Gilroy, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| ROBERT J. LINDELEAF,<br>Respondent,<br>and<br>UNITED FARM WORKERS OF AMERICA, AFL-CIO,<br>Charging Party. | ) | Case No. 84-CE-8-SAL<br>12 ALRB No. 18 |

DECISION AND ORDER

On March 23, 1982, the Agricultural Labor Relations Board (ALRB or Board) issued a Decision and Order of Certification in which it dismissed all of Employer Lindeleaf's objections to conduct of election and conduct affecting results of election held on September 4, 1980, and certified the United Farm Workers of America, AFL-CIO ( UFW or Union) as the exclusive collective bargaining representative of all agricultural employees of Robert J. Lindeleaf in the State of California. (Robert J. Lindeleaf (1982) 8 ALRB No. 22.)

Thereafter, on March 26, 1982, and again on May 11, 1982, the UFW requested the Employer to commence negotiations. On May 21, 1982, the Employer advised the Union that it was refusing to bargain in order to challenge the validity of the Board's certification order and to perfect a judicial review of the entire underlying representation proceeding. Pursuant to a timely filed unfair labor practice charge in which the Union alleged an unlawful refusal to bargain in violation of Labor Code section 1153 ( e ) and

(a),[1/] the Regional Director issued a complaint on September 9, 1982. The parties agreed to waive a hearing and submit the matter directly to the Board by means of a stipulated record. On June 14, 1983, the Board concluded that Respondent Lindeleaf had, as alleged in the complaint, refused to bargain in violation of the Agricultural Labor Relations Act (Act). In accordance with section 1160.3 and the California Supreme Court's decision in J. R. Norton (1979) 26 Cal.3d 1, the Board ordered Respondent to make whole its employees on the basis of its finding that the refusal to bargain was premised neither on a reasonable litigation posture nor on good faith. (Robert J. Lindeleaf (1983) 9 ALRB No. 35.) Thereafter, the California Court of Appeal for the First District granted Respondent's request for review of 9 ALRB No. 35 (including 8 ALRB No. 22).

On November 22, 1983, during pendency of the appellate court proceedings, Respondent advised the DFW that it no longer conducted agricultural operations within the State of California. One month later, the UFW responded with a request for information for the express purpose of preparing for and scheduling a meeting in order to negotiate the effects of Respondent's closure on its agricultural employees. Respondent immediately notified the Union that it had intended only to advise the Union of the closure rather than to engage in effects bargaining, but also stated that, " . . . if the courts reject our challenge to the certification . . . we will reassess our position and sit down with you to discuss the effects

[1/] All section references herein re to the California Labor Cede unless otherwise specified.

of the closure." On January 30, 1984, the UFW timely filed an unfair labor practice charge in which it alleged that Respondent refused to engage in effects bargaining in violation of section 1153(e) and (a), pursuant to which a complaint issued on May 16, 1984. General Counsel, Respondent and the Union agreed to waive an evidentiary hearing and submit the question to the Board on the basis of a stipulated record. All parties were invited to submit briefs stating, and in support of, their respective positions. Briefs were filed with the Board by General Counsel, Respondent, and the UFW.

Pursuant to the provisions of Labor Code section 1146, the Board has delegated its authority in this matter to a three-member panel. [2/]

On the basis of the stipulations and exhibits of the parties, and the Board's findings in related proceedings, the Board hereby makes, as material and relevant findings of fact, the statements which are set forth above. On the basis of the briefs of the parties, applicable law, Board precedents and -subsequent events, the Board makes additional findings of facts and conclusions of law, as discussed below.

In June 1985, pursuant to Respondent's challenge to the underlying representation matter, the Court of Appeal of the State of California, First Appellate District, Division Four, in Robert J. Lindeleaf v. Agricultural Labor Relations Board, 169 Cal.App.3d

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[2/] 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.

1190, annulled the Board's Decision and Order of Certification in 8 ALRB No. 22, thereby also vacating 9 ALRB No. 35. The court remanded the entire representation matter to the Board for the purpose of taking evidence on certain objections to the election which the Board had dismissed without a hearing, and for a de novo review of the existing evidentiary record with regard to those objections which were heard, but without benefit of the rulings, findings and recommendations of the Investigative Hearing Examiner in the case.[3/] On October 17, 1985, the California Supreme Court granted the Board's Petition for Review of Lindeleaf, supra, 169 Cal.App.3d 1190, thereby vacating the appellate court's decision. Respondent's brief in the instant proceeding was filed on December 21, 1984, prior to action by either of the courts. Respondent points out, therein, that it has consistently advised the UFW, as well as the Board, that its refusal to bargain over the effects of the closure was premised conditionally and solely on judicial affirmation of its challenge to the representation proceeding.

On May 29, 1986, the California Supreme Court reversed the judgment of the Court of Appeal for the First District and

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[3/] The Court of Appeal had upheld Respondent's challenge to the validity of the Board's standard practice of delegating Investigative Hearing Examiners (IHE's) to render findings of fact, conclusions of law, and recommended disposition of contested matters in election cases. That court found that we had exceeded the express limitations of Labor Code section 1156.3(e) in delegating such authority to IHE's. The Supreme Court ultimately disagreed, holding that the pertinent statutory provision only precludes an employee or director of a regional office from making recommendations to the Board, if appointed as a hearing officer in an election case, but that the IHE's in question here are not employees of regional offices.

affirmed in their entirety the Board's Decisions and Orders in Robert J. Lindeleaf, supra, 8 ALRB No. 22 and Robert J. Lindeleaf, supra, 9 ALRB No. 35. (Robert J. Lindeleaf v. ALRB (1986) 41 Gal.3d-861.) Thus, the present proceeding is based on the charge and complaint alleging failure by Respondent to timely notify and bargain with the UFW over the effects on its employees of the closure of its operations.

It is well-settled that an employer who ceases all operations/ for whatever reason, has an obligation to notify its employees' certified bargaining representative of its intention to close and to afford the representative an opportunity to engage in negotiations over the effect of the closure on said employees. (First National Maintenance Corp. v. National Labor Relations Board (1981) 452 U.S. 666 [107 LRRM 2705].) This Board has held that such notification is timely when it is made prior to closure/ so as to allow the union a meaningful opportunity to bargain about the effects of the impending closure. When an employer fails to timely notify the union of its decision to cease operations, even though the decision itself could properly be made unilaterally, it violates its duty to bargain in good faith. (Pik'd Rite, Inc., and Cal-Lina, Inc. (1983) 9 ALRB No. 39.

While ii is not clear from the existing record when Respondent decided to cease operations, it is undisputed that the Union was not so advised until after the fact. Respondent stipulated only that it terminated its agricultural operations "during" the 1983 season without prior notice to the certified representative. In Pik'd Rite, supra 9 ALRB No. 39, the Board

affirmed the Decision of its Administrative Law Judge (ALJ) who correctly observed that bargaining about the effects of a pending decision to close all or part of an operation is required, " . . . since the impact of any agreements on items such as severance pay, jobs for employees, pensions and insurance, etc., might well be considered by an employer before final arrangements to close are made." (Pik'd Rite, supra, ALJ slip opn. at p. 15.) Where, as here, the union is not notified of a decision to close until the company actually closes, the statutory duty to bargain in good faith has not been satisfied. (Highland Ranch and San Clemente Ranch, Ltd. (1979) 5 ALRB No. 64, enforced sub nom. Highland Ranch v. Agricultural Labor Relations Board (1981) 20 Cal.3d 848.) Accordingly, we find that Respondent failed to timely notify the Union of its decision to close and thereby denied it a meaningful opportunity to bargain as to the effects of the closure in violation of section 1153(e) and (a).

Having found that Respondent engaged in an unfair labor practice within the meaning of section 1153(e) and (a) of the Act, we will require that it cease and desist therefrom, and take certain affirmative action designed to effectuate the polices of the Act.

We acknowledge the Employer's dilemma of deciding whether to act consistently with its decision to engage in a technical refusal to bargain as a means of obtaining judicial review, or to minimize its potential liability pursuant to a Board backpay order if the failure to bargain is subsequently deemed unlawful. However, in balancing the adverse consequences to be suffered as a result of

that dilemma, we conclude that employees should not be required to sacrifice the potential benefits which could have resulted from the Employer's early acceptance of the certification order whose validity was ultimately affirmed by the California Supreme Court. Moreover, as Respondent recognized, the pendency of collateral litigation, as in this instance, would not suspend an employer's duty to bargain with a certified representative with respect to its employees' terms and conditions of employment, including the effects occasioned upon them by a closure of operations. (Porta-Kamp Manufacturing Co., Inc. (1971) 189 NLRB 899 [79 LRRM 2103]; Keller Aluminum Chairs Southern, Inc. (1968) 173 NLRB 947 [69 LRRM 1472].)

As a consequence of Respondent's unlawful failure to advise the incumbent Union of its impending cessation of all operations, employees were precluded from negotiating, through their collective bargaining representative, the effects of Respondent's decision to terminate them. Since meaningful bargaining may not occur until some measure of balanced bargaining strength is restored to the Union, a bargaining order alone would not provide an adequate remedy for the unfair labor practice committed. Accordingly, we shall accompany our order that Respondent bargain with the Union, upon request, concerning the effects of its decision to terminate all operations, with the additional requirement that, for the purpose of restoring a degree of economic balance, it provide backpay to unit employees in a manner similar to that which the NLRB set forth in Transmarine Navigation Corp. (1968) 170 NLRB 389 [67 LRRM 1419]; Frontier Delivery, Inc. (1986) 278 NLRB No. 72.

Thus, we direct Respondent to pay its agricultural employees

backpay at the rate of their normal wages when last in its employ from five days after the date of this Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the UFW on those subjects pertaining to the effects of the closure on all its agricultural employees in the State of California; or (2) a bona fide impasse in bargaining; or (3) the failure of the Union to request bargaining within five days of this Order, or to commence negotiations within five days of Respondent's notice to the Union of its desire to bargain with it; or (4) the subsequent failure of the UFW to bargain in good faith. In no event, however, shall the sum of the backpay paid to any employee (1) exceed the amount each would have earned as wages from the date on which Respondent terminated operations to the time he or she secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; or (2) be less than employees would have earned for a two-week period at the rate of their normal wages when last in Respondent's employ. Interest will be computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Robert J. Lindeleaf, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to bargain with the United

Farm Workers of America, AFL-CIO (UFW), the certified collective bargaining representative of its agricultural employees, about the effects on said employees of its decision to discontinue all agricultural operations in the State of California.

(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 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, bargain collectively with the UFW with respect to the effects upon its former employees of its termination of operations, and, if an agreement is reached, reduce to writing any agreement reached as a result of such bargaining.

(b) Pay to those employees on its payroll during the 1983 season, their normal wages, plus interest, for the period set forth previously in this Decision.

(c) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amounts of backpay 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 all appropriate languages, reproduce sufficient copies in each language

for the purposes set forth herein-after.

(e) 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 the date on which it reached its decision to cease operations until the end of the 1983 season.

(f) 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.

3. If Robert J. Lindeleaf has resumed or resumes its agricultural operations, it shall:

(a) 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.

(b) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the resumption of its agricultural operations.

(c) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors

and management, to answer any questions the employees may have concerning the Notice 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.

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

Dated: September 26, 1986

JYRL JAMES-MASSENGALE, Chairperson

JOHN P. McCARTHY, Member

JORGE CARRILLO, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Robert J. Lindeleaf, had violated the law. After each side had an opportunity to present evidence, the Board found that we did violate the law by failing or refusing to bargain with the United Farm Workers of America, (AFL-CIO) with respect to the effects on our agricultural employees of our decision to close our agricultural operations. The Board has told us to mail this Notice to all agricultural employees who were employed by us at any time from the date on which we decided to close operations until the end of our 1983 season. We will do what the Board has ordered us to do.

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

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

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

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

WE WILL, upon request, bargain collectively with the United Farm Workers of America, (AFL-CIO) with respect to the effects of our decision to close our agricultural operations on the agricultural employees who were employed by us, and put in writing any agreement reached as a result of such bargaining.

WE WILL pay the agricultural employees who were employed by us, between the time we decided to close our operations and the end of our 1983 season, a minimum of their normal wages, plus interest, that they would have earned for a two-week period when last in our employ.

Dated:

ROBERT J. LINDELEAF

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) 433-3161.

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

CASE SUMMARY

ROBERT J. LINDELEAF
(UFW)

12 ALRB No. 18
Case No. 84-CE-8-SAL

BACKGROUND

On September 4, 1980, agricultural employees of Robert J. Lindeleaf (Respondent) selected the United Farm Workers of America, AFL-CIO, (UFW) as their exclusive bargaining representative. On March 23, 1982, the Agricultural Labor Relations Board (ALRB or Board) dismissed Respondent's objections to the election and certified the Union. Thereafter, Respondent advised the UFW of its intention to knowingly engage in a technical refusal to bargain in order to perfect a judicial challenge to the Board's decision to uphold the election. Accordingly, the UFW filed an unfair labor practice charge in which it alleged that Respondent had violated its statutory duty to bargain and a complaint issued based on that charge. The parties waived the normal evidentiary hearing as Respondent had conceded its refusal to bargain. Thus, the only question before the Board was that of an appropriate remedy. The Board found that Respondent's challenge to the election was based neither on a reasonable litigation posture nor on good faith and ordered Respondent to make its employees whole for all economic losses resulting from its failure to bargain with the incumbent union. Thereafter, Respondent obtained a ruling from *a* California Court of Appeal which served to annul the Board's Order of Certification and directed the Board to reopen the hearing on election objections. The Board's request for review of that decision was granted by the California Supreme Court which, on May 29, 1986, reversed the judgment of the Court of Appeal and affirmed in their entirety the Board[1] s decisions and orders in both the election and the subsequent unfair labor practice cases.

PRESENT PROCEEDING

In its decision today, the Board resolves an independent unfair labor practice in which Respondent ceased its agricultural operations without affording the UFW the opportunity to bargain over the effects of closure on its employees. The Board ordered Respondent to effects bargain with the Union. In addition, the Board ordered Respondent to pay employees, who were in its employ between the time it reached the decision to close and actually closed, the equivalent of their normal wages for a two week period. That remedy, consistent with applicable precedents of the National Labor Relations Board, seeks to restore a measure of bargaining strength that would have obtained had Respondent timely notified the Union of the impending closure, when the employee unit was still intact.

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