St. Helena, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

C. MONDAVI & SONS, dba CHARLES KRUG WINERY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 77-CE-21-S 6 ALRB No. 30 (4 ALRB No. 52)

SUPPLEMENTAL DECISION ON REMAND

In accordance with the remand order of the Court of Appeal for the First Appellate District, dated February 26, 1980, in Case 1 Civ. No. 44867, 4 ALRB No. 52 (1977), we have reviewed and reconsidered our remedial Order and hereby make the following findings and modifications in our original Decision, in light of J. R. Norton Co. v. Agricultural Labor Relations Bd., 26 Cal. 3d 1 (1980).

A representation election was conducted among the agricultural employees of Respondent, C. Mondavi & Sons, on October 17, 1975. The vote count was: UFW - 77; No Union - 35; Challenged Ballots - 6; Void Ballots - 2. Respondent timely filed objections to the election, 24 of which were dismissed by the Executive Secretary and 9 of which were set for hearing.

After a hearing was held on the remaining objections, the Investigative Hearing Examiner's (IHE) Decision issued, recommending that the objections be dismissed, that the election be

upheld, and the UFW be certified. The Board affirmed that Decision and certified the UFW as the exclusive collective bargaining representative of Respondent's employees on August 9, 1977. C. Mondavi & Sons, d/b/a Charles Krug Winery, 3 ALRB No. 65 (1977).

On September 19, 1977, the UFW requested that Respondent begin bargaining with the Union. On September 28, Respondent replied by letter stating that it was refusing to meet and bargain with the UFW pending Board action on its motion for reconsideration of the representation decision. The Board subsequently denied that motion. After another request for bargaining by the UFW, Respondent informed the Union by letter dated November 14, 1977, that it was refusing to bargain in order to test the validity of the Board's certification in court. In the subsequent unfair-labor-practice proceeding, the Board concluded that Respondent had violated Section 1153(e) and (a) of the Act and awarded make-whole relief to Respondent's employees. C. Mondavi & Sons, d/b/a Charles Krug Winery, 4 ALRB No. 52 (1978).

Respondent's petition for writ of review was denied by the appellate court, C. Mondavi & Sons, dba Charles Krug Winery v. Agricultural Labor Relations Board, 1 Civ. No. 44867, on February 26, 1980, and its petition for hearing before the California Supreme Court was denied on March 27, 1980. This case was remanded to the Board solely for a determination as to whether imposition of the make-whole remedy is warranted herein.

In J. R. Norton Co. v. Agricultural Labor Relations 3d., supra, which issued after the original Board decision herein, the Supreme Court held that, in technical refusal to bargain cases, 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 henceforth "determine in each case whether the employer 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." J. R. Norton Co., supra, at 2.

Turning to the case before us, we first inquire whether Respondent's litigation posture was reasonable at the time of its refusal to bargain with the UFW. We conclude that Respondent did not have a reasonable basis for seeking judicial review.

Nine election objections were set for hearing in the representation proceeding. The decisions of the IHE and the Beard fully set forth the factual findings and legal conclusions as to those objections.[1/] The Board dismissed objections that Respondent did not have adequate notice of the election and therefore was denied the opportunity to conduct an effective pre-election campaign. Respondent was served with the election petition on October 10, 1975, the day the UFW filed the petition with the ALRB. Respondent claimed that it was prejudiced by statements of ALRB agents made during the following days, which indicated that the petition was not filed until October 15. The Board concluded that

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[1/] In its answer to the refusal to bargain complaint, Respondent set forth specific grounds on which it wished to test certification. Respondent did not object to the dismissal by the Executive Secretary of the remaining 24 objections.

service of the petition constitutes sufficient notice under the Act, and found that the testimony concerning the agents' statements was uncorroborated hearsay insufficient to support a finding. The Board found that Respondent had sufficient time to campaign, noting that it had in fact campaigned during the two months prior to the election. Moreover, Respondent had obtained a temporary restraining order on October 16 to halt the election. The Board found that any detriment to Respondent's last-minute campaign was a result of its own error in judgment rather than lack of adequate notice from the Board.

The Board also dismissed Respondent's objections that the employees did not have adequate prior notice of the election. The IHE found that 85.5 percent of the eligible employees voted and that the UFW, Respondent, and Board agents all made efforts to inform the eligible workers of the coming election. The Board agreed that there was adequate notice, in light of the high voter turnout and the fact that no evidence of voter disenfranchisement was presented.

The Board dismissed Respondent's objections that failure to provide ballots in Portuguese affected the outcome of the election, because there was no evidence of voter disenfranchisement caused by the omission. Respondent claimed that, although the ALRB agent had promised to provide ballots in Portuguese, he failed to do so. The IHE found that there were only seven or eight Portuguese employees, at least three of whom indicated that they understood the ballot. No evidence was presented that the remaining Portuguese voters had trouble understanding the ballot.

The Board dismissed Respondent's objection alleging that the UFW threatened employees with loss of employment. The IKE found that the statements about job loss did not amount to threats and did not constitute a pattern of economic intimidation. The IHE further found that the statements were made to only a few employees. The Board affirmed the IHE's conclusion that the statements did not affect the outcome of the election. The Board further found that employee Tellez, one of the two people who made the statements, was not a union agent.

The Board also dismissed objections of improper electioneering by the UFW at the polls. The IHE found that the UFW organizer left the polling area prior to the voting and that no disturbances occurred during the voting. The Board affirmed the IHE's finding that the election was conducted in an atmosphere conducive to free choice and full participation by employees.

In light of the insubstantial nature of Respondent's election objections and considering the UFW1s wide margin of victory in this election, we conclude that, at the time that it refused to bargain, Respondent did not entertain a reasonable 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. We therefore affirm our original Order awarding make-whole relief to Respondent's employees.

Paragraph 1(c) of our original Order directed Respondent to cease and desist from "in any other manner" interfering with its employees' organizational rights. We shall modify that provision

to order Respondent to cease and desist from interfering with its employees' 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).

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders Respondent, C. Mondavi & Sons, its officers, agents, successors, and assigns, 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.

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

(c) 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, 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 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 nonhourly 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

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from the date on which Respondent commences to bargain 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 all 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)

6 ALRB No. 30
(4 ALRB No. 52)
Case No. 77-CE-21-S

BOARD DECISION

On remand from the Court of Appeal for the First Appellate District, 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 C. Mondavi & Sons, dba Charles Krug Winery, 4 ALRB No. 52 (1978). In the latter case Respondent was found to have violated Section 1153 (e) and (a) by refusing to bargain with the DFW after the Board upheld election results and certified the UFW as collective bargaining agent for Respondent's agricultural employees.

Using the standards set forth in J. R. Norton Co., 6 ALRB No. 26 (1980), the Board concluded that in light of the insubstantial nature of the election objections and the UFW's wide margin of victory in the election, Respondent did not have, at the time of its refusal to bargain, a reasonable good faith belief that misconduct occurred that affected the outcome of the election.

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.

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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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