Moorpark, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MURANAKA FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 83-CE-172-OX 12 ALRB No. 9

DECISION AND ORDER

This is a "technical" refusal to bargain case in which the parties, Respondent Muranaka Farms (Muranaka, Respondent or Employer) and the Charging Party, United Farm Workers of America, AFL-CIO (UFW or Union), have filed a stipulation of facts and waived an evidentiary hearing before an Administrative Law Judge (ALJ).[1/]

Pursuant to the provisions of Labor Code section 1146,[2/] the Board has delegated its authority in this matter to a three-member panel.[3/]

On March 25, 1982, Board agents conducted a

[1/] The parties also stipulated that Respondent could file a motion with the Agricultural Labor Relations Board (ALRB or Board) to reopen the proceedings in the underlying representation case, 82-RC-l-OX (Muranaka Farms (1983) 9 ALRB No. 20).

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

[3/] 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.

representation election among Respondent's agricultural employees. The UFW received a majority of the votes cast, by a vote of 112 to 45.[4/] Respondent timely filed nine election objections, of which four were set for hearing and five were dismissed by the Executive Secretary. Following an investigative hearing on the four set objections, an Investigative Hearing Examiner (IHE) recommended that the objections be dismissed. On April 28, 1983, the Board dismissed the objections and certified the UFW as the exclusive bargaining representative of all of Respondent's agricultural employees. (Muranaka Farms, supra, 9 ALRB No. 20.)

Thereafter, on May 3, 1983, the UFW requested that Respondent commence negotiations for a collective bargaining agreement. On May 10, 1983, Respondent notified the UFW that it was refusing to negotiate because of Respondent's contention that the Board had incorrectly certified the UFW. A charge was filed by the UFW, and the General Counsel issued a complaint alleging Respondent's refusal to bargain and seeking makewhole relief. After filing their stipulation of facts, the parties submitted briefs to the Board arguing their positions regarding the appropriateness of a bargaining order and makewhole order in this case.

Respondent's Motion to Reopen Proceedings

On May 23, 1985, Respondent filed a motion to reopen the proceedings in the underlying representation case, 82-RC-l-OX

[4/] There were also four unresolved challenged ballots

(Muranaka Farms, supra, 9 ALRB No. 20) on the grounds that the Board improperly dismissed one of Respondent's election objections on the basis of standards later rejected by the California Supreme Court in Triple E Produce Corp. v. Agricultural Labor Relations Board (Triple E) (1983) 35 Cal.3d 42. The objection alleged that Board agents and UFW representatives threatened potential voters with loss of employment after the election if they failed to vote for the UFW. In support of the objection, Respondent submitted declarations of three Muranaka employees. Two of the declarations stated that on the day before the election, another Muranaka employee asked them to sign authorization cards[5/] and said that if they did not sign, there would be no work for them if the UFW won the election. The third declaration stated that on the day of the election, after the polls had opened, a man came to the declarant's house and told him to vote for the UFW, because if he voted for the Employer and the Union won, there would be no work for him.

The election threats objection was dismissed by the Board's Executive Secretary on the grounds, inter alia, that there was no evidence to support the Employer's allegation that ALRB agents made any threats to employees, no evidence that the alleged statements created an atmosphere of fear in which employees were unable freely to choose a bargaining

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[5/] Authorization cards are cards signed and dated by employees providing that the signer authorizes the union to be his or her collective bargaining representative. The cards may be used as evidence that *a* majority of employees are interested in having a representation election conducted.

representative, and no evidence that the statements threatened employees with physical violence or retaliation or created an atmosphere of fear in which a large number of workers were dissuaded from voting or were unable freely to choose a bargaining representative.

Respondent argues that the Board applied an improper outcome-determinative test in dismissing the election threats objection and that, under the Triple E standard, the objection should have been set for hearing. General Counsel and the UFW argue that Respondent's motion to reopen the proceedings is untimely since the Triple E decision issued seven months after the election herein was certified, and Respondent did not file its motion until eighteen months later.

We find it unnecessary to rule on the timeliness of Respondent's motion because we conclude that in Triple E the California Supreme Court did not establish a new standard of review in cases involving election threats, but rather applied the National Labor Relations Board's (NLRB) and this Board's existing standard. In cases involving threats, the NLRB inquires whether the statements reasonably tended to coerce and threaten the employees in the exercise of their organizational rights not to vote for the union or interfered with the election. (A. Rebello Excavating Contractors (1975) 219 NLRB 329 [89 LRRM 1704].) The ALRB makes the same inquiry in cases involving election threats (see, e.g., Patterson Farms (1976) 2 ALRB No. 59), and in Triple E the Supreme Court recognized that the ALRB has not approved a test different from that utilized

by the NLRB in reviewing the effect of threats on the election process. (Triple E, supra, 35 Gal. 3d at 48.) We find that under the test applied by the NLRB and the ALRB, the declarations submitted with Respondent's election objection failed to present a prima facie case that the alleged threats reasonably tended to coerce or threaten employees in the exercise of their organizational rights not to vote for the union or interfered with the conduct of the election.

Respondent asserts that its supporting declarations describe threats virtually identical to the threats made in Triple E which led the court to set aside the election in that case. We disagree.

In Triple. E, union organizers spoke to employees on the day before and the day of the election and told them that if they did not vote for the union they would be replaced on their jobs by union people. Employees testified that they were afraid they would lose their jobs and were afraid to vote, and that they discussed their fears with each other. Unlike the circumstances in Triple E, there is no evidence herein of widespread dissemination of the alleged threats. The Triple E court noted that the NLRB has

> long held that statements made during an election can reasonably be expected to have been discussed, repeated, or disseminated among the employees, and, therefore, the impact of such statements will carry beyond the person to whom they are directed.
> (United Broadcasting Company of New York (1980) 248 NLRB 403, 404, quoted in Triple E, supra, 35 Cal.3d at 51.)

This expectation cannot be applied to the threat

allegedly made herein by the man who came to a declarant's house and told him to vote for the UFW, since the incident occurred on the day of the election, after the polls had opened, and there is no evidence upon which it can be reasonably said that the employee disseminated the threat among the employees prior to voting.

Although the expectation of dissemination could reasonably be applied to the alleged threats made by a Muranaka employee who asked workers to sign authorization cards, the dissemination factor would not raise the alleged threats to the level of seriousness present in Triple E, because Triple E involved threats made by union organizers while the threats alleged herein were made by company employees who were union adherents.[6/] NLRB precedent clearly holds that the conduct and statements of union adherents which are not attributable to the union itself are entitled to less weight in determining their impact on the election process than are conduct and statements of union representatives. (NLRB v. Southern Metal Service (5th Cir. 1979) 606 F.2d 512 [102 LRRM 2907]; NLRB v. Monroe Auto Equipment Co. (5th Cir. 1972) 470 F. 2d 1329 [81 LRRM 2929]; Firestone Steel Products Co. (1979) 241 NLRB 382 [100 LRRM 1612].) Even those threats by union adherents which tie job loss to the refusal to sign union authorization cards or failure to vote for the union are generally found not

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[6/] Although the third declarant (unlike the other two declarants) did not specifically allege that the man who came to his door on election day was a company employee, neither did he allege that the man was a Union official or organizer.

sufficiently coercive to justify setting aside the election. For example in Firestone Steel Products, supra, 241 NLRB 382, the NLRB upheld an election where union adherents had told other employees that if they did not sign authorization cards and were later fired or laid off, they would not be recalled. In another NLRB case, a circuit court declared:

> We think it is clear that conduct not attributable to the opposing party cannot be relied upon to set aside an election. The only exception to this general principle, not applicable here, is where coercive or disruptive conduct or other action is so aggravated that a free expression of choice of representation is impossible. (Bush Hog, Inc. v. NLRB (5th Cir. 1969) 420 F. 2d 1266, 1269 [73 LRRM 2066, 2068].)

ALRB cases have also given less weight to conduct of union supporters and workers than that of union officials and organizers in determining the conduct's effect on the election process. (San Diego Nursery Co., Inc. (1979) 5 ALRB No. 43; Takara International (1977) 3 ALRB No. 24.) In determining the seriousness of a non-party threat, both the NLRB and the ALRB evaluate not only the nature of the threat itself, but also whether the person making the threat was capable of carrying it out, and whether it is likely that the employees acted in fear of the person's capability of carrying out the threat. (Westwood Horizons Hotel (1984) 270 NLRB 802 [116 LRRM 1152]; T. Ito & Sons Farms (1985) 11 ALRB No. 36.) For example, in Westwood Horizons Hotel the NLRB set aside an election in which pro-union employees threatened physical violence to employees if they refused to vote for the union. In T. Ito & Sons Farms, this Board found that where striking employees threatened workers

with physical beatings, threatened to call the Immigration and Naturalization Service, and engaged in acts of physical force, such conduct constituted aggravated misconduct and was grounds to set aside the election. However, the non-party threats alleged in the instant case should be distinguished from serious threats made by persons with apparent ability to carry them out. Here, the alleged threats by co-workers were not made by persons (e.g., union or employer officials) who had any apparent authority to deprive employees of their jobs if they failed to sign authorization cards or failed to vote for the Union. (Firestone Steel Products, supra, 241 NLRB 382.)

We conclude that Respondent's objection alleging election threats was properly dismissed under NLRB and ALRB precedent concerning non-party threats. We therefore deny Respondent's motion to reopen the representation proceedings herein.

The Appropriateness of a Makewhole Remedy

We next consider whether to order a makewhole remedy for Respondent's refusal to bargain. When an employer refuses to bargain with a labor organization in order to gain judicial review of a Board certification, we consider the appropriateness of a makewhole remedy on a case-by-case basis. (J.R. Norton Company v. Agricultural Labor Relations Board (1979) 26 Cal.3d 1.) We impose a makewhole remedy where the employer's litigation posture is not reasonable at the time of its refusal to bargain or the employer does not seek judicial review of the Board's certification in good faith. (J.R. Norton Company

(1980) 6 ALRB No. 26.)

We have previously adopted the NLRB's doctrine prohibiting relitigation of representation issues in subsequent related unfair labor practice proceedings in the absence of newly-discovered or previously unavailable evidence or extraordinary circumstances. (Adamek & Dessert, Inc. (1985) 11 ALRB No. 8.) Respondent has pointed to no newly discovered or previously unavailable evidence which would warrant reconsideration of our Decision in Muranaka Farms, supra, 9 ALRB No. 20, and has not shown any extraordinary circumstances which would justify reconsidering our earlier decision in the representation case.[7/] (T. Ito & Sons Farms, supra, 11 ALRB No. 36.) We proceed, therefore, to examine the

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[7/] Recently, in Sub-Zero Freezer Company, Inc. (Sub-Zero) (1984) 271 NLRB 47 [116 LRRM 1281] the NLRB vacated an earlier certification of a representative because a new majority of board members in the technical refusal to bargain proceeding agreed with the position of the dissent in the representation proceeding that conduct had occurred which resulted in the election being conducted in an atmosphere of fear and coercion. However, there has been no indication from the NLRB in later cases that, except for extraordinary circumstances, the NLRB is retreating from its long-standing proscription against reopening technical refusal to bargain cases absent newly discovered or previously unavailable evidence. (See e.g., Dickerson Florida (1984) 272 NLRB No. 4 [117 LRRM 1195].) Moreover, unlike the instant case, Sub-Zero involved serious, widespread threats of violence and coercion sufficient to result in an atmosphere of fear and reprisal, rendering a free election impossible. (See also T. Ito & Sons Farms, supra, 11 ALRB No. 36.)

Member Henning adheres to his position regarding the application of the Sub-Zero decision of the NLRB as stated in his dissenting opinion in T. Ito & Sons Farms, Inc., supra, 11 ALRB No. 36. He agrees with the majority that this matter presents no "extraordinary circumstances" justifying reconsideration of the underlying election certification.

reasonableness of Respondent's litigation posture.[8/]

All of Respondent's objections which were set for hearing involved alleged abuse of discretion by Board agents. Respondent objected that Board agents failed to give it timely notice of the pre-election conference and the election, and abused their discretion by holding a strike-time election in 23 rather than 48 hours. However, the IHE and Board found that Respondent did receive notice of and attended the pre-election conference and provided no evidence during the conference that it would be prejudiced if the election were expedited. The ALRA directs the Board to hold strike-time elections within 48 hours after the filing of a petition if at all possible. (Labor Code section 1156.3(a).) The Board found that 23 hours was unquestionably within 48 hours, and that a strike-time election should be held as soon as possible provided adequate notice is given to the parties and employees, that no party is prejudiced, and that eligible employees are not denied the opportunity to vote. Respondent failed to show that expediting the election caused prejudice to any party or resulted in disenfranchisement of any employee. At the election objections hearing, the Employer offered to prove that it had insufficient time to prepare an adequate employee list, and that consequently 40 ineligible people

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[8/] The Board employs a two-pronged test in determining the appropriateness of makewhole relief in a technical refusal to bargain case. Thus, the Board first examines whether the employer's litigation posture in challenging the certification is reasonable. Only if the Board concludes that the employer's litigation posture is reasonable does it go on to determine whether the employer acted in good faith in contesting the certification.

voted in the election. However, the IHE found that even if 40 ineligible people had voted for the UFW, they would not have affected the outcome of the election since the Union's margin of victory exceeded 40. Moreover, the Employer is required by statute to maintain an accurate and current payroll list. (Labor Code section 1157.3.)

At the pre-election conference, the ALRB Regional Attorney suggested several alternative ways that an employee list could be compiled prior to the election: obtaining the daily tally sheets kept by Respondent's supervisors, telephoning the computer company in Long Beach where Respondent's payroll records were located, or going to one of Respondent's offices to construct a list from employee records. Respondent's attorney did not respond to the Regional Attorney's alternatives, but sat silent. Moreover, even though the Employer had the computer payroll list at its Northridge office by 1:30 p.m. on the day of the election, it did nothing to make the list available at the election site in Moorpark, approximately 30 miles from Northridge. By noon on election day, Respondent's accountant had compiled, from the daily tally sheets, a handwritten list of all but 15-20 of Muranaka's employees. Since the election did not commence until 4:00 p.m., the IHE and Board found that there was sufficient time in which to bring the two lists to Moorpark before the election. Consequently, the IHE and Board found that Respondent could have disclosed the names of at least a large majority of the employees at the time of the election if it had wished to cooperate in the effort.

The Employer objected that the Board agents prejudicially abused their discretion by not obtaining the Employer's position with regard to times and places of the election and the names and number of the Employer's observers. The IHE credited Board agent Harry Martin's testimony that he discussed with the parties the time and location of the election as well as the issue of observers; the IHE discredited Rob Roy's testimony to the contrary. Board agent Martin testified that to his recollection, when the issue of observers was raised, Respondent's attorney did not mention any names. At the election site, as the polls were being set up, the parties present were requested to provide election observers. However, the Muranakas and their counsel chose not to attend the election. The IHE and Board found that by not recontacting the Board agents after the pre-election conference and not sending a representative to the election, Respondent waived its right to name election observers.[9/]

Thus, the IHE and Board found that the Employer's own misconduct caused two of the primary situations to which it objected: use of an incomplete or inaccurate employee list at the election, and lack of Employer-selected election observers. Further, Respondent made no showing that either of those situations affected the results of the election.

We conclude that, regarding the four objections set for hearing, Respondent has not shown a reasonable basis for

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[9/] It is unclear from the record how the observers were selected,

challenging the Board agents' exercise of discretion in setting and conducting the election. Respondent has further not shown a reasonable basis for overturning the IHE and Board's credibility determinations.

Two of Respondent's election objections which were not set for hearing alleged that Board agents abused their discretion by failing to require identification of each potential voter and allowing ineligible individuals to vote.[10/] The Executive Secretary dismissed the objections on the grounds that the Employer had waived its right to object by not challenging the voters' eligibility prior to their receiving ballots.[11/] We find that in making thest two objections, Respondent has objected to results caused by its own conduct. Respondent argued that it did not have time to prepare an accurate employee eligibility list, and that consequently ineligible voters were allowed to vote. However, the reason there was not a completely accurate employee list at the election was that the Employer did not provide the list it was required by Board Regulations to provide, and did not cooperate with the Regional Director who suggested several alternatives for compiling a list. Rather than objecting to the fact that allegedly ineligible voters were

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[10/]Since Respondent's brief to the Board does not discuss *its* Objections Nos. 5 and 8, we assume that Respondent is not challenging the Board's dismissal of those objections.

[11/] The Executive Secretary cited Board Regulations, 8 Cal. Admin. Code section 20355(b), which provides that a party's failure to challenge the eligibility of a voter prior to the person's receiving a ballot shall constitute a waiver of the right to challenge the vote, and any post-election objection raising the issue shall be dismissed.

not "automatically" challenged by Board agents, Respondent should have registered its own challenges to any employees its observer did not recognize. Respondent waived its objection by not timely challenging the voters' eligibility. Moreover, Respondent's offer of proof at the hearing showed that the number of voters it claimed to be ineligible (40) could not have affected the outcome of the election since the tally of ballots shows that the number of votes the Union received exceeded by 67 the number of votes cast for No Union. Since Respondent waived its objections regarding ineligible voters and further made no showing that the number of allegedly ineligible voters could have affected the election results, Respondent has not shown a reasonable litigation posture in pursuing these two objections.

Finally, we hold that Respondent's litigation posture is unreasonable insofar as it relates to the question of whether Board agents and UFW representatives threatened voters with loss of employment after the election if they failed to vote for the Union. As noted supra, the declarations submitted with Respondent's alleged threats objection failed to state a prima facie case of interference with voter free choice. Respondent made no showing that the alleged threats were made by Board agents or Union organizers rather than by Muranaka employees who were Union adherents, nor that the alleged threats were widely disseminated, nor that coercive or disruptive conduct occurred which was so aggravated that a free expression of choice in the election was impossible. In view of the clear NLRB and ALRB precedent holding that threats such as the ones alleged herein

are not sufficiently serious to justify setting aside election results, Respondent's litigation posture on this point is not reasonable.

Respondent has presented no new evidence or legal theories not considered by-this Board prior to its overruling of Respondent's election objections and certification of the election results. Respondent 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." (J. R. Norton Company v. Agricultural Labor Relations Board, supra, 26 Cal.3d at 39.) We therefore conclude that Respondent's litigation posture was not reasonable and in good faith[12/] and that a makewhole award is an appropriate remedy for Respondent's refusal to bargain with the certified bargaining representative of its agricultural employees.

ORDER

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

1. Cease and desist from:

[12/] As further evidence of the unreasonableness of Respondent's litigation posture we note that a Court of Appeal case which Respondent relied upon extensively in its brief to the Board (George Arakelian Farms, Inc. v. Agricultural Labor Relations Board, which formerly appeared at 150 Cal.App.3d 664.) was vacated by the California Supreme Court on April 9, 1984, more than a year before Respondent filed its brief herein.

(a) Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code section 1155.2(a), on request, 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 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 regarding a collective bargaining agreement and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole its present and former agricultural employees for all losses of pay and other economic losses sustained by them as the result of Respondent's refusal to bargain, such losses to be computed in accordance with Board precedents, plus interest computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55. The period of said makewhole obligation shall extend from May 10, 1983 until the date of this Order and thereafter until Respondent commences good faith bargaining with the UFW.[13/]

[13/] Chairperson James-Massengale concurs in that portion of the remedial order which provides that the makewhole period

(fn. 13 cont. on p. 17.)

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

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

(e) Post copies of the attached Notice in conspicuous places on its property for sixty (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) Provide a copy of the attached Notice to each employee hired during the 12-month period following the date of issuance of this Order.

(fn.13 cont.)

commenced on May 10, 1983. Since the Board's cease and desist provision relates to a specific unfair labor practice which is the subject of the present proceeding, she would terminate makewhole when Respondent conforms to that provision by ceasing its refusal to bargain with the certified representative of its agricultural employees. Accordingly, she dissents from the balance of the Order insofar as it measures liability according to whether and when Respondent commences to bargain in good faith. The good faith requirement contemplates inquiry during the compliance phase concerning conduct outside the scope of the present proceeding. Such inquiry and possible litigation unnecessarily complicates and may potentially delay the compliance process. The Chairperson believes that allegations of new and distinct unlawful conduct are best handled through the statutory prosecutorial procedures. (See Joe G. Fanucchi & Sons (1986) 12 ALRB No. 8, conc. and dis. opn.)

(g) Mail copies of the attached Notice in all appropriate languages, within thirty (30) days after the date of issuance of this Order, to all agricultural employees employed by Respondent between May 10, 1983 and the date of this Order and thereafter until Respondent commences good faith bargaining with the UFW.

(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 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 to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Regional Director in writing, within thirty (30) days after the date of issuance of this Order, of the steps which have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing of further actions taken to comply with this Order.

IT IS FURTHER ORDERED that the certification of the UFW, as the exclusive collective bargaining representative of all of Respondent's agricultural employees, be extended for a

period of one year from the date following the issuance of this Order on which Respondent commences to bargain in good faith with the UFW.

Dated: May 21, 1986

JYRL JAMES-MASSENGALE, Chairperson

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 (Muranaka Farms) employees on March 25, 1982. '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 April 28,1983. 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 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
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 make whole each of the employees employed by us at any time on or after May 10, 1983, 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 in good faith, plus interest.

Dated: MURANAKA FARMS

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 528 South A Street, Oxnard, California 93030. The telephone number is (805) 486-4475.

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

MURANAKA FARMS

12 ALRB No. 9
Case No. 83-CE-172-OX

On April 28, 1983, in 9 ALRB No. 20, the Board certified the United Farm Workers of America, AFL-CIO (UFW) as the exclusive bargaining representative of all agricultural employees of Muranaka Farms. Thereafter, the Employer refused to bargain with the Union in order to seek judicial review of its contention that the Board should have set aside the election on the grounds that Board agents had not conducted the election properly and that employees had been threatened with loss of employment after the election if they failed to vote for the UFW. The Board dismissed the election threats objection on the grounds, inter alia, that there was no evidence that the alleged statements created an atmosphere of fear in which employees were unable freely to choose a bargaining representative. The Board held a hearing on the objections involving alleged abuse of discretion by Board agents, and concluded that the Employer had made no showing of any Board agent misconduct or any conduct affecting the results of the election.

In the present proceeding, the Board found that the alleged threats objection had been properly dismissed under ALRB and NLRB precedent involving non-party threats. The Board also found that the Respondent did not show a reasonable basis for challenging the Board agents' exercise of discretion in setting and conducting the election. The Board concluded that the Respondent had failed to prove a "close case" based on a reasonable good faith belief that the Union had not been freely selected by the employees as their bargaining representative, and therefore the employees should be made whole from the date on which the Respondent notified the UFW that it was refusing to negotiate.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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