

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D'ARRIGO BROTHERS OF CALIFORNIA,)	
)	
Respondent,)	Case No. 77-CE-164-M
)	
and)	
)	6 ALRB No. 27
UNITED FARM WORKERS OF AMERICA, AFL-CIO,)	(4 ALRB No. 45)
)	REMAND
Charging Party.)	
_____)	

SUPPLEMENTAL DECISION AND REVISED ORDER

In accordance with the remand of the Court of Appeal, we have reviewed and reconsidered our remedial Order in light of J. R. Norton Co. v. Agricultural Labor Relations Bd. ,_26 Cal. 3d 1 (1980) , and hereby make the following findings and conclusions- with respect to our original Decision and Order.^{1/}

In J. R. Norton Company, 6 ALRB No. 26 (1980), we stated that in determining in which cases a make-whole remedy is appropriate, we shall consider "whether the employer litigated in a reasonable good-faith belief that the election was conducted in a manner which did not fully protect employees'

^{1/}In D'Arrigo Brothers of California, 4 ALRB No. 45 (1978), pursuant to a stipulation of facts, this Board concluded that Respondent had violated Labor Code Section 1153(a) and (e) by refusing to bargain and ordered certain remedies, including a make-whole remedy. The Court of Appeal for the First Appellate District, on March 20, 1980, in Case 1 Civ. No. 44814 (4 ALRB No. 45 (1978)), denied review of the Board's Decision, thereby upholding the Board's certification, 3 ALRB No. 34 (1977), and remanding only as to the make-whole portion of the Order.

rights', or that misconduct occurred which affected the outcome of the election." *Id.*, at page 2. On this record we find that Respondent had a reasonable good-faith belief that the certification was invalid, and that a make-whole remedy is therefore inappropriate.

In its objections to the election, Respondent argued that the "laboratory conditions" standard for valid elections enforced by the NLRB was not met.^{2/} This Board dismissed the objections, upheld the election, and issued a certification, stating that because of the conditions peculiar to agriculture, it would set aside an election "only where the circumstances of the first election were such that employees could not express a free and uncoerced choice of a collective bargaining representative." 3 ALRB No. 37, at page 4.

As this was the first case in which the Board announced its general standard for setting aside elections, the evidence produced by Respondent in support of its objections was sufficient at that time to warrant a reasonable belief on Respondent's part that under the NLRB's standards the election might have been set aside. Because our standards differ from those

^{2/} In election proceedings, it is the [NLRB's] function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. It is our duty to establish those conditions? it is also our duty to determine whether they have been fulfilled. When, in the rare extreme case, the standard drops too low, because of our fault or that of others, the requisite laboratory conditions are not present and the experiment must be conducted over again." *General Shoe Corporation*, 77 NLRB 124, 21 LRRM 1337 (1948) (footnote omitted).

of the NLRB, we find that this is a "close [case] that [raises] important issues concerning whether the election was conducted in a manner that truly protected the employees' right of free choice." J. R. Norton Co. v. Agricultural Labor Relations Bd., supra, at page 39. Moreover, in the record before us, there is no indication that Respondent did not litigate its objections in good faith.

Having determined that Respondent's litigation posture was reasonable and that Respondent acted in good faith, we shall modify our original remedial Order to delete the make-whole provisions thereof.

REVISED 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 Farm Workers of America, APL-CIO (UPW), as the certified exclusive bargaining representative of its agricultural employees in violation of Labor Code Section 1153(e) and (a).

(b) In any like or related 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) 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.

(c) Post copies of the attached Notice for 60 consecutive days at places to be determined by the Regional Director.

(d) Provide a copy of the Notice to each employee hired by the Respondent for 60 consecutive days following the issuance of this Decision.

(e) 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.

(f) 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.

(g) 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

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of one year from the date on which Respondent commences to meet and bargain collectively in good faith with said union. Dated: May 30, 1980

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

RALPH FAUST, 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.

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.

CASE SUMMARY

D'Arrigo Brothers of California

6 ALRB No. 27
(4 ALRB No. 45)
Case No. 77-CE-164-M

BOARD DECISION

On remand from the Court of Appeal for the First Appellate District, Division Two/ the Board reconsidered, in light of J. R. Norton Co. v. ALRB, 26 Cal. 3d 1 (1980), whether make-whole was an appropriate remedy in D'Arrigo Brothers of California, 4 ALRB No. 45 (1978). In the latter case, Respondent was found to have violated Section 1153(e) and (a) by refusing to bargain with the UFW after the Board upheld election results and certified the UFW as collective bargaining agent for Respondent's agricultural employees.

Assessing Respondent's election objections by the criteria set forth in Norton, supra, for technical refusal-to-bargain cases, the Board determined that Respondent's litigation posture at the time of the refusal to bargain was reasonable and that Respondent acted in good faith.

REMEDY

The Board deleted the make-whole provision in its Revised Order, and modified the scope of the Order's cease-and-desist provision, directing Respondent to cease and desist from interfering with, restraining, or coercing employees in the exercise of their organizational rights in any manner like or related to the unfair labor practice committed by Respondent.

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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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