and at least once by the Board.[14/] As reflected in the Executive Secretary's initial Order of November 23, 1983, regarding the objections, where a ruling was made contrary to Respondent's assertions, the rationale underlying the ruling was set forth in detail. In each instance, Respondent was apprised by the Executive Secretary of the particulars why the objection was either legally or factually insufficient to be utilized as a basis for overturning the election.

Examining the Executive Secretary's ruling dismissing all but three of Respondent's objections, nearly one-half of the 62 objections filed were dismissed on the basis that there was inadequate declaratory evidence, including hearsay, to support the respective allegations of misconduct. Another 14. objections were dismissed because they complained of conduct within the proper exercise of Board agent discretion pursuant to the Regulations. The remaining allegations were dismissed as a result of: the failure to demonstrate coercive conduct; proof of "minor, insubstantial or trivial" incidents which would not tend to affect the outcome of the election; or the assertion of conduct which was not legally cognizable as a ground to set aside the election.[15/]

[14/] The objections were indirectly reviewed by the Board an additional time by the exceptions Respondent filed to the IHE's Decision in 10 ALRB No. 31.

[15/] Scrutinizing Respondent's objections in greater detail than that set forth (see, e.g., Ron Nunn Farms, supra, 6 ALRB No. 41) could serve no useful purpose at this point"! The objections have been considered and reconsidered during the representation phase. Respondent has had ample opportunity to argue its position on these issues before the Board. Considering the objections yet another

[fn. cont. on p. 13]

Having failed to produce declaratory support which was either legally or factually sufficient to establish prima facie evidence of 59 of its 62 objections, Respondent has not met its burden of establishing, in this regard, "conduct which would tend to affect the outcome of the election." (See generally, George A. Lucas, supra, 10 ALRB No. 14-.) Respondent has further failed to meet its burden of proof at the representation hearing by-refusing to submit testimonial evidence in support of the three objections which were eventually set to be litigated.[16/]

Finally, Respondent has not demonstrated with specificity, at this current stage of the proceedings, where either the orders of the Executive Secretary or the Board were clearly erroneous,

[fn.15 cont.]

time would run counter to the policy noted above against relitigating representation issues, as well as the underlying statutory policy alluded to in J.R. Norton Co., supra, 26 Cal.3d at 32, of achieving finality in and a prompt resolution of representation matters.

A further consideration appertains. The objections themselves hint of boiler-place draftsmanship. A good number of them are redundant (compare objections 11 and 12; 14., 15, 16, 17, and 19; 31 and 32; and 47 and 54.). Thirty-five of the sixty-two objections refer to the destruction of the election's "laboratory conditions," a standard for adjudging election conduct under NLRA standards which has been specifically held "inapplicable" since D'Arrigo Brothers of California (1977) 3 ALRB No. 37. Lastly, the boiler-plate nature of the objections can be discerned in the "Memorandum of Points and Authorities" filed in support of the objections. The "Memorandum" merely regurgitates numerous black-letter law principles, with case citations, without detailing how any of the cases cited apply to the specific facts of this case. As noted in Kawano Farms. Inc. (1977) 3 ALRB No. 25, the pure bulk of the objections filed, many of which included "boiler-plate" allegations, necessitates the utilization of the screening of objections procedure outlined in 8 Cal. Admin. Code section 20365.

[16/] An additional adverse inference may be drawn from such failure, to wit, that Respondent's evidence, even if offered, would have been insufficient to support the allegations in question. (See Evidence Code section 413.)

arbitrary, or unsupportable.[17/] It has offered no new evidence or "novel" legal theories not already considered by this Board. In its brief to the Board Respondent merely reiterates the substance of its objections in broad conclusionary terms. It has thus ultimately failed to demonstrate that this is a "close" case based on a "reasonable good faith" belief that its employees would not have selected the Union had the election been fairly conducted so as to render inappropriate the imposition of makewhole relief. (See George A. Lucas, supra, 10 ALRB No. 14; George Arakelian (1980) 6 ALRB No. 28; Ron Nunn Farms, supra, 6 ALRB No. 4-1.)

Stated in another fashion, Respondent urges in its "litigation posture" that it should have been permitted to adduce "evidence" at a hearing which encompassed all of its objections, despite the fact that the great bulk of them were factually unsupported or legally insufficient. We thus conclude that Respondent could not have entertained a "reasonable good faith belief" that the Union would not have been elected in the absence of such conduct. It is therefore concluded that makewhole relief should be awarded in this case.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent D. Papagni Fruit Co. and D. P. Farms Company, its officers, agents, successors, and assigns, shall:

[17/] Respondent has the burden of establishing prima facie evidence for the basis of its objections (J.R. Norton v. ALRB, supra, 29 Cal.3d 1.) It has not delineated where such evidence was presented during the representation phase.

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith with the United Farm Workers of America, AFL-CIO (UFW) as the certified exclusive 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 them by section 1152 of the Agricultural Labor Relations Act (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 with respect to the said employees' rates of pay, wages, hours of employment, and other terms and conditions of employment and, if agreement is reached, embody such agreement 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 refusal to bargain, as such losses have been defined in J.R. Norton Company, Inc. (1984.) 10 ALRB No. 42, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55 for the period from August 3, 1984 until the date of this Order, and thereafter until such time as Respondent recognizes and commences good-faith bargaining with the UFW which results in a contract or a bona-fide impass in negotiation.

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

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

(e) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and places 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) Provide a copy of the attached Notice, in all appropriate languages, to each employee hired by Respondent during the 12-month period following the date of issuance of this Order.

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of the Order, to all of the agricultural employees employed by Respondent at any time subsequent to August 3, 1984 to the date of this Order, and thereafter until Respondent recognizes the UFW and commences good faith bargaining with the UFW which leads to a contract or a bona fide impasse.

(h) Arrange for a representative of Respondent or a Board agent to 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 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 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 collective bargaining representative of the agricultural employees of D. Papagni Fruit Co. and D. P. Farms Company, be, and it hereby is, extended for one year from the date of issuance of this Order.

Dated: December 31, 1985

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Fresno Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, D. Papagni Fruit Co. and D. P. Farms, Co. had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we violated the law by refusing to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW). The Board has ordered 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 secret ballot elections 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 in the future meet and bargain in good faith, on request, with the UFW about a collective bargaining contract covering our agricultural employees.

WE WILL reimburse each of the employees employed by us at any time on or after August 3, 1984, until the date we began to bargain in good faith with the UFW for any loss of wages and economic benefits they have suffered as a result of our failure and refusal to bargain in good faith with the UFW.

Dated:

D. PAPAGNI FRUIT CO. and
D. *P.* FARMS, CO.

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 1900 Mariposa Mall, Suite 119, Fresno, California, 93721. The telephone number is (209) 4.45-5591.

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. Papagni Fruit/D. P. Farms Co. (UFW)

11 ALRB No. 38
Case No.

BOARD DECISION

Following the Board's certification of the United Farm Workers, AFL-CIO (UFW or Union) as the collective bargaining representative for this employer's farm workers (see D. Papagni Fruit Co. (1984) 10 ALRB No. 31), Papagni refused to bargain with the UFW.

The General Counsel issued a complaint alleging the Employer was engaged in a "technical" refusal to bargain, but did not request as a remedy that the employees be made whole.

The Employer had filed 62 objections to the election during the underlying election certification proceeding. The objections had been considered by the Executive Secretary, and then reconsidered at least once by the Board. Three objections were set for hearing; the dismissed objections were either factually unsupported or legally inadequate as a basis for overturning the election. At the representation hearing, the Employer refused to present evidence in support of the three objections set for hearing because the IHE had denied its motion to introduce evidence pertaining to the dismissed objections. Following the Board's certification, the Employer refused to bargain, maintaining that it should have been allowed to submit evidence pertaining to the dismissed objections in order to demonstrate that the "cumulative effect" of all the objections had an impact on the election.

The Board found that the Employer's litigation posture conflicted with well-established precedent that the Board and Executive Secretary are empowered to summarily dismiss, without setting for hearing, objections which are unsupported by prima facie declaratory evidence or not legally cognizable grounds to set aside an election. Applying the Norton standard, the Board held that the Employer's litigation posture was not "reasonable" and that makewhole relief was appropriate.

Noting that the General Counsel had not requested makewhole, and that the Employer had argued that should the Board nonetheless contemplate such an award that it be allowed to present "evidence opposing the imposition" of that award, the Board ruled that: a) the imposition of the makewhole remedy could be considered by the Board regardless of the omission of such relief from the General Counsel's complaint and, b) the imposition of that award in the context of a "technical" refusal to bargain case is a legal, not a factual determination, and therefore no additional "evidence" is necessary before determining the appropriateness of the award.

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