Blythe, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GEORGE ARAKELIAN FARMS, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 78-CE-11-E 6 ALRB No. 28 (4 ALRB No. 53)

SUPPLEMENTAL DECISION AND REVISED ORDER

In accordance with the Remand Order of the Court of Appeal for the Fourth Appellate District, Division Two, dated February 8, 1980, in Case 4 Civil No. 20469, 4 ALRB No. 53 (1978), we have reconsidered our remedial Order in George Arakelian Farms, Inc., 4 ALRB Mo. 53 (1978), in light of the decision of the California Supreme Court in J. R. Norton Co. v. Agricultural Labor Relations Bd., 26 Cal. 3d 1 (1980), and hereby make the following findings and modifications in our original Decision and Order.

A representation election was conducted among the agricultural employees of Respondent, George Arakelian Farms, Inc., on December 15, 1976. The vote count was:

United Farm Workers of America, AFL-CIO . . .	139
No Union	12
Challenged Ballots	17
Total	168

Respondent timely filed five post-election objections. Four of

the objections were dismissed by the Executive Secretary of the Agricultural Labor Relations Board (ALRB) and the remaining objection was set for hearing. That objection alleged that United Farm Workers of America, AFL-CIO (UFW), organizers violated 8 Cal. Admin. Code Section 20900, by taking access to employees in Respondent's fields for longer periods than authorized by the access regulation, or at unauthorized times, and that such conduct affected the outcome of the election. Based on a stipulation of facts, the Investigative Hearing Examiner (IHE), and subsequently the Board, concluded that many of the access violations which had been committed were de minimis and that the rest involved no work disruption, no coercion or intimidation of employees, and no adverse impact upon the employees' free choice of a bargaining representative.

The Board certified the UFW as the collective bargaining representative of Respondent's employees. George Arakelian Farms, Inc., 4 ALRB No. 6 (1978). Following certification, on or about February 6, 1978, the UFW requested that Respondent begin bargaining with the Union, but Respondent refused to do so. Following an unfair labor practice proceeding, the Board concluded that Respondent had unlawfully refused to bargain with the UFW, in violation of Section 1153(e) and (a) of the Act, and ordered Respondent to reimburse its employees for loss of pay and other economic losses suffered as a result of Respondent's unfair labor practice. George Arakelian Farms, Inc., 4 ALRB No. 53 (1978).

In J. R. Norton Co. v. Agricultural Labor Relations Bd., supra, which issued after our prior Decision and Order in this

matter, the Supreme Court held that, in technical refusal-to-bargain cases such as this, the Board must determine the appropriateness of make-whole relief on a case-by-case basis. In accordance with the Court's decision, we set forth the standards, procedures, and considerations involved in making such determinations in J. R. Norton Co., 6 ALRB No. 26 (1980). We shall determine in each case whether the respondent litigated in a reasonable good faith belief that the election was conducted in a manner which did not fully protect employees' rights or that misconduct occurred which affected the outcome of the election. On the basis of the record, we conclude that Respondent did not act reasonably in seeking judicial review of the Board certification.

As of the date the election was held, two decisions of this Board had addressed the impact of access rule violations on election results. In John V. Borchard Farms, 2 ALRB No. 16 (1976), the Board refused to set aside an election where there had been "minimal and insubstantial encroachment" upon the employer's premises beyond the scope of the access rule. In K. K. Ito Farms, 2 ALRB No, 51 (1976), the Board declined to set aside an election where the extra access was not of such character as to have had an intimidating or coercive impact upon employees, to have disadvantaged a competing labor organization, or in any other way to have affected the outcome of the election. As Respondent Arakelian provided no evidence that the access violations committed by the UFW were of such a character as to have had an intimidating or coercive impact upon employees, to have disadvantaged a competing labor organization, or in any other way to have affected

the outcome of the election, the IHE properly recommended that this objection be dismissed, and this Board dismissed it.

The four objections filed by Respondent which the Executive Secretary dismissed without a hearing included an allegation that the Board agent conducting the election was biased in favor of the UFW, as shown by his decision as to the times, places, and number of observers for the balloting. Citing Melco Vineyards, 2 ALRB No. 14 (1976), the Executive Secretary dismissed this objection on the grounds that Respondent failed to present evidence of bias, as a Board agent has discretion to set the time and place of an election, and setting an election over the specific objection of an employer does not constitute evidence of bias.

Respondent further objected that the Board agent gave the appearance of bias when, at the pre-election conference attended by several employees, he allowed a UFW representative to act as an interpreter until Respondent objected thereto, and made decisions as to the time, locations, and number of observers for the election in accordance with the Union's suggestions and contrary to Respondent's suggestions. The Executive Secretary dismissed the objection to the use of a UFW representative as an interpreter at the pre-election conference and to the Board agent's decision about the number of observers on the grounds that bias or the appearance of bias does not constitute grounds for setting aside an election unless it is shown to have affected the conduct or results of the election or to have impaired the validity of the balloting as a measure of employee choice, which Respondent failed

to show.

Respondent submitted further objections on the grounds that the times and places of balloting were unfairly advantageous to the UFW. Citing NLRB v. Wolverine World Wide, (6th Cir. 1973) 477 F.2d 969, 83 LRRM 2309, the Executive Secretary dismissed the objection that the election site itself had an adverse impact on employee freedom of choice, on the grounds that Respondent provided no evidence to support this objection. Similarly, relying on Ralph Samsel Co., 2 ALRB No. 10 (1977), the Executive Secretary dismissed the objection that the hours of balloting put the employer at a disadvantage since there was no evidence that any eligible employee was restrained, coerced, or disenfranchised.

Respondent requested that the Board review the Executive Secretary's dismissal of the four election objections discussed above. Having duly considered this request, the Board on July 1, 1977, denied it. Upon reconsideration of these objections and the objection which was dismissed in George Arakelian Farms, Inc., 4 ALRB No. 6 (1978), we conclude that Respondent's objections to the election are not substantial enough to support a reasonable, good faith belief "that the union would not have been freely selected by the employees as their bargaining representative had the election been properly conducted." J. R. Norton Co. v. Agricultural Labor Relations Bd., supra at 39. Each objection was dismissed either for lack of supporting evidence or because it clashed with an established labor law principle. In refusing to bargain and pursuing its objections through litigation, Respondent did not satisfy the requirement that its "litigation posture must

have been reasonable at the time of the refusal to bargain." J. R. Norton Co., supra at 3.

Accordingly, we find that imposition of the make-whole remedy is warranted in this case in order to prevent Respondent's employees from incurring financial loss due to Respondent's unlawful refusal to bargain with their freely chosen collective bargaining representative. We shall therefore retain the make-whole provision in our remedial Order, requiring Respondent to reimburse its employees for any losses of pay and other economic losses they have suffered as a result of Respondent's refusal to bargain with the UFW, for the period from February 28, 1978, to such time as Respondent commences to bargain in good faith and continues to bargain to the point of a contract or a bona fide impasse.

In paragraph 1(b) of our original remedial Order, we directed. Respondent to cease and desist from "in any other manner interfering with, restraining, or coercing agricultural employees in the exercise of rights guaranteed to them by Labor Code Section 1152." We shall modify that paragraph so as to require 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. See M. Caratan, Inc., 6 ALRB No. 14 (1980); Hickmott Foods, Inc., 242 NLRB No. 177, 101 LRRM 1342 (1979).

REVISED ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders Respondent,

George Arakelian Farms, Inc., its officers, agents, successors, and assigns 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 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 UFH 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) Reimburse its agricultural employees for all losses of pay and other economic losses 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 attached Notice to each employee hired by 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 at any time during the period 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: 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.

WE WILL reimburse all employees who worked for us at any time during the period from February 28, 1978, to the present, for any loss of pay or other economic losses sustained by them because we have refused to bargain with the UFW.

Dated: GEORGE ARAKELIAN FARMS, INC.

_____

(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 SUM1ARY

George Arakelian Farms, Inc., (UFW)

6 ALR3 No. 28
(4 ALRB No. 53)
Case No. 73-CE-ll-E

BOARD DECISION

On remand from the Court of Appeal for the Fourth 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 George Arakelian Farms, Inc., 4 ALRB No. 53 (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 the objections were not substantial enough to support a reasonable good faith belief on Respondent's part, at the time of its refusal to bargain, that the union would not have been freely selected by the employees had the election been properly conducted.

REMEDY

The Board retained the make-whole provision in its Revised Order but narrowed 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.