Santa Maria, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JOHN F. ADAM, JR. and RICHARD E. ADAM, dba ADAM FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 78-CE-55-M 6 ALRB No. 40 (4 ALRB No. 76)

SUPPLEMENTAL DECISION AND REVISED ORDER

In accordance with the remand order of the Court of Appeal for the Second Appellate District, Division 5, dated January 11, 1980, in Case 2 Civil No. 54893, 4 ALRB No. 76, we have reconsidered the make-whole provision in our remedial Order in John F. Adam, Jr. and Richard E. Adam, dba Adam Farms (Oct. 20, 1978) 4 ALRB No. 76, in light of the decision of the California Supreme Court in J. R. Norton Company, Inc. v. ALRB (1980) 26 Cal. 3rd 1, and hereby make the following findings and conclusions with respect to our original Decision and Order.

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In John F. Adam, Jr. and Richard E. Adam, dba Adam Farms (Mar. 16, 1978) 4 ALRB No. 12, the Board concluded that Respondent, Adam Farms, violated Labor Code Section 1154.6 by hiring workers for the primary purpose of having them vote in a Board

representation election. As a result, the outcome-determinative ballots of those workers were not counted and the UFW, having received a majority of the valid votes cast, was certified by the Board on March 16, 1978, as the exclusive collective bargaining representative of Respondent's agricultural employees.

Respondent appealed the Board's unfair labor practice decision to the court and refused to bargain with the UFW on the ground that its bargaining obligation was tolled pending resolution of its appeal. A letter confirming Respondent's intent not to bargain pending the outcome of the appeal was sent to the UFW on April 5, 1978, two weeks after the union sent its letter to Respondent requesting that bargaining commence. On April 10, 1978, the UFW filed a charge alleging that Respondent refused to bargain in violation of Labor Code Section 1153(e) and (a), and a complaint alleging that violation was thereafter issued by the General Counsel.

The Court of Appeal subsequently denied Respondent's petition for review of the Board's Decision on the ground that the petition did not state facts sufficient to justify issuing a writ of review. The UFW again requested Respondent to commence collective bargaining. Two weeks later, Respondent advised the UFW by letter of its willingness to commence negotiations and to provide the information previously requested by the union relevant to collective bargaining. The elapsed time between issuance of the Board's certification and Respondent's statement of willingness to bargain was two months.

The refusal to bargain case was submitted to the Board

on a stipulation of facts entered into by all parties to the proceeding. Respondent's position was, as before, that it had refused to bargain during the pendency of the appeal because the validity of the certification turned on the resolution of the unfair labor practice charge and complaint. In the subsequent refusal to bargain proceeding, the Board, following NLRA precedent, concluded that the duty to bargain is not tolled pending outcome of an appeal of an unfair labor practice case, even though the validity of the certification may turn on the resolution of the unfair labor practice charge. The Board accordingly found a violation of Labor Code Section 1153(e) and (a), and imposed the make-whole remedy for the two-month period during which Respondent had refused to bargain. Adam Farms (Oct. 20, 1978) 4 ALRB No. 76.

Upon review in light of the Supreme Court's decision in J. R. Norton, Company, Inc. v. ALRB (1980) 26 Cal. 3rd 1, we find that the imposition of the make-whole remedy is appropriate in this case. In Norton the Court was concerned with the Board's award of make-whole relief "in cases in which an employer has refused to bargain in order to obtain judicial review of the Board's dismissal of his challenge to an election certification." 26 Cal. 3rd at 9. Because Board certifications are not subject to direct judicial review, a person wishing to challenge the validity of the certification must first refuse to bargain, in violation of Labor Code Section 1153(e). The Board order in the unfair labor practice decision, and the underlying representation decision, are then subject to judicial review pursuant to Labor Code Section 1160.8. The Norton Court noted competing considerations in determining the

appropriateness of the make-whole remedy in these technical refusal to bargain cases. One consideration was the need to compensate employees for losses suffered due to the respondent's refusal to bargain. The counterbalancing consideration was the interest in fostering judicial review of election challenges. Because respondents subject themselves to the possible imposition of make-whole relief simply by seeking judicial review, the Court found that a blanket imposition of such relief in every technical refusal to bargain case might deter respondents from seeking judicial review of the certifications in cases in which the employees did not freely select their bargaining representative.

In the instant case, Respondent did not refuse to bargain in order to seek judicial review of the underlying representation decision. Rather, it refused to bargain pending judicial review of the unfair labor practice decision in which the Board found that it had violated Section 1156.4 of the Act.

Imposition of the make-whole remedy in this case is therefore not in conflict with a policy of fostering judicial review of representation decisions. Respondent sought direct judicial review of the Board's unfair labor practice decision that it had hired students for the primary purpose of voting in the election. Respondent was not compelled to refuse to bargain, and thereby subject itself to the possible imposition of the make-whole remedy, in order to obtain such court review. Its violation of Labor Code Section 1153(e) and (a) was therefore not a technical refusal to bargain, with which the Norton Court was concerned.

We find therefore that the considerations expressed by

the Norton Court in determining the applicability of the make-whole remedy are not present in this case. We hereby affirm the inclusion of the make-whole remedy in our original Order.

We find it unnecessary to include the broad cease-and-desist language which was a part of paragraph 1(h) of our original Order, and, in lieu thereof, we shall order 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 practices committed by Respondent. See M. Caratan, Inc. (Mar. 12, 1980) 6 ALRB No. 14; Hickmott Foods, Inc., 242 NLRB No. 177, 101 LRRM 1342 (1979).

A 90-day posting period, as provided for in paragraph 2(f) of the original Order, does not appear necessary in this case. Therefore, we shall modify paragraph 2(f) to provide for a 60-day posting period.

REVISED ORDER

Pursuant to Labor Code Section 1160.3, Respondent, John F. Adam, Jr. and Richard E. Adam, dba Adam Farms, its officers, 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 collective bargaining representative of Respondent's agricultural employees.

(b) Failing or refusing to provide all information relevant to collective bargaining requested by the UFW to enable

it to fulfill its obligation as exclusive collective bargaining representative of Respondent's agricultural employees.

(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 exclusive collective bargaining representative of its agricultural employees and, if an agreement is reached, embody its terms in a signed agreement.

(b) Provide all relevant information requested by the UFW to enable it to fulfill its obligation as the exclusive collective bargaining representative of Respondent's agricultural employees.

(c) Make its agricultural employees whole for all losses of pay and other economic losses sustained by them as the result of Respondent's refusal to bargain during the period from March 21, 1978, through May 23, 1978.

(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 in all appropriate languages, for 60 consecutive days, at conspicuous locations on its premises, to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered or removed.

(g) Provide a copy of the attached Notice in the appropriate language to each employee hired by Respondent during the 12-month period following the issuance of this Decision.

(h) Mail a copy of the attached Notice, in the appropriate language, within 30 days from receipt of this Order, to each employee deemed an eligible voter in the representation election conducted on October 23, 1975, and to each employee employed by Respondent during the period from March 21, 1978 through May 23, 1978.

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

Dated: July 18, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act, and has ordered us to notify our employees that we will respect their rights under the Act in the future. Therefore, we are now telling each of you:

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 unions;
(3) To bargain as a group and choose whom they want to speak for them;
(4) To act together with other workers to try to get a contract or to help or protect one another; and
(5) To decide not to do any of these things.

Because this is true we promise that:

(1) Because the UFW was selected by a majority vote of our employees as their exclusive representative for purposes of collective bargaining, we will, on request, meet with the UFW at reasonable times and bargain in good faith about wages, hours, working conditions and other terms and conditions of employment of our agricultural employees.

(2) We will provide all relevant information requested by the union to enable it to fulfill its obligation as our employees' exclusive collective bargaining representative.

(3) We will reimburse those of you who were employed by us during the period from March 21, 1978 through May 23, 1978 for any losses of pay or other economic losses which resulted from our refusal to bargain in good faith with the UFW during that period.

Dated:

JOHN F. ADAM, JR. and
RICHARD E. ADAM, dba ADAM FARMS

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

John F. Adam, Jr. and Richard E. Adam, dba Adam Farms (UFW)	6 ALRB No. 40 (4 ALRB No. 76) 78-CE-55-M

BOARD DECISION

In an earlier case, 4 ALRB No. 12, the Board concluded that Respondent had violated Labor Code Section 1154.6 by hiring workers for the primary purpose of having them vote in a Board representation election. As a result, the outcome-determinative ballots of these workers were not counted, and the Board certified the UFW as the collective bargaining representative of Respondent's agricultural employees.

Respondent appealed the Board's unfair labor practice decision [4 ALRB No. 12] to the court and refused to bargain with the UFW on the ground that its bargain obligation was tolled pending resolution of its appeal. Two months later the Court denied Respondent's petition for review of the Board's decision, and Respondent agreed to commence negotiations with the union.

In a subsequent refusal to bargain decision [4 ALRB No. 76], the Board, following NLRA precedent, concluded that Respondent's duty to bargain was not tolled pending outcome of its appeal of the previous unfair labor practice decision, even though the validity of the Board's certification might depend on the resolution of the unfair labor practice complaint. The Board accordingly found a violation of Labor Code Section 1153(e) and (a), and imposed the make-whole remedy for the two-month period during which Respondent had refused to bargain.

A remand order from the Court of Appeal required the Board to review the appropriateness of the make-whole remedy in light of the Supreme Court's decision in J. R. Norton v. ALRB, 26 Cal. 3rd 1. That decision was predicated largely on the fact that a refusal to bargain was a necessary step for any employer who wished to contest a certification and that automatic application of the make-whole remedy in such situations might improperly deter good faith challenges to elections. In the instant case, Respondent did not have to refuse to bargain in order to seek review of the underlying representation decision because the validity of the certification turned on the Board's decision that Respondent had violated Labor Code Section 1154.6, and appeal of that decision functioned as a test of the validity of the certification. Respondent's violation of Labor Code Section 1153(e) was therefore not the technical refusal to bargain with which the Norton Court was concerned, and the imposition of make-whole was not in conflict with the policy of fostering judicial review of representation case decisions. The Board accordingly affirmed the inclusion of the make-whole remedy in its original Order. In addition, the Board modified the Order to provide for a narrower cease-and-desist order and a 60-day, rather than a 90-day, posting period.

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