San Clemente, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HIGHLAND RANCH and SAN CLEMENTE RANCH , LTD., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Cases Nos.	77-CE-11-X 77-CE-27-X 77-CE-13-X 77-CE-35-X 77-CE-14-X 77-CE-36-X 77-CE-19-X 77-CE-39-X 77-CE-21-X 78-CE-4-X 78-CE-5-X
	8 ALRB NO. 11 (5 ALRB NO. 54)	

SUPPLEMENTAL DECISION AND REVISED ORDER

In accordance with the remand order of the California Supreme Court in San Clemente Ranch, Ltd, v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 874, we have reconsidered our remedial Order in Highland Ranch and San Clemente Ranch, Ltd. (Aug. 16, 1979) 5 ALRB No. 54 in light of J. R. Norton Company, Inc. v. ALRB (1979) 26 Cal.3d 1, and have decided to affirm our original Decision and to reinstate our original remedial Order in this matter.

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

In Highland Ranch and San Clemente Ranch, Ltd., supra, 5 ALRB No. 54, we found that San Clemente Ranch is the legal successor to Highland Ranch and therefore had and has a duty to meet and bargain with the United Farm workers, of America, AFL-CIO (UFW) as the certified exclusive collective bargaining representative of

Highland's agricultural employees.[1/] We therefore concluded that San Clemente's refusal to meet with, and its refusal to provide information to, the UFW, since on or about December 9, 1977, violated Labor Code section 1153(e) and (a). In our remedial Order, we directed San Clemente to make its agricultural employees whole for all economic losses they suffered as a result of its refusal to bargain.

Our findings and conclusions regarding San Clemente's successor status were affirmed by the Supreme Court in San Clemente Ranch, Ltd., supra, 29 Cal.3d 874. However, the make-whole provision of our remedial order was remanded to the Board for reconsideration in light of the Supreme Court's decision in J. R. Norton Company, Inc., supra, 26 Cal.3d 1.

In Montebello Rose Company (Jan. 22, 1982) 8 ALRB No. 3, we considered the scope and application of the J. R. Norton decision and held that J. R. Norton applies only where an employer refuses to bargain in order to test the validity of a certification and thereby to preserve the free choice of its employees. Where employee free choice is not at issue, we found the delay caused by an employer's refusal to bargain, and by its subsequent judicial appeal, benefits only the employer. In such circumstances, we held, the employees are entitled to be made whole for the economic

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[1/] Following a representation election conducted among the agricultural employees of Highland Ranch on July 28, 1977, at which the UFW received a majority of the votes cast, post-election objections were filed by Highland. After reviewing those objections, the Board certified the UFW on November 29, 1977. While the objections were pending, Highland negotiated the sale of its business to San Clemente; the sale was consummated on November 29, the day the certification issued.

losses they suffered as a result of the employer's refusal to bargain, in the event the employer's judicial appeal proves to be unsuccessful and its duty to bargain is affirmed.

In the instant case, San Clemente's refusal to bargain is based on the argument that it did not succeed to Highland Ranch's collective bargaining obligations when it purchased and took over the operation of Highland Ranch on November 29, 1977. Although successorship is a complex question, and was a novel issue for this Board at the time of our original San Clemente decision, it is not an issue involving the proper conduct of elections or any other matter concerning the employees' choice of a bargaining representative. In the absence of a question affecting or involving employee free choice, we hold that the Respondent's, or any employer's, right to seek judicial review of its successorship theory is not unduly restricted by the risk of make-whole liability in the event its appeal is unsuccessful. Since Respondent's employees have suffered a potentially great financial loss due to Respondent's failure and refusal to meet and bargain collectively in good faith with the UFW at all times since December 9, 1977, we hereby affirm our original Decision and reinstate our original remedial Order, in Highland Ranch and San Clemente Ranch, Ltd., supra, 5 ALRB No. 54.

Dated: February 19, 1982

HERBERT A. PERRY, Acting Chairman

JOHN P. MCCARTHY, Member

JEROME R. WALDIE, Member

CASE SUMMARY

San Clemente Ranch, Ltd. (UFW)

8 ALRB No. 11
(5 ALRB No. 54)
Case No. 77-CE-ll-X

BOARD DECISION

This case was remanded to the Board by the California Supreme Court in San Clemente Ranch, Ltd, v. Agricultural Labor Relations Board (1981) 29 Cal.3d 874 to consider whether Respondent is liable to its employees for economic losses they may have suffered as a result of Respondent's refusal to bargain with the UFW since December 1977.

Following its recent decision in Montebello Rose Co. (Jan. 22, 1980) 8 ALRB No. 3, the Board reviewed the instant case and determined that, since Respondent's refusal to bargain did not preserve employee free choice, there was no reason to apply the limitations on the make-whole remedy created by J.R. Norton, Co. v, Agricultural Labor Relations Bd. (1979) 26 Cal.3d 1. The Board therefore reaffirmed its original remedial order.

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