

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

|                                 |   |                      |
|---------------------------------|---|----------------------|
| D'ARRIGO BROTHERS OF CALIFORNIA | ) |                      |
| Respondent,                     | ) | Case No. 77-CE-164-E |
|                                 | ) |                      |
| and                             | ) |                      |
|                                 | ) | 4 ALRB NO. 45        |
| UNITED FARM WORKERS OF AMERICA, | ) |                      |
| AFL-CIO,                        | ) |                      |
| Charging Party.                 | ) |                      |
| _____                           | ) |                      |

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.

On February 6, 1978, the Board received a stipulation of facts entered into by all parties to this proceeding, including General Counsel, Respondent (D'Arrigo Brothers of California) and the Charging Party (United Farm Workers of America, AFL-CIO, hereinafter called the UFW), requesting that this matter be transferred directly to the Board for findings of fact, conclusions of law, and decision and order pursuant to 3 Cal. Admin. Code 20260. All parties have stipulated that the charge, complaint, answer, the "Stipulation of Facts" and the documents attached thereto constitute the entire record in the case; that no party desires to present testimony; and that all parties have waived their rights to a hearing pursuant to Labor Code 1160.2 in this matter.

On February 10, 1978, the Executive Secretary issued an order granting the parties until February 24, 1978, to file briefs if they chose to do so. Thereafter, all parties submitted timely briefs.

Pursuant to 8 Cal. Admin. Code Sec. 20260, this matter is hereby transferred to the Board. Upon the basis of the parties' Stipulation of Facts, the briefs, and the entire record in the case, the Board makes the following: FINDINGS OF FACT

1. Respondent, D'Arrigo Brothers of California, is, and at all times material herein has been, engaged in agriculture in Fresno, Imperial, Monterey and Riverside Counties and is and has been an agricultural employer within the meaning of Labor Code Section 1140.4 ( c ) .

2. The Charging Party, the CIFW, is, and at all times material herein has been, a labor organization within the meaning of Labor Code Section 1140.4 ( f ) .

3. On September 2, 1975, a petition for certification pursuant to Section 1156.3 ( a ) was filed by the UFW. On September: 9, 1975, the Board conducted an election among Respondent's agricultural employees pursuant to this petition. Respondent thereafter filed timely objections to the election pursuant to Labor Code Section 1156.3 ( c ) . In its decision in D'Arrigo Brothers of California, 3 ALRB No. 37 ( 1977 ) , which issued on May 10, 1977, the Board considered and dismissed Respondent's objections based on the record of a hearing conducted pursuant to Section 1156.3 ( c ) and 8 Cal. Admin. Code 20363(d) ( 1975 ) ,

and directed that certain challenged ballots be opened and counted in the presence of the parties. Respondent thereafter filed a second objection petition, dated May 27, 1977, based on alleged irregularities in the handling of challenged ballots first discovered when these ballots were opened and counted. On July 6, 1977, this objection was dismissed by the Executive Secretary pursuant to 8 Cal. Admin. Code Section 20365 (c) (1976), for failure to state facts which, if uncontroverted or unexplained, would constitute grounds for setting aside the election.<sup>1/</sup> On August 5, 1977, the Board denied Respondent's Request for Review of the Executive Secretary's order, pursuant to 8 Cal. Admin. Code Section 20393 (a) (1976).

4. On August 24, 1977, the UFW was certified as the exclusive representative of all agricultural employees of Respondent at its Brawley location and all of Respondent's agricultural employees in the Salinas Valley, excluding mainshop mechanics at the Clark Street mainshop, onion shed workers, field shop mechanics, and truck drivers, for the purpose of collective bargaining with respect to employees' rates of pay, wages, hours of employment, and other terms and conditions of employment.

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<sup>1/</sup> In John y. Borchard Farms, 2 ALRB No. IS (1976) was held that Section 1156.3(c) requires us to conduct a hearing only where facts are alleged which, if true, would constitute grounds for refusing to certify the election. Under current regulations, in effect at the time of this second objection petition, hearings on objections relating to the conduct of elections are ordered where a petition: (1) states facts which, if uncontroverted or unexplained, would constitute grounds for setting aside the election; and (2) where substantial and material issues of fact are in dispute. 8 Cal. Admin. Code 20365 (c), (e) and (g).

5. On or about September 16, 1977, the UFW requested that Respondent commence collective bargaining negotiations with the UFW. At all times since on or about that date, Respondent has refused to meet and bargain collectively with the UFW. Respondent's stated purpose in so refusing is to obtain review of this Board's decision and order certifying the UFW as exclusive collective bargaining representative of Respondent's employees in the above-described unit.

#### Conclusions of Law

In its answer to the complaint and its brief to the Board, Respondent contends that it seeks review of the Board's certification of the UFW on two grounds: (1) that the Board's decision in D'Arrigo Brothers, supra, is invalid because the Board failed to follow applicable NLRB precedent as required by Labor Code Section 1148; and (2) that Labor Code Section 1156.3 (c) required the Board to conduct a hearing before dismissing Respondent's second objection petition of May 27, 1977.

This Board has adopted the NLRB's broad proscription as to relitigation of representation issues in related unfair labor practice proceedings. Perry Farms, 4 ALRB No. 25 (.1978). We have already considered and ruled on the issues raised by Respondent in connection with the decision in D'Arrigo Brothers, supra, and Respondent's subsequent objection petition. 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 24, 1977, and. further that Respondent has failed and refused to meet and bargain in good faith with the UFW, in violation of Labor Code Sections 1153(e) and (c), at all times since on or about September 16, 1977.

#### The Remedy

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 of said delay for the period from September 16, 1977, to such time as Respondent commences to bargain in good faith and continues so to bargain to the point of a contract or a bona fide impasse. The Regional Director will determine the amount of the award herein based in general upon the criteria set forth in Perry Farms, supra, and Adam Dairy, 4 ALRB No. 24 (1973).

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, supra, 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 work-force, 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 rats 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 all employees who participated in the election on September 9, 1975, 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 September 2, 1975.

ORDER

Pursuant to Labor Code Section 1160.3, the Respondent, D'Arrigo Bros. of California, its officers, agents, 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 1155.2 ( a ) , with the United Farmworkers of America, AFL-CIO (UFW), as the certified exclusive bargaining representative of its agricultural employees in violation of Labor Code Section 1153 ( e ) and ( a )

( 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 certified exclusive collective bargaining representative of its agricultural employees, and if an understanding is reached, embody such understanding in a signed agreement.

( 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.

( 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 Notice to each employee hired by the Respondent during the 12-month period following the issuance of this Decision.

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days from receipt of this Order, to all employees employed during the payroll periods immediately preceding September 2, 1975, and to all employees employed by Respondent from and including September 16, 1977, 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 non-hourly **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 period-



ically 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 meet and bargain collectively in good faith with said union.

Dated: July 14, 1973

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

NOTICE TO EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to meet and bargain about a contract with the UFW. The Board has ordered us to post this Notice and to take certain other actions. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

- (1) To organize themselves;
- (2) To form, join or help any union;
- (3) To bargain as a group and to choose anyone they want to speak for them;
- (4) To act together with other workers to try to get a contract or to help or protect each other; and
- (5) To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL, on request, meet and bargain with the CJFW about a contract because it is the representative chosen by our employees.

WE WILL reimburse each of the employees employed by us after September 16, 1977, for any loss of pay or other economic benefits sustained by them because we have refused to bargain with the UFW.

Dated: D'ARRIGO BROS. OF CALIFORNIA

By: \_\_\_\_\_  
Representative Title

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

DO NOT REMOVE OR MUTILATE.

MEMBER MCCARTHY, Concurring:

Respondent has articulated two grounds upon which it proposes to seek judicial review of the Board's Decision in D'Arrigo Bros. of California, 3 ALRS No. 37 (1977). In my opinion, neither ground has legal merit; this is therefore an appropriate case in which to invoke make-whole relief.

With due deference to my colleagues, however, I continue to reject the automatic application of a broad remedial rule which precludes a case-by-case analysis and allowance for those employers who, in good faith, refuse to bargain in order to place legally or factually defensible claims before the courts of appeal. For a fuller discussion of my position with respect to make-whole relief, see Perry Farms, Inc., concurring opinion, 4 ALRB No. 25 (1978); Superior Farming Company, Inc., dissenting opinion, 4 ALRB No, 44 (1978).

Dated: July 14, 1978

JOHN P. MCCARTHY, Member

CASE SUMMARY

D'Arrigo Brothers of California  
(UFW)

4 ALRB No. 45  
Case No. 77-CZ-164-E

On December 12, 1977, the General Counsel issued a complaint charging Respondent with refusing to bargain in good faith with the UFW as certified representative of its employees. Respondent timely filed an answer. There being no factual controversy, the case was transferred to the Board pursuant to 8 Cal. Admin. Code 20260 for decision upon the formal pleadings and briefs and a "Stipulation of Facts" signed by General Counsel, Respondent and Charging Party.

BOARD DECISION

The Board found appropriate jurisdictional facts and further found that the UFW was certified as representative of Respondent's employees pursuant to its decision in D'Arrigo Brothers of California, 3 ALRS No. 37 (1977);. The Board rejected Respondent's request that it reconsider its decision to certify, citing Perry Farms, 4 ALHB No. 25 (1978) , and concluded that Respondent had violated Labor Code Sections 1153(e) and (a) by refusing to bargain with the UFW since on or about September 16 , 1977.

REMEDY

Respondent is ordered to make its employees whole for loss of pay resulting from its refusal to bargain and to post, mail and read a Notice to its employees; the UFW<sup>1</sup>'s certification is extended for one year from the date Respondent commences to bargain with it in good faith.

Member McCarthy concurred in the application of make-whole relief in this case, stating that the grounds on which Respondent seeks review of the certification lack legal merit. See Superior Farms, Inc., 4 ALRB No, 44 U973) [dissenting opinion].

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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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