

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

C. MONDAVI & SONS, dba	)	
CHARLES KRUG WINERY,	)	
	)	CASE NO. 77-CE-21-S
Respondent,	)	
	)	4 ALRB No. 52
and	)	
	)	
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.

The complaint in this case, which issued on December 1, 1977, alleged that since on or about September 28, 1977, Respondent has refused to bargain collectively in good faith with the United Farm Workers of America, AFL-CIO (UFW), as the certified bargaining representative of Respondent's agricultural employees, in violation of Section 1153(e) and (a) of the Act. In its answer to the complaint, Respondent admitted all the factual allegations therein, but denied that it had violated the Act and, as an affirmative defense, contended that the UFW's certification was invalid.

On December 22, 1977, the General Counsel filed a Motion For Transfer Of Case To Board' And For Summary Judgment in favor of the General Counsel, along with a Memorandum Of Points And Authorities in support of said motion. On

December 29, 1977, Respondent filed a Motion For Transfer Of Case To Board, For Summary Judgment in Respondent's favor and for dismissal of the complaint, along with a supporting Memorandum Of Points and Authorities.

As all material issues of fact herein have been admitted by Respondent in its answer to the complaint, there are no matters requiring a hearing before an Administrative Law Officer. Accordingly, this matter is hereby transferred to the Board for decision, and the General Counsel's motion for summary judgment is hereby granted.<sup>1/</sup> Respondent's motion for a summary judgment in its favor and for dismissal of the complaint, is hereby denied.

On the basis of the entire record in this matter, including the record in related case number 75-RC-44-S, the Board makes the following: FINDINGS OF FACT

1. Respondent, C. Mondavi & Sons dba Charles Krug Winery, is now, and at all times material herein has been, an agricultural employer, within the meaning of Labor Code Section 1140.4(c), engaged in agriculture in Napa County, California.

2. The Charging Party herein, United Farm Workers of America, AFL-CIO (UFW), is now, and at all times material

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<sup>1/</sup>The General Counsel's other motion, that the Board determine now the issue of liability and reserve the issue of remedy for later determination, is hereby denied.

herein has been, a labor organization within the meaning of Labor Code Section 1140.4(f).

3. On or about October 10, 1975, a petition for certification pursuant to Labor Code Section 1156.3 (a) was filed by the UFW in Case No. 75-RC-44-S. On or about October 17, 1975, the Board conducted an election among Respondent's agricultural employees pursuant to the said petition. Thereafter, Respondent filed timely objections to the election pursuant to Labor Code Section 1156.3 (c). On October 26, 1976, the Board's Executive Secretary issued an order dismissing 24 of Respondent's objections and setting the remaining nine objections for hearing. Respondent filed a motion on November 5, 1976, to declare the results of the election void and to quash permanently the notice of hearing. The Board denied the motion by order dated November 12, 1976. A hearing was conducted pursuant to 8 Cal. Admin. Code Section 20370 in St. Helena, California, on November 15 through 18, and December 8 and 9, 1976. On February 8, 1977, the Investigative Hearing Examiner (IHE) issued his decision recommending dismissal of Respondent's remaining objections and certification of the UFW. Respondent thereafter filed timely exceptions, to the IHE's decision.

4. On August 9, 1977, the Board issued its decision in C. Mondavi & Sons dba Charles Krug Winery, 3 ALRB No. 65 (1977), in which it adopted the IHE's recommendations and certified the UFW as the exclusive representative of all Respondent's agricultural employees for the purpose of

collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. On August 19, 1977, Respondent filed, pursuant to 8 Cal. Admin. Code Section 20393 (c), a motion for reconsideration of the Board's decision in 3 ALRB No. 65, or, in the alternative, a stay of certification. On October 13, 1977, the Board denied the alternative motions.

6. On or about September 19, 1977, the UFW, by letter, requested a negotiations meeting with Respondent and requested information relevant to the issues to be discussed during negotiations.

7. On or about September 28, 1977, and November 14, 1977, Respondent, by letter to the UFW, refused to commence collective bargaining negotiations.

8. On or about November 16, 1977, the UFW, by letter, asked Respondent to provide proposed dates for an initial collective bargaining negotiations meeting, and repeated its request of September 19, 1977, for information relevant to collective bargaining subjects. Respondent has not replied to the UFW's letter of November 16, 1977, and has never provided the UFW with any of the information requested in its letters of September 19 and November 16, 1977.

9. In its answer to the complaint filed in this matter, Respondent asserts, as an affirmative defense, that the certification of the UFW is invalid for reasons raised in its objections petition, and that Respondent has therefore

not committed an unfair labor practice by its failure and refusal to meet and bargain with the UFW.

#### Conclusions of Law

This Board has adopted the NLRB's broad proscription against relitigation of representation issues in related unfair labor practice proceedings. Perry Farms, 4 ALRB No. 25 (1978). In our decision in C. Mondavi & Sons dba Charles Krug Winery, 3 ALRB No. 65 (1977), we have already considered and ruled on the issues raised by Respondent's objections to the election in Case No. 75-RC-44-S. Respondent here presents no newly discovered or previously-unavailable evidence, nor does it argue any extraordinary circumstance (s) which might justify relitigation of such issues. Accordingly, we conclude that Respondent had a duty to bargain with the UFW based upon that union's certification on August 9, 1977, and that Respondent, by its failure and refusal, at all times since September 28, 1977, to meet and bargain collectively in good faith with the UFW and to provide the UFW with the requested information relevant to collective bargaining subjects, has violated Labor Code Section 1153(e) and (a).

#### 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 thereof, for the period

from September 28, 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 based in general upon the principles and criteria set forth in Perry Farms, supra, and Adam Dairy, 4 ALRB No. 24 (1978).

Because the certification in this case issued considerably later than the certifications in Adam and Perry, the exact data used to compute the basic make-whole wage in those cases may, not provide a satisfactory basis for such a computation in this case. See Adam Dairy, supra, at page 19. We shall therefore direct the Regional Director to investigate and determine a basic make-whole wage to use in calculating back-pay and other benefits due in this matter. The investigation should include a survey of more-recently-negotiated UFW contracts. In evaluating the relevance of particular contracts to the determination of a make-whole award in this case, the Regional Director shall 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 (size of work-force, type of industry, or geographical locations}. We note, however, that the Bureau of Labor Statistics data which we used in that case to calculate the 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.

Our remedial Order in this case will include a requirement that Respondent notify its employees that it will bargain with their certified collective bargaining representative. In addition to the methods of publicizing the Notice to Employees customarily provided for in our orders, we hold that it is appropriate, where Respondent has refused to bargain in good faith, that the Notice be distributed to all of the employees who were eligible to participate in the secret-ballot election in which the UFW was selected as their bargaining agent on October 17, 1975. Accordingly, we shall order distribution of the Notice to Employees to all employees who were on Respondent's payroll during the payroll period immediately preceding the filing of the petition for certification on October 10, 1975.

ORDER

Pursuant to Labor Code Section 1160.3, Respondent, C. Mondavi & Sons, its officers, agents, successors and assigns is hereby ordered to:

1. Cease and desist from:

(a) Failing and refusing to meet and 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 certified exclusive collective bargaining representative of its agricultural employees.

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( b ) Failing and refusing to furnish, at the UFW's request, information and data relevant to subjects of collective bargaining.

( c ) 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, concerning the wages, hours and working conditions of such employees, and if understanding is reached, embody such understanding in a signed agreement.

( b ) Provide the UFW, on request, with all information and data relevant to collective bargaining issues and subjects.

( c ) 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.

( d ) 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.

( e ) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall thereafter reproduce sufficient

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copies in each language for the purposes set forth hereinafter.

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

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

( h ) 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 period immediately preceding October 10, 1975, and to all employees employed by Respondent from and including September 28, 1977, until compliance with this Order.

( i ) 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.

( j ) 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: July 21, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

MEMBER McCARTHY, Dissenting:

For the reasons set forth in my concurring opinion in Perry Farms, Inc., 4 ALRB No. 25 (1978) and my dissenting opinion in Superior Farming Company, Inc., 4 ALRB No. 44 (1978), I oppose application of make-whole relief where, as here, the Board has failed to examine the particular circumstances to determine the appropriateness of the remedy. Dated: July 21, 1978

JOHN P. McCARTHY, 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 UFW about a contract because it is the representative chosen by our employees.

WE WILL, on request, give the UFW information and data it needs to represent you in dealing with us for a contract to cover your wages, hours and working conditions.

WE WILL reimburse each of the employees employed by us after September 28, 1977, for any loss of pay or other economic benefits sustained by them because we have refused to bargain with the UFW.

DATED: C. MONDAVI & SONS

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.

CASE SUMMARY

C. Mondavi & Sons, dba  
Charles Krug Winery  
(UFW)

4 ALRB No.  
Case No. 77-CE-21-S

BACKGROUND

On December 1, 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.

BOARD DECISION

As the UFW was certified as collective bargaining representative of Respondent's agricultural employees in C. Mondavi s Sons, dba Charles Krug Winery, 3 ALRB Mo. 65 (1977), the Board rejected Respondent's request that it reconsider that decision, citing Perry Farms, 4 ALRB No. 25 (1978), and concluded that Respondent had violated Labor Code Sections 1153(e) and (a) by failing and refusing to meet and bargain with the UFW, and by failing to provide the UFW with information needed for collective bargaining, since on or about September 28, 1977.

DISSENT

Member McCarthy dissented to the granting of make-whole relief, citing his separate opinions in Perry Farms, Inc., 4 ALRB No. 25 (1978), and Superior Farming Company, Inc., 4 ALRB No. 44 (1978).

REMEDY

Respondent is ordered: to meet and bargain, upon request, with the UFW; to embody any agreement reached in a signed contract; to provide the UFW, on request, with information relevant to collective bargaining subjects; to make its employees whole for all losses of pay and benefits resulting from its refusal to bargain; and to post, mail and read a Notice to its employees. Also the UFW's certification is extended for one year from the date Respondent commences to bargain with it in good faith.

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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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