

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

J. R. NORTON COMPANY,	)	
Respondent,	)	Case No. 77-CE-166-E
	)	
and	)	
	)	4 ALRB No. 39
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
	)	

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DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

In accordance with Labor Code Section 1160.3 and Section 20260 of the Board's regulations, 8 Cal. Admin. Code (1977) , this proceeding has been transferred directly to the Board on the basis of a stipulation of facts , signed by all of the parties, which waived an evidentiary hearing before an Administrative' Law Officer.

On August 10, 1977, the United Farm Workers of America, AFL-CIO (UFW) was certified as the exclusive collective bargaining representative of Respondent's agricultural employees in the Imperial and Palos Verdes Valleys, excluding off -the- farm packing-shed employees and vacuum-cooling-plant workers . J. R. Norton, 3 ALRB No. 66 (1977). Thereafter, the UFW requested that Respondent commence negotiations . Respondent refused to bargain with the union in order to obtain judicial

review of the certification and the election on which it was based. Respondent admitted in its answer to the complaint that it had refused to bargain but denied that such refusal constituted a violation of Section 1153 (e) of the Act. Respondent contends that the Board's certification was not proper since certain of Respondent's post-election objections had been dismissed by the Board prior to hearing the representation matter.

This Board has adopted the NLRB's broad proscription as to relitigation of representation issues in related unfair labor practice proceedings. Perry Farms, Inc. 4 ALRB No. 25 (1973). We have already considered and ruled on the issues raised by Respondent in connection with the election held among the Respondent's agricultural employees. Respondent here presents no newly-discovered or previously-unavailable evidence, nor does it argue extraordinary circumstances justifying relitigation of these issues. Accordingly, we conclude that Respondent had a duty to bargain with the UFW based upon the Board's certification of the UFW dated August 10, 1977, and further that Respondent has failed and refused to meet and bargain in good faith with the UFW, in violation of Labor Code Section 1153(e) and (c), after August 10, 1977.

In accordance with our Decision in Perry Farms, supra, we shall order that Respondent, rather than its employees, bear the costs of the delay, which has resulted from its failure and refusal to bargain with the union, by making its employees whole for any losses of pay and other economic benefits which

they may have suffered as a result thereof, from the date the Respondent received the union's initial request to commence negotiations to such time as Respondent commences to bargain in good faith and continues so to bargain to contract or bona fide impasse. The amount of Respondent's monetary obligation to its employees will be determined by the Regional Director.

Because the certification in this case issued substantially after the certifications in Adam and Perry, the exact data used to arrive at a basic make-whole wage in those cases does not provide as good a basis for a make-whole computation in this case. See Adam Dairy, 4 ALRB No. 24 (1978), at page 19. We will therefore direct the Regional Director to investigate and determine a new basic make-whole wage in this matter. The investigation should include a survey of more-recently-negotiated UFW contracts. In evaluating the relevance of particular contracts to determination of a make-whole award in this case, the Regional Director should consider such factors as the time frame within which the contracts were concluded as well as any pattern of distribution of wage rates based on factors such as were noted in Adam Dairy, *supra*, e.g., size of workforce/ type of industry, or geographical locations. We note, however, that the Bureau of Labor Statistics data which we used in Adam Dairy to calculate the dollar value of fringe benefits are unchanged, so that the investigation herein need only be concerned with establishing an appropriate wage rate or rates for straight-time work. See Adam Dairy, *supra*, at pp. 24-28.

The order in this case will include a requirement that

Respondent notify its employees that it will, upon request, meet and bargain in good faith with their certified collective bargaining representative. In addition to the standard means of publicizing the Notice to Employees, we believe that the notice herein should also be distributed to ail employees who participated in the election on February 6, 1376, in which the UFW was designated and selected as their bargaining agent. Accordingly, we shall order distribution of the Notice to all employees of Respondent who were on its payroll for the period immediately preceding the filing of the petition for certification herein on January 30, 1976.

ORDER

Pursuant to Labor Code Sec-ion 1150.3, Respondent, J. R Norton Company, its officers, successors and assigns is hereby ordered to:

1. Cease and desist from:

(a) Refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1135.2 (a), with the United Farm Workers of America, AFL-CIO (UFW) as the certified bargaining representative of its agricultural employees.

(b) In any other manner interfering with, restraining or coercing agricultural employees in the exercise of the rights guaranteed to 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 exclusive representative of

its agricultural employees and, if an agreement is reached, embody its terms in a signed contract.

(b) Make its agricultural employees whole for all losses of pay and other economic benefits sustained by them as the result of Respondent's refusal to bargain from the date of the UFW's request for bargaining to the date on which Respondent commences to bargain collectively in good faith and thereafter bargains to a contract or a bona fide impasse.

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

(d) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice for 90 consecutive days at places to be determined by the Regional Director.

(f) Provide a copy of the attached Notice to each employee hired by Respondent during the 12-month period following the issuance of this Decision and Order.

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days from receipt of this Order, to all employees employed by Respondent from the date on which it refused to bargain until compliance with this Order.

(h) Arrange for a representative of Respondent

or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified 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 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 30 days from the date of the receipt of this order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's agricultural employees be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with said union.

Dated: June 22, 1978

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

MEMBER McCARTHY, Concurring:

The majority correctly concludes that this is an appropriate case for make-whole relief. I concur in the result, but I continue to reject the notion that the make-whole remedy is warranted in all refusal to bargain situations for the reasons discussed in my concurring opinion in *Perry Farms, Inc.*, 4 ALRB No. 25 (1978).

Dated: June 22, 1978

JOHN P. McCARTHY, Member





## CASE SUMMARY

J. R. Norton Company (UFW)      4 ALRB No. 39  
Case No, 77-CE-166-E

### BOARD DECISION

This proceeding was transferred directly to the Board based on stipulated facts, which waived an evidentiary hearing before an Administrative Law Officer.

The UFW was certified as the exclusive collective bargaining agent of Respondent's employees. Since the Union's request to commence negotiations, Respondent has refused to bargain with the Union because it believed the Board's certification was not proper.

Citing Perry-Farms, Inc., 4 ALRB No. 25 (1973), in which the Board enunciated its policy of proscribing relitigation of representation issues in related unfair labor practice proceedings, the Board found Respondent had a duty to bargain and had failed to meet and bargain in good faith in violation of Labor Code Section 1152(e) and (c).

### REMEDY

The Board ordered Respondent to make its employees whole for any lost wages or economic benefits resulting from Respondent's violation. Noting that the certification in this case issued substantially after the certification in Adam Dairy, 4 ALRB No. 24 (1978), and Perry Farms, Inc., supra, the Board directed the Regional Director to formulate a new basic make-whole wage; in part, by surveying recently negotiated UFW contracts.

### CONCURRING OPINION

In a separate opinion, Member McCarthy concurred in the majority's order of make-whole on the facts of this case; but, for reasons stated in Perry Farms, Inc., supra, rejects the notion that all refusal to bargain situations warrant this remedy.

This case summary is furnished for information only and is not an official statement of the Board.