

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SUNNYSIDE NURSERIES, INC.,)	
Respondent,)	Case No. 78-CE-164-M
)	
and)	
)	5 ALRB No. 23
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER

On January 31, 1979, this Board received a Stipulation and Statement of Facts, entered into by all parties to this matter, including General Counsel, Respondent (Sunnyside Nurseries, Inc.), and Charging Party (United Farm Workers of America, AFL-CIO) (UFW), wherein the parties agreed to a transfer of this matter to the Board for findings of fact, conclusions of law, and order pursuant to 8 Cal. Admin. Code 20260. In their Stipulation, the parties agreed, inter alia; that the charge, complaint, answer, and the Stipulation and Statement of Facts with the documents incorporated' therein, constitute the entire record in the case; and that all parties waive a hearing before an Administrative Law Officer (ALO), findings of fact and conclusions of law by an ALO, and the issuance of an ALO's decision.

In accordance with 8 Cal. Admin. Code 20260, this matter is hereby transferred to the Board. Pursuant to the

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provisions of Labor Code Section 1146,^{1/} the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record in light of the brief filed by Respondent and makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. At all times material herein, Respondent has been engaged in agriculture in Monterey County and has been an agricultural employer within the meaning of Section 1140.4(c).

2. At all times material herein, the UFW has been a labor organization within the meaning of Section 1140.4(f).

3. On October 8, 1975, a petition for certification pursuant to Section 1156.3(a) was filed by the UFW. On October 15, 1975, the Board conducted an election among Respondent's agricultural employees pursuant to that petition. Respondent thereafter timely filed objections to the election pursuant to Section 1156.3(c). On November 26, 1975, the Regional Director issued his Report on Challenged Ballots, and on January 7, 1976, this Board issued its Decision on Challenged Ballots, 2 ALRB No. 3 (1976). On February 28, 1977, the Executive Secretary of the Board issued an order dismissing Respondent's objections in part, and setting other objections for hearing. On March 9, 1977, Respondent and the UFW each filed a request for review of the Executive Secretary's order.

^{1/} All Section references herein are to portions of the California Labor Code.

On April 27, 1977, the Board issued an order granting in part and denying in part Respondent's request for review, and denying the UFW's request for review. The UFW submitted a motion for reconsideration on April 30, 1977, which was denied by order of the Board on May 3, 1977. A hearing on objections was held in Salinas, California, on May 9 through 13 and May 16 through 18, 1977. On November 7, 1978, the Board certified the UFW as exclusive representative of all agricultural employees of Respondent for the purpose of collective bargaining, as defined in Labor Code Section 1155.2(a), 4 ALRB No. 88 (1978). On November 14, 1978, Respondent submitted a motion for reconsideration of the Board's action, and on December 20, 1978, the Board granted that motion and amended its certification to show the UFW as exclusive collective bargaining representative of Respondent's agricultural employees at its Salinas facility, effective as of November 7, 1978.

4. On November 14, 1978, Cesar Chavez, President of the UFW, sent a letter to Respondent requesting negotiations and information in Respondent's possession necessary for collective bargaining.

5. On November 27, 1978, Respondent, through its attorney, sent a letter to Cesar Chavez wherein it refused to commence negotiations.^{2/}

^{2/} Although the UFW's request to bargain and Respondent's refusal to bargain occurred prior to the amendment of the certification, Respondent's refusal to meet and bargain with the UFW was clearly a refusal to bargain concerning any of its agricultural employees.

6. On December 12, 1978, the UFW filed with the Board and duly served on Respondent an unfair-labor-practice charge against Respondent, alleging that Respondent had refused to bargain with the UFW, the certified collective bargaining representative of Respondent's agricultural employees.

7. On December 27, 1978, the Acting Regional Director of the Board's Salinas Region issued the complaint in this matter which was duly served on Respondent. Said complaint alleges that Respondent violated Section 1153(e) and (a) by its refusal to bargain with the UFW.

8. On January 2, 1979, Respondent filed and served its answer to the complaint in this matter, in which it denied that it had violated Section 1153(e) and (a), and contended that the UFW had been improperly certified by the Board.

9. On February 16, 1979, Respondent submitted a brief in support of its position in this matter.

In its brief to the Board, Respondent contends that this Board's certification of the UFW as the collective bargaining representative for certain of its agricultural employees is invalid because ballots were not provided in the Korean language. Respondent further argues that in the event a new election is not directed, it would be inappropriate for the Board to issue a make-whole remedy.

CONCLUSIONS OF LAW

This Board has adopted the NLRB's proscription against relitigation of previously-determined representation issues in subsequent related unfair-labor-practice proceedings,

absent a showing of newly-discovered or previously-unavailable evidence, or other special circumstances. See, e.g., Superior Farming Company, Inc., 4 ALRB No. 44 (1978). We have already considered and ruled on the certification issues now raised by Respondent in our decision in Sunnyside Nurseries, Inc., 4 ALRB No. 88 (1978). Respondent has presented no newly discovered or previously-unavailable evidence, and it has shown no extraordinary circumstances which would justify 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, and that Respondent has failed and refused to meet and bargain in good faith with the UFW, in violation of Section 1153(e) and (a) at all times since November 27, 1978.

THE REMEDY

In accordance with our decisions in prior cases, e.g. High & Mighty Farms, 4 ALRB No. 51 (1978), and C. Mondavi & Sons dba Charles Krug Winery, 4 ALRB No. 52 (1978), 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 UFW, by making whole its employees for any losses of pay and other economic losses which they may have suffered as a result thereof, for the period from November 27, 1978, until 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. In accordance

with our usual practice, the Regional Director will determine the amount of the make-whole award herein.

Because the certification in this case issued substantially after the certification in Adam Dairy, dba Rancho Ikas Rios, 4 ALRB No. 24 (1978), the exact data used to arrive at the make-whole award in that case may not provide a fully adequate basis for a make-whole computation in the instant case. See, Adam Dairy, supra, at page 19. We therefore direct the Regional Director to include in his/her investigation and determination of the make-whole award 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 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, e.g., size of work-force, type of industry, or geographical locations.

Our remedial 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, the UFW. In addition to the customary 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 October 15, 1975, in which the UFW was designated and selected by the employees as their bargaining agent. Accordingly, we shall order distribution of the said 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 October 8, 1975.

ORDER

Pursuant to Labor Code Section 1160.3, the Respondent, Sunnyside Nurseries, 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 Respondent's agricultural employees at its Salinas facility, in violation of Labor Code Section 1153(e) and (a).

(b) Failing or refusing to provide to the UFW information in its possession which is relevant to collective bargaining and requested by the UFW.

(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 at its Salinas facility, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, provide to the UFW information in its possession which is relevant to collective bargaining.

(c) Make whole its agricultural employees for all losses of pay and other economic losses 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 copies in each language for the purposes set forth hereinafter.

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

(g) Provide a copy of the attached Notice to each employee hired by 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 after issuance of this Order to all employees employed during the payroll period immediately preceding October 8, 1975, and to all employees employed by Respondent from and including November 27, 1978, 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 issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him 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 bargaining representative of Respondent's agricultural employees at its Salinas facility, be, and it hereby is, extended for a

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period of one year from the date on which Respondent commences to bargain in good faith with said union.

DATED: March 27, 1979

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by failing and refusing to bargain about a contract with the UFW. The Board has ordered us to post this Notice and to take other action. 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 meet and bargain in good faith with the UFW about a contract because it is the representative chosen by our employees.

WE WILL reimburse each of the employees employed by us after November 27, 1978, for any loss of pay or other economic losses which they suffered because we have failed and refused to bargain with the UFW.

WE WILL NOT refuse or fail to provide to the UFW information in our possession which is relevant to collective bargaining and which the UFW requests.

DATED:

SUNNYSIDE NURSERIES, INC.

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

Sunnyside Nurseries, Inc.

Case No. 78-CE-164-M

5 ALRB No. 23

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 charge, formal pleadings and a Stipulation and Statement 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 the agricultural employees of Respondent's Salinas facility in Sunnyside Nurseries, Inc., 4 ALRB No. 88 (1978), and as Respondent had not presented any newly-discovered or previously-unavailable evidence, and had not shown other extraordinary circumstances which would justify relitigation of issues resolved in that case, the Board rejected Respondent's request that it reconsider that decision. 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 November 27, 1978.

REMEDY

The Board ordered Respondent: (1) to meet and bargain in good faith with the UFW at its request and to embody any agreement reached in a signed contract; (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, distribute and read an appropriate remedial Notice to its employees. The Board also ordered the UFW's certification extended for one year from the date Respondent commences to bargain with the UFW 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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