

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GEORGE ARAKELIAN FARMS, INC.,)	
)	
Respondent,)	Case No. 78-CE-11-E
)	
and)	14 ALRB No. 53
)	
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 May 16, 1978, the Board received a stipulation of facts entered into by all parties to this proceeding, including the General Counsel, Respondent (George Arakelian Farms, Inc.) 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 8 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 right to a hearing pursuant to Labor Code Sec. 1160.2 in this matter.

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On May 16, 1978, the Executive Secretary issued an order granting the parties until June 8, 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, George Arakelian Farms, Inc., is, and at all times material herein has been, engaged in agriculture in Riverside County and is and has been an agricultural employer within the meaning of Labor Code Section 1140.4(c).

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

3. On December 8, 1976, a petition for certification pursuant to Section 1156.3(a) was filed by the UFW. On December 15, 1976, 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 George Arakelian Farms, Inc., 4 ALRB No. 6 (1978), which issued on February 2, 1978, 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 20365(e) (1976), and

certified the UFW as exclusive representative for all of the Respondent's agricultural employees in the State of California for the purpose of collective bargaining as defined in Labor Code Section 1155.2(a), concerning employees' wages, working hours and other terms and conditions of employment.

4. On or about February 6, 1978, the UFW requested that Respondent commence collective bargaining negotiations with the UFW.

5. Since on or about February 28, 1978, Respondent has refused to meet and bargain collectively with the UFW.

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 George Arakelian Farms, Inc., supra, is invalid as being contrary to the provisions of the Agricultural Labor Relations Act; and (2) that Respondent was denied due process of law by being denied a hearing on certain objections to the election.^{1/}

This Board has adopted the NLRB's broad proscription as to relitigation of representation issues in related unfair

^{1/}In John V. Borchard Farms, 2 ALRB No. 16 (1976), we 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, hearings on objections relating to the conduct of elections are ordered: (1) where a petition states facts which, if uncontro-verted 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).

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 George Arakelian Farms, Inc., supra. 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 February 2, 1978, and further that Respondent has failed and refused to meet and bargain in good faith with the UFW, in violation of Labor Code Sections 1153Ce) and (a), at all times since on or about February 28, 1978.

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 February 28, 1978, 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 (1978).

Because the certification in this case issued substantially after the certification in Adam and Perry, the

exact data-used to arrive at a basic make-whole wage in those cases do not provide as good a basis for a make-whole computation in this case. See Adam Dairy, *supra*, at page 19. We 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 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 all employees who were eligible to participate in the election on December 15, 1976, 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 pay period immediately preceding the filing of the petition for certification herein on December 8, 1976.

ORDER

Pursuant to Labor Code Section 1160.3, the Respondent, George Arakelian Farms, Inc., its officers, agents, successors and assigns is hereby ordered to:

1. Cease and desist from:

(a) Failing or 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 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 December 8, 1976, and to all employees employed by Respondent from and including February 28, 1978, 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 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 meet and bargain collectively in good faith with said union.

DATED:

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

Blythe, California

CASE SUMMARY

George Arakelian Farms, Inc.
(UFW)

4 ALRB No. 53
Case No. 78-CE-11-E

BACKGROUND

The General Counsel's complaint alleged that Respondent refused to meet and bargain in good faith with the UFW as certified representative of its agricultural employees. Respondent timely filed an answer. As there was 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

As the Board had certified the UFW as exclusive collective bargaining representative of Respondent's employees in George Arakelian Farms, Inc., 4 ALRB No. 6 (1978), it rejected Respondent's request that it reconsider that decision, citing Perry Farms, 4 ALRB No. 25, (1978), in which the Board adopted the NLRB's broad proscription as to relitigation of representation issues in related unfair labor practice proceedings. The Board concluded, therefore, that Respondent had violated Labor Code Section 1153 (e) and (a) by failing and refusing to meet and bargain with the UFW at all times since on or about February 28, 1978.

REMEDY

Respondent is ordered: (1) to meet and bargain in good faith with the UFW at its request and to embody any agreement reached in a signed contract; and (2) to make its employees whole for loss of pay and other economic losses resulting from its refusal to bargain; and (3) to post, mail and read a Notice to its employees. 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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