Arvin, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

RANCH NO. 1, INC.,	)	
	)	
Respondent,	)	Case Nos. 79-CE-43-D
	)	79-CE-44-D
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	6 ALRB No. 37
	)	
Charging Party.	)	

DECISION AND ORDER

On September 11, 1979, this Board received a stipulation and statement of facts, entered into by all parties to this matter, including General Counsel, Respondent (Ranch No. 1, Inc.), and Charging Party (United Farm Workers of America, AFL-CIO), wherein the parties agreed to a transfer of this matter to the Board for findings of facts, conclusions of law, decision, and order, pursuant to 8 Cal. Admin. Code Section 20260. In their stipulation, the parties agreed, inter alia: that the charge, complaint, answer, and the stipulation and statement of facts with the exhibits attached thereto, constitute the entire record in this 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 Section 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 briefs filed by the parties 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 Kern 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 August 9, 1977, pursuant to Section 1156.3(a), a petition for certification was filed by the UFW. On August 13, 1977, pursuant to the said petition, the Board conducted a representation election among Respondent's agricultural employees.

4. On August 15, 1977, Respondent filed post-election objections, alleging UFW violations of the access rule (8 Cal. Admin. Code Section 20900). Respondent also filed a motion to deny access to the UFW, pursuant to 8 Cal. Admin. Code Section 20900(c)(5)(A).

5. On December 20, 1977, the Executive Secretary of the Board issued an order dismissing all but one of Respondent's post-election objections and setting the remaining objection for hearing. Respondent thereafter filed a request for review of the Executive Secretary's order, which request was denied by order of

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[1/]Unless otherwise indicated, all section references herein are to the California Labor Code.

the Board on February 16, 1978.

6. A hearing on the objection that the access violations affected the result of the election was conducted before an Investigative Hearing Examiner (IHE) on May 10 through May 12, 1978. In its decision in Ranch No. 1, inc. (Jan. 3, 1979) 5 ALRB No. 1, the Board affirmed the IHE's decision that the six-access violations did not deprive employees of a free and fair election, dismissed Respondent's post-election objection, and certified the UFW as the exclusive collective bargaining representative of Respondent's agricultural employees.

7. On or about January 12, 1979, UFW President Cesar Chavez sent a letter to Respondent requesting negotiations and information in Respondent's possession relevant to collective bargaining.

8. On February 14, 1979, Respondent, through its counsel, sent a letter to the UFW wherein it refused to commence collective bargaining negotiations.

9. By letter dated February 27, 1979, Richard Chavez, director of the negotiations division of the UFW, renewed the union's request for relevant information.

10. By letter dated March 13, 1979, Respondent, through its counsel, declined to furnish the requested information for the reason that it would prevent Respondent from testing the certification.

11. On May 8, 1979, the UFW filed with the Delano field office of the ALRB, and duly served on Respondent, unfair labor practice charges against Respondent alleging that Respondent had

refused to provide requested information relevant to collective bargaining and had refused to bargain with the UFW, the certified collective bargaining representative of Respondent's agricultural employees. Case Nos. 79-CE-43-D and 79-CE-44-D.

12. On June 29, 1979, General Counsel issued the complaint in this matter which was duly served on Respondent. Said complaint alleged that Respondent violated Section 1153 (e) and (a) by its refusal to bargain with the UFW.

13. On July 19, 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) by its refusal to bargain and contended that the UFW certification should be set aside because the UFW's violations of the access rule affected the results of the election.

Conclusions of Law

This Board has adopted the NLRB's proscription against relitigation of previously resolved representation issues in subsequent related unfair labor practice proceedings, absent a showing of newly discovered or previously unavailable evidence, or other special circumstances. D'Arrigo Brothers of California (July 14, 1978) 4 ALRB No. 45, review den. by Ct. App., 1st Dist., Div. 2, March 20, 1980, hg. den. April 21, 1980. We have already considered and ruled on the issue now raised by Respondent in our decision in Ranch No. 1, Inc., supra, 5 ALRB No. 1. Respondent has presented no newly discovered or previously unavailable evidence, and it has shown no extraordinary circumstances which would justify relitigation of the issue.

Accordingly, based on the stipulated facts in this matter, we conclude that Respondent has a duty to bargain with the UFW based upon the Board's certification of the UFW, and that Respondent has, since January 15, 1979, failed and refused to meet and bargain in good faith with the UFW, and has failed and refused to furnish requested data relevant to collective bargaining, in violation of Section 1153 (e) and (a).[2/]

The Remedy

In J. R. Norton Company (May 30, 1980) 6 ALRB No. 26, page 2 of the slip opinion, we stated that in determining in which cases a make-whole remedy was appropriate, we would 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' rights, or that misconduct occurred which affected the outcome of the election.

We requested supplemental briefs from the parties on the applicability of make-whole in this case. Based upon the record before us and the supplemental briefs, we find that, at the time Respondent refused to bargain, Respondent did not have a reasonable good faith belief that the certification of the UFW as the exclusive bargaining representative was invalid. We find, under these circumstances, that make-whole relief is an appropriate

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[2/] The record herein did not contain the date of receipt of the UFW's bargaining demand of January 12, 1979. We have previously held that the make-whole period should commence from the date of the receipt of the union's demand. Kyutoku Nursery, Inc. (Aug 8, 1978) 4 ALRB No. 55. As there is no evidence that the letter of demand herein was delayed, we shall presume that it was received in due course of mail, and shall therefore allow three days as a reasonable time for delivery. This is consistent with various ALRB and NLRB regulations which allow three days for mailing. See, e.g., 8 Cal. Admin. Code Section 20480.

remedy for Respondent's refusal to bargain with the certified representative of its employees.

The UFW was selected by an overwhelming majority of the unit employees who participated in an election which was held on August 13, 1977. The tally of ballots reveals the following results:

UFW	203
No Union	24
Challenged Ballots	18

Thereafter, Respondent's objection, "Whether the United Farm Workers of America, AFL-CIO violated the access rule in several instances among employees working for Spudco and Ranch No. 1, and whether this conduct affected the results of the election", was set for hearing. After the hearing and issuance of the Investigative Hearing Examiner's Decision, the Board decided that the proven access violations by the UFW were minimal in the context of the election campaign and were not of such a character as to create an intimidating or coercive impact on the employees' free choice. The UFW was certified on January 3, 1979. On January 12, 1979, the UFW invited Respondent to commence negotiations and requested information relevant to collective bargaining. Respondent refused to bargain and refused to furnish the requested information, asserting that the certification was invalid because the Board erred in its assessment of the effect of the access violations on the election results.

On August 15, 1977, in conjunction with its objections to the election, the Employer also filed a motion to deny access. On

May 16, 1979, in a separate decision, the Board granted the Employer's motion. Ranch NO. 1, Inc., and Spudco, 5 ALRB No. 36. We held therein that a motion to deny access will be granted when the moving party establishes violations of the access rule involving either significant disruption of agricultural operations, intentional harassment of an employer or employees, or intentional or reckless disregard of the time, place, or number limitations of the access rule. Applying this standard, we found that an organizer for the UFW had, on one occasion prior to the election, displayed deliberate or reckless disregard of the access rule and, in addition, disrupted the agricultural operations at Ranch No. 1, Inc.[3/] In order to remedy this violation of the access regulation, we issued an order prohibiting the named organizer involved from taking access to any agricultural property within the area served by the Board's Presno Regional Office for a period of 60 days beginning on the day on which the UFW next filed a notice of intent to take access pursuant to 8 Cal. Admin. Code Section 20900(e)(1)(B).

In reliance on Ranch No. 1, Inc., and Spudco, supra, Respondent now contends that since the access violations considered in the representation proceeding were later deemed by the Board to have been willful, they are of a different nature than those considered and decided in previous election cases. Therefore, according to Respondent, the same infractions of the access rule at

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[3/] Since the Board's decision to deny access issued three months following the Employer's refusal to bargain, the Employer could not have relied upon our findings and conclusion therein as a basis for its refusal to recognize the UFW at the time it responded to the union's initial request to commence negotiations.

issue in both proceedings provide an adequate basis for setting aside the election. We disagree. Willful disregard of the access rule during the pre-election period, like other pre-election conduct, will not be the basis for setting aside an election unless it can be demonstrated that the conduct affected the results of the election. Section 1156.3 (c).[4/]

At the time Respondent refused to bargain with the UFW, the Board had addressed the issue of the effect of excess access in four elections: John V. Borchard Farms (Jan. 22, 1976) 2 ALRB No. 16; K. K. Ito Farms (Oct. 29, 1976) 2 ALRB No. 51; Dessert Seed_ Company, Inc. (Oct. 29, 1976) 2 ALRB No. 53; and_(George Arakelian Farms, Inc. (July 28, 1978) 4 ALRB No. 53. In each of these cases the Board held that an election will not be set aside unless the misconduct affected the employees' free choice. Our decision in Ranch No. 1, Inc. (Jan. 3, 1979) 5 ALRB No. 1, was consistent with these past decisions.

As Respondent 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, or in any other way to have affected the outcome of the election, we conclude that Respondent's refusal to bargain in order to test the certification was for the purpose of avoiding its obligation to bargain. We find therefore that make-whole relief is an appropriate remedy in this

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[4/]Whether the organizers acted willfully in violating the access rule simply reflects the organizers' attitude towards the Board's rules and regulations. The attitudes of the organizers, standing alone, would not tend to affect the results of the election. Hence, "willfulness" on the part of the organizers adds nothing new to our analysis of the access violations.

case. 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 have suffered as a result thereof, for the period from January 15, 1979, 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 of this matter issued substantially after the certification in Adam Dairy, dba-Rancho—Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, 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 matter. 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.

Our remedial order in this matter 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, and will comply with the UFW's requests for information and data relevant to collective bargaining. In addition to the customary means of publicizing the Notice to Employees, we shall order that the Notice herein also be distributed to all employees who were eligible to vote in the representation election which was conducted on August 13, 1977, in

which the UFW was designated and selected by a majority of Respondent's agricultural employees as their bargaining agent.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Ranch No. 1, Inc., its officers, agents, successors, and assigns, shall:

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.

b. Failing or refusing to provide to the UFW on request information in its possession which is relevant to 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 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 and, after 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 at conspicuous locations on its premises for 60 days, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may become altered, defaced, covered, or removed.

g. Provide a copy of the attached Notice to each employee hired by Respondent during the 12-month period following the date of issuance of this Order.

h. Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the payroll period immediately preceding August 9, 1977, and to all employees employed by Respondent at any time from January 15, 1979, until issuance of 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 after 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 or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

ORDER EXTENDING CERTIFICATION

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 starting on the date on which Respondent commences to bargain in good faith with said union.

Dated: July 14, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

A representation election was conducted by the Agricultural Labor Relations Board among our employees on August 13, 1977. The majority of the voters chose the United Farm Workers of America, AFL-CIO to be their union representative. The Board found that the election was proper and officially certified the UFW as the representative of our employees on January 3, 1979. When the UFW then asked us to begin to negotiate a contract, we refused to bargain so that we could ask the court to review the election.

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by 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 NOT refuse to bargain with the UFW, or refuse to provide the UFW with requested information in our possession which is relevant to collective bargaining.

WE WILL, on request, 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 agricultural employees employed by us after January 15, 1979, for all losses of pay and other economic losses which he or she has 'suffered because we refused to bargain with the UFW.

Dated: RANCH NO. 1, 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

Ranch No. 1, Inc. (UFW)

6 ALRB No. 37
Case Nos. 79-CE-43-D
79-CE-44-D

On the basis of a stipulation of facts entered into by all parties in this matter, the Board found that Respondent had unlawfully refused to bargain with the UFW, the certified representative of its employees, for the purpose of delaying its obligation to bargain and concluded that make-whole relief therefore was an appropriate remedy in this case.

In so holding, the Board rejected Respondent's defense that access violations by the UFW, as found in Ranch No. 1, Inc., and Spudco (May 16, 1979) 5 ALRB No. 36, were sufficient to compel the Board to set aside the election. The Board found that the violations were not of such a character as to have had an intimidating or coercive impact upon employees, or in any other way to have affected the outcome of the election.

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