Indio, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GREWAL ENTERPRISES, INC.,	)	
	)	Case No. 98-CE-162-EC
Respondent,	)	
	)	26 ALRB No. 5
and	)	(November 8, 2000)
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
	)	

DECISION AND ORDER[1]

On August 30, 2000, Administrative Law Judge (ALJ) Douglas Gallop issued the attached Decision in this proceeding. The ALJ found that Respondent, Grewal Enterprises, Inc. (Grewal or Respondent), committed unfair labor practices by failing to provide the United Farm Workers of America, AFL-CIO (UFW or Union) with relevant information and failing to provide timely notice of its decision to cease its grape operations, so as to allow for meaningful bargaining over the effects of that decision.

The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the ALJ's Decision in light of the exceptions and briefs and has decided to

[1] All decisions of the Agricultural Labor Relations Board, in their entirety, are issued as precedent for future cases. (Gov. Code section 11425.60.)

affirm the ALJ's rulings, findings, and conclusions, and to adopt his recommended Order, except as explained below.[2]

The General Counsel issued a complaint which was amended and to which Respondent timely filed an answer. However, Respondent did not appear at the duly noticed hearing in this matter. Both General Counsel and the UFW appeared and presented evidence as well as oral argument. The General Counsel excepts to the ALJ's failure to award the so-called *Transmarine* remedy which provides for limited back pay and is designed to create a situation in which meaningful effects bargaining may take place. (See *Transmarine Navigation Corp.* (1968) 170 NLRB 389 [67 LRRM 1419].)

The ALJ found, as alleged in the complaint, that Respondent closed its operations without notice to the UFW. He found that Respondent's counsel had notified the Union's counsel, in August of 1998, that Respondent was considering an offer to purchase one of the unit parcels and had assured the Union that it would be notified when the decision was made so that effects bargaining could commence. He further found that Respondent did not notify the Union of the sale of one unit parcel and the sublease of the other until approximately five months after the

[2] Member Ramos Richardson did not participate in this matter.

closure. It is well settled that an employer has a duty to bargain over the effects of a closure regardless of whether it has a duty to bargain over the decision to cease operating. Meaningful effects bargaining cannot, however, take place without notice to the Union prior to the actual cessation of operations. (*Robert J. Lindeleaf* (1986) 12 ALRB No. 18; *Kaplan's Fruit & Produce Co.* (1985) 11 ALRB No. 7; *Pik'd Rite, Inc.* et al. (1983) 9 ALRB No. 39; *First National Maintenance Corporation v. NLRB* (1981) 452 U.S. 666). The ALJ properly found that, in the present case, Grewal's failure to provide timely notice of its decision to close its grape operations unlawfully prevented meaningful effects bargaining.

In *John V. Borchard*, et al. (1982) 8 ALRB No. 52, this Board adopted the *Transmarine* remedy utilized by the National Labor Relations Board (NLRB) in cases where an employer has failed to bargain with a union over the effects of a decision to close or partially close its operations. In the instant case, the ALJ refused to award the *Transmarine* remedy due to the lack of evidence in the record as to the outcome of the parties' post-closure negotiations. In this, the ALJ relied on the decision in *Valdora Produce Company and Valdora Produce Company, Inc.* (1984) 10 ALRB No. 3 where the employer failed to notify

the union prior to a partial closure of its agricultural operations. In *Valdora,* the ALJ found no effects bargaining violation because the union failed to pursue its effects bargaining rights.[3] Specifically, the union notified the employer that it would contact the employer regarding further negotiations. Instead, the union filed its unfair labor practice charge based on the lack of timely notice of the partial closure.

We do not believe that the ALJ's ruling in *Valdora* can be reconciled with the well-established principle that a violation is committed at the time that an employer reaches a decision to close all or a part of its business and fails to give a union notice thereof, so that meaningful effects bargaining may take place. Moreover, we believe the union in *Valdora* was well within its rights when it chose to file an unfair labor practice charge rather than continue bargaining in an environment in which it had been stripped of all leverage due to lack of advance notice of the closure. Therefore, we overrule *Valdora* to the extent the decision failed to find an effects bargaining violation and failed to award the *Transmarine* remedy. As the erroneous holding in *Valdora* was the ALJ's

[3] While there were no exceptions filed to this portion of the ALJ's decision in *Valdora* and the Board did not comment on it, it appeared that the Board adopted the reasoning and conclusions with respect to effects bargaining.

sole basis for the denial of the appropriate remedy herein, and we find no other basis in the record for denying the *Transmarine* remedy, we shall incorporate the remedy into our order.

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act (Act)[4] Respondent, Grewal Enterprises, Inc., its owners, officers, agents, labor contractors, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to bargain collectively in good faith with the United Farm Workers of America, AFL-CIO (UFW), as the collective bargaining representative of its employees.

(b) Failing or refusing to bargain with the UFW regarding the effects of its decision to terminate its agricultural operations on bargaining unit properties.

(c) Failing or refusing to timely provide to the UFW, at its request, information relevant to collective bargaining.

(d) In any other like or related manner interfering with, restraining, or coercing agricultural

[4] The ALRA is codified at Labor Code section 1140 et seq.

employees in the exercise of their rights as 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 with the UFW, as the exclusive collective bargaining representative of its agricultural employees, with respect to the effects of Respondent's decision to cease its agricultural operations on bargaining unit properties, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay to all unit employees on its payroll, during the period beginning with the peak payroll period in 1998 and continuing until Respondent ceased its operations, their average daily wage. Payment shall be made during the period beginning ten days after this Order becomes final and continuing until: (1) the date Respondent reaches an agreement with the UFW about the impact and effect on its former employees of its decision to discontinue its operations; or (2) the date Respondent and the UFW reach a bona fide impasse in such collective bargaining; or (3) the failure of the UFW either to request bargaining within ten days after the date this Order becomes final or to commence negotiations within five days after Respondent's notice to

the UFW of its desire to bargain; or (4) the subsequent failure of the UFW to meet and bargain collectively in good faith with Respondent. In no event shall the sum of the backpay paid to any employee exceed the amount each would have earned as wages from the date Respondent terminated operations to the time he or she secured equivalent employment, provided, however, that in no event shall the backpay award to any employee be less than he or she would have earned for a two-week period, at the rate of his or her usual wages. Such amount shall include interest thereon, computed in accordance with our Decision and Order in *E.W. Merritt Farms* (1988) 14 ALRB No. 5.

(c) Preserve and, upon request, make available to this Board or 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 amounts, 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 hereinafter.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date this Order becomes final or when directed by the Regional Director, to all unit employees employed by Respondent during the period beginning with the peak payroll period in 1998 until Respondent ceased its operations.

(f) Notify the Regional Director in writing within 30 days after the date this Order becomes final 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 Respondent, its successors, or assigns resume agricultural operations, it shall:

(a) Upon request, meet and bargain collectively in good faith with the UFW as the exclusive collective bargaining representative of its agricultural employees, for the purpose of arriving at a collective bargaining agreement.

(b) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property, for 60 days, the periods and places to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered and removed. Pursuant to the authority granted

under Labor Code section 1151(a), give agents of the Board access to its premises to confirm the posting of the attached notice.

(c) Provide a copy of the attached Notice to each agricultural employee hired to work on the bargaining unit properties during the 12-month period following the resumption of Respondent's agricultural operations. Upon request, provide the Regional Director with the names and addresses of the new employees.

(d) 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 times and places 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 non-hourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(e) Upon request of the Regional Director,

provide the Regional Director with the dates of its next peak season. Should the peak season have already begun at the time the Regional Director requests peak season dates, Respondent will inform the Regional Director of when the present peak season began and when it is anticipated to end in addition to informing the Regional Director of the anticipated dates of the next peak season.

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

DATED: November 8, 2000

GENEVIEVE A. SHIROMA, Chairwoman

GLORIA A. BARRIOS, Member

HERBERT O. MASON, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB), by the United Farm Workers of America, AFL-CIO (UFW), the General Counsel of the ALRB issued a complaint which alleged that we, Grewal Enterprises, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we did violate the law by failing to bargain with the UFW about the effects of our decision to go out of business and by failing to provide information requested by the UFW.

The ALRB has told us to mail this Notice to all of the employees who worked for us before we stopped our agricultural operations. The ALRB has also told us that if we resume operations, we must post and publish this Notice. We will do what the ALRB 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 the following 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 ALRB;
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, upon the request of the UFW, meet and bargain collectively in good faith with the UFW about the effects on our former employees of our decision to cease operations on the bargaining unit properties.

WE WILL, upon the request of the UFW, provide to the UFW information relevant to collective bargaining.

WE WILL NOT, in any similar manner, interfere with, restrain or coerce employees from exercising their rights under the Act.

WE WILL pay to each of our former employees described in the ALRB's Decision and Order, their usual wages plus interest for a period of at least two weeks.

WE WILL, should we resume agricultural operations, upon the request of the UFW, meet and bargain with the UFW as the exclusive collective bargaining representative of our agricultural employees, and timely furnish the UFW with the information requested for bargaining.

DATED: _____ GREWAL ENTERPRISES, INC.

By:_____

(Representative)(Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. The El Centro office is located at 319 South Waterman Avenue in El Centro. The telephone number is (760) 353-2130.

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

Grewal Enterprises, Inc. (UFW)

26 ALRB No. 5
Case No. 98-CE-162-EC

ALJ Decision

The ALJ found that the Employer violated Labor Code sections 1153(a) and (e) by failing to inform the UFW of its decision to cease its grape operation until five months after the sale, thereby depriving the union of the opportunity to engage in meaningful effects bargaining. The ALJ also found that the employer violated sections 1153(a) and (e) by its unreasonable delay in providing information requested by the union. He recommended that the employer be ordered to cease and desist from its unlawful conduct. Relying on *Valdora Produce Company and Valdora Produce Company, Inc.* (1984) 10 ALRB No. 3, the ALJ rejected imposition of a limited back pay remedy, but recommended that the case be remanded to the Regional Director for further investigation and that, if appropriate, such remedy could be pursued informally with Respondent or through compliance procedures.

Board Decision

The Board affirmed the ALJ's decision but modified the ALJ's remedial order. The Board concluded that the *Valdora* decision cannot be reconciled with the well established principle that a violation is committed at the time that an employer fails to give advance notice of a closing so that meaningful effects bargaining may take place. Thus, the union in *Valdora* was well within its rights when it chose to file an unfair labor practice charge rather than to continue effects bargaining in which it had been stripped of all leverage due to the lack of timely notice of the closing. The Board overruled *Valdora* to the extent that it failed to find an effects bargaining violation and failed to award the *Transmarine* remedy. *Transmarine Navigation Corp.* (1968) 170 NLRB 389 [67 LRRM 1419]. As the erroneous holding in *Valdora* was the sole basis stated by the ALJ for denying the *Transmarine* remedy in the present case, and there is no other basis in the record for denying this remedy, the Board reversed this portion of the ALJ's decision and provided for the *Transmarine* remedy in its order.

* * * * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	**Case No. 98-CE-162-EC**
	)	
GREWAL ENTERPRISES, INC.,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	

Appearances:

Kristine Rabago
El Centro Regional ALRB Office
For the General Counsel

Thomas Patrick Lynch
Marcos Camacho, A Law Corporation
Keene, California
For the Charging Party

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DOUGLAS GALLOP: This case was heard by me on August 8, 2000, at Indio, California. It is based on charges filed by the United Farm Workers of America, AFL-CIO (hereinafter referred to as the Union), alleging that Grewal Enterprises, Inc. (hereinafter Respondent), violated section 1153(a) and (e) of the Agricultural Labor Relations Act (Act). The Union has intervened in this proceeding. The General Counsel of the Agricultural Labor Relations Board (hereinafter ALRB or Board) issued a complaint, which was amended (hereinafter complaint) alleging that Respondent failed to negotiate in good faith with the Union.

Respondent filed an answer to the complaint denying the commission of unfair labor practices, and alleging affirmative defenses. Only General Counsel and the Union appeared at the hearing. Upon the conclusion of their presentation of evidence, General Counsel and the Union presented oral argument, and waived the filing of briefs. Based on the testimony and documentary evidence, and the arguments of counsel, the undersigned issues the following findings of fact and conclusions of law:

FINDINGS OF FACT

Jurisdiction[1]

Respondent admits the service of the charge, and does not

[1] The jurisdictional facts herein are either admitted or not denied in Respondent's answer, and were established in prior Board proceedings.

contest that it was filed with the Board. Respondent is an agricultural employer within the meaning of section 1140(a) and (c) of the Act. The Union is a labor organization within the meaning of section 1140.4(f). Ranjit Singh Grewal, Respondent's President, and Thomas E. Campagne, its lead attorney, were at all material times supervisors and/or agents within the meaning of section 1140.4(j).

BASIS OF THE CHARGE

In ALRB Case Nos. 97-CE-1-EC, et al., the Union alleged that Respondent was the successor to a portion of a bargaining unit formerly operated by David Freedman Company, Inc. The unit consisted of employees working on two parcels of land, one then owned by Respondent, and the other leased. On June 13, 1998,[2] at the hearing of this and other allegations, Respondent and the Union settled this allegation by stipulating that Respondent was the successor to this part of the unit, and would negotiate with the Union. Subsequent Board and court decisions affirmed this obligation.

By letter and FAX dated August 17, Campagne informed Union attorney Thomas Patrick Lynch that Grewal was "contemplating" an offer to purchase the parcel of bargaining unit land owned by Respondent. Campagne offered to negotiate the effects of the sale, if Grewal accepted. In fact, Grewal sold the parcel on August 25, and additionally, subleased the other parcel, to a

[2] All dates hereinafter refer to 1998 unless otherwise indicated.

different individual, on September 1, thus terminating the agricultural operations of Respondent. Lynch's uncontradicted testimony establishes that he was not informed of these facts until several months later. Upon receipt of the letter/FAX, Lynch unsuccessfully moved to set aside the settlement agreement, on the ground that absent a Board decision, the stipulated recognition was unenforceable. In denying this motion, the Board and the Fourth District, Court of Appeals (in an unpublished decision) found that as a successor, as opposed to an initial certification, such agreements were subject to Board enforcement.[3]

Prior to Campagne's letter/FAX of August 17, Respondent and the Union had agreed to meet in an initial negotiating session on September 16. After receiving the August 17 communication, Lynch repeatedly attempted to contact Campagne to discuss the potential sale, but was unable to do so. On August 21, Lynch sent a letter to Campagne stating he had attempted to contact him by telephone, and his messages were not returned. Lynch further stated that although the Union had moved to set aside the settlement agreement, it was still appropriate to meet on September 16, in the event that the motion was denied.

The Union sent Campagne a draft collective bargaining proposal on September 15. On that day, Campagne cancelled the meeting scheduled for the following day, on the stated ground

[3] See (1998) 24 ALRB No. 7.

that he needed time to study the proposal. No mention was made of the sale or sublease. Lynch sent a confirming letter/FAX of the cancellation on September 16, and requested that Campagne reschedule the meeting when he had evaluated the proposal. On that same date, Lynch sent a letter/FAX containing a request for information, asking for basic employee identification, wage, hour and fringe benefit information.[4]

Campagne did not directly respond to either request until his letter/FAX of January 29, 1999 which, in essence, stated that by moving to set aside the settlement agreement, Lynch had repudiated any bargaining obligation. Campagne went on to state that since the Board had affirmed the settlement agreement, Lynch could no longer deny the bargaining relationship (although the Union had filed a court appeal), and Respondent was demanding bargaining. Campagne also stated he would respond to the information request once the Union agreed to bargain. Campagne concluded by demanding that the Union choose between dropping its court appeal, and bargaining with Respondent, inasmuch as these postures purportedly constituted conflicting positions. Again, this communication did not confirm the sale/sublease of the bargaining unit properties.

On January 29, 1999, Lynch sent a letter/FAX response stating that while he believed the recognition agreement was unenforceable, and would continue to pursue his appeal before

[4] Respondent, in its answer, does not dispute the form or relevance of the information request.

the Fourth District, it was not inconsistent to demand bargaining pending resolution of the issue, and such bargaining should take place. The same day, David Villarino, the Union's Director, Collective Bargaining Department, sent Campagne a letter/FAX demanding negotiating dates and a response to the request for information.

By letter/FAX dated February 8, 1999, Campagne reiterated his position that Lynch could not deny the collective bargaining relationship by seeking to vacate the settlement agreement, and at the same time demand bargaining. The letter/FAX stated that, indeed, the unit property had been sold/sub-leased. Campagne attached a bargaining proposal: Respondent would pay $1,000.00 in severance pay, to be divided among the crews by the Union, and provide letters of reference.

In a letter/FAX to Campagne dated February 11, 1999, Lynch reiterated that he was entitled to demand bargaining while challenging the settlement agreement. Lynch further stated that, months after stating that Grewal was considering the sale of one of the two unit properties, and agreeing to update the Union on the contemplated sale, Campagne, after the fact, was belatedly notifying him of the disposition of both properties, and was making an inadequate offer. Lynch requested additional information pertinent to the sale/sub-lease of the properties. Finally, Lynch reminded Campagne that no response had been made to the September 16, 1998 information request.

Campagne responded on February 23, 1999, charging that the Union, in fact, was attempting to prevent Respondent from disposing of the subject property. Nevertheless, Campagne responded to the two information requests, attaching documents. Campagne requested a response to Respondent's severance pay proposal. The record does not show what, if any, additional bargaining has taken place since that time, other than Lynch's testimony that there was "some discussion" of further severance pay negotiations.

ANALYSIS AND CONCLUSIONS OF LAW

General Counsel contends that Respondent violated section 1153(a) of the Act by failing and refusing to meet with the Union, and by failing and refusing to inform the Union of the sale/sublease of the unit property in a timely manner, so as to permit the Union to engage in effects bargaining. General Counsel's position has merit. Inasmuch as the parties agreed that Respondent was the successor employer to the bargaining unit, Respondent was obligated to negotiate upon demand, which was made. Respondent's argument, that since the Union was seeking to have the settlement agreement vacated, there was no longer a bargaining obligation, fails to withstand scrutiny.

A union's bad faith bargaining may constitute a defense to a charge that the employer failed to bargain in good faith. Admiral Packing Co., et al., (1981) 7 ALRB No. 43. In Grow-Art (1983) 9 ALRB No. 67, the Board held that when an employer

engages in full collective bargaining negotiations, it waives its right to challenge the union's certification. In that case, the employer was found to have violated section 1153(a) and (e) by entering into contract negotiations for three months, and then cutting them off, for the stated reason that it would seek judicial review of the certification.

Arguably, under Grow-Art, by offering to engage in contract negotiations, the Union waived its right to seek judicial review of the successorship agreement. This, however, does not mean that the Union engaged in misconduct permitting Respondent to refuse to negotiate. Unlike in Grow-Art, the Union, even though challenging the agreement, was willing to engage in negotiations. Also, unlike in Grow-Art, the Union did not engage Respondent in negotiations for a substantial period of time, only to terminate the process. Indeed, it was Respondent who seized upon the Union's position to refuse bargaining. Accordingly, the Union did not engage in misconduct warranting Respondent's refusal to bargain, and Respondent thereby violated section 1153(a) and (e) of the Act.

Respondent, in its correspondence to the Union, acknowledged its obligation to negotiate the effects of its decision to sell/sublease the unit property[5]. In order to permit a union to engage in meaningful effects bargaining, an employer

[5] In Gerawan Ranches, et al., (1992) 18 ALRB No. 16, the Board distinguished Grow-Art, supra, finding that irrespective of challenges by an employer to the certification, it must give the union notice and the opportunity to bargain concerning changes in wages, hours and other terms and conditions of employment. See also San Justo Ranch/Wyrick Ranch (1983) 9 ALRB No. 55; George Arakelian Farms v. ALRB (1986) 186 Cal.App.3d 94, at page 105.

must give timely notice of its decision to cease operations. Kaplan's Fruit & Produce Co. (1985) 11 ALRB No. 7; Pik'd Rite, Inc., and Cal-Lina, Inc. (1983) 9 ALRB No. 39; Robert J. Lindeleaf, (1986) 12 ALRB No. 18; Vessey & Company, Inc., et al. (1987) 13 ALRB No. 17, at pages 19-29; Pleasant Valley Vegetable Co-Op (1986) 12 ALRB No. 31, at ALJD, pages 46, et seq. In this case, Respondent failed to do so. Campagne's letter of August 17, 1998 only referred to the possibility of the sale of a portion of the unit property, promising to give further notice should the sale become imminent. No mention was made of the sublease at the time. Although the parties continued to communicate thereafter, it was not until several months after the fact that Respondent notified the Union of the sale and sublease. By engaging in said conduct, Respondent deprived the Union of the opportunity to demand and engage in meaningful effects negotiations, and thereby violated section 1153(a) and (e).

Finally, General Counsel alleges as a violation Respondent's delay in furnishing the information requested in Lynch's communication of September 16, 1998. Again, Respondent based its refusal to provide the information on the Union's alleged repudiation of the bargaining obligation, while itself maintaining that the obligation existed. As discussed above, seizing on the Union's exercise of its legal right to challenge the settlement did not give Respondent the right to refuse to

furnish the information for over five months. Therefore, Respondent also violated section 1153(a) and (e) by its unreasonable delay in furnishing the information.[6] See Mario Saikhon, Inc. (1987) 13 ALRB No. 8; Sam Andrews' Sons (1985) 11 ALRB No. 5; AS-H-NE Farms (1980) 6 ALRB No. 9; The House of the Good Samaritan, et al. (1995) 319 NLRB 392, at page 398 [151 LRRM 1375]; Zukiewicz, Inc. d/b/a Baldwin Shop 'N Save (1994) 314 NLRB 114 [146 LRRM 1296].

THE REMEDY

Having found that Respondent violated section 1153(a) and (e) of the Act, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the purposes of the Act. In fashioning the affirmative relief delineated in the following order, I have taken into account the entire record of these proceedings, the character of the violations found, the nature of Respondent's operations, and the conditions among farm workers and in the agricultural industry at large, as set forth in Tex-Cal Land Management, Inc. (1977) 3 ALRB No. 14. Noting that Respondent has ceased agricultural operations on the unit property, some of the actions required will be contingent upon the resumption of agricultural operations by Respondent, or derivative liability by some other entity or entities.

[6] Assuming the sale/sublease of the properties might make the information request irrelevant for contract negotiations, the requested information was still relevant to the issue of effects bargaining.

General Counsel seeks a makewhole remedy based on Respondent's delay in informing the Union of the sale/sublease of the unit property. The Board, on several occasions, has required employers engaging in such conduct to pay the bargaining unit employees a minimum two weeks of backpay. See Robert J. Lindeleaf, supra; Kaplan's Fruit & Produce Co., supra; Pik'd Rite, Inc., supra. In Valdora Produce Company and Valdora Produce Company, Inc. (1984) 10 ALRB No. 3, however, the Board upheld the Administrative Law Judge's decision not to award such makewhole, where the union, upon being advised of a partial shutdown, shortly thereafter, failed to pursue its effects bargaining rights.[7] In the instant case, the record does not disclose what, if any, bargaining took place once Respondent notified the Union of the sale/sublease, and made its proposal or, more importantly, if the parties reached agreement. Accordingly, this issue is remanded to the El Centro Regional Director for further investigation, and if appropriate, said remedy may be further pursued informally with Respondent, or through compliance proceedings.

[7] In that case, the ALJ dismissed the section 1153(a) and (e) allegation based on the union's conduct. In this case, irrespective of any failure to negotiate by the Union, Respondent's substantial delay in giving notice, in itself, would give rise to a violation, and the only issue remaining is the remedy.

ORDER

Pursuant to Labor Code section 1160.3, Respondent, Grewal Enterprises, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

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

(b) Failing or refusing to bargain with the UFW over the effects of its decision to cease agricultural operations on the bargaining unit properties.

(c) Failing or refusing to timely provide to the UFW, at its request, information relevant to collective bargaining.

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

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

(a) Upon request, meet and bargain collectively in good faith with the UFW, as the exclusive collective bargaining representative of its agricultural employees, with respect to the effects of Respondent's decision to cease agricultural operations on the bargaining unit properties.

(b) 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.

(c) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the issuance of this Order, to all agricultural employees in the bargaining unit employed at any time during the period from the date Respondent reached its decision to dispose of the bargaining unit properties to September 1, 1998, at their last known addresses.

(d) Notify the Regional Director in writing, within thirty days after the date of issuance of this Order, of the steps which have been taken to comply with its terms. Upon request of the Regional Director, Respondent shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

3. If Respondent has resumed or resumes agricultural operations, it shall:

(a) Upon request, meet and bargain collectively in good faith with the UFW as the exclusive collective bargaining representative of its agricultural employees, for the purpose of arriving at a collective bargaining agreement.

(b) 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) to be determined by the

Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

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

(d) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all employees then employed in the bargaining unit, 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 the bargaining unit in order to compensate them for time lost during the reading of the Notice and the question-and-answer period.

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

4. The issue of whether a makewhole remedy is appropriate

is remanded to the Regional Director for further investigation. If the Regional Director, after completing the investigation, believes that such a remedy is warranted, said issue may be resolved informally with Respondent, or through compliance proceedings.

Dated: August 30, 2000

_____
Douglas Gallop
Administrative Law Judge