

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

F & P GROWERS ASSOCIATION,)	
)	
Respondent,)	Case No. 82-CE-7-0X
)	
and)	
)	
UNITED FARM WORKERS OF)	9 ALRB No. 28
AMERICA, AFL-CIO,)	(9 ALRB No. 22)
)	
Charging Party,)	
)	

SUPPLEMENTAL DECISION, AMENDMENT TO DECISION, AND ORDER

On September 28, 1982, Administrative Law Judge (ALJ)^{1/} William H. Steiner issued his Decision and proposed Order on the General Counsel's motion for summary judgment and motion to strike Respondent's amended answer in this proceeding. The ALJ recommended General Counsel's motions be granted and summary judgment be awarded against Respondent for its refusal to bargain with the United Farm Workers of America, AFL-CIO (UFW), with makewhole dating from Respondent's initial refusal to bargain on July 31, 1981. On April 29, 1983, the Agricultural Labor Relations Board (Board or ALRB) issued its decision in F & P Growers Association (1983) 9 ALRB No. 22, affirming the ALJ's ruling as to the unavailability under the Agricultural Labor Relations Act (Act or ALRA) of Respondent's defense to the refusal to bargain allegations in the complaint. Regarding the

^{1/}At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 31, 1983.)

appropriateness of a makewhole remedy, however, the Board decided that additional evidence was necessary to determine whether makewhole was appropriate for the period from Respondent's initial refusal to bargain until the issuance of the Board's decisions in Cattle Valley Farms and Nick J. Canata (March 25, 1982)

8 ALRB No. 24 and Nish Noroian Farms (March 25, 1982)

8 ALRB No. 25. Allowing a reasonable period of time for Respondent to obtain notice of the two above-cited decisions and to inform the Union of its willingness to negotiate, the Board held that makewhole was appropriate dating from April 15, 1982. (See Waller Flowerseed Company (1980) 6 ALRB No. 51.)

On May 9, 1983, General Counsel, joined by Charging Party UFW, filed a motion to amend the complaint and a motion for reconsideration of our Decision and Remand Order in 9 ALRB No. 22.^{2/} In its amended motion, General Counsel sought to delete from its makewhole prayer in the complaint the period from Respondent's initial refusal to bargain to the issuance of Cattle Valley and Nish Noroian and to have the Board reconsider its remand order in 9 ALRB No. 22 and issue a final order, consistent with the requested amendment to the complaint, awarding makewhole only for the period commencing on April 15, 1982. Respondent did not oppose either motion.

Pursuant to the provisions of section 1146 of the Labor Code, the Board has delegated its authority in this proceeding

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^{2/} On May 12, 1983, General Counsel amended its motion to confine the amendment to the prayer for relief.

to a three-member panel.

After careful consideration of General Counsel's motions, the Board has decided to grant the amendment sought by General Counsel, to vacate the remand order in 9 ALRB No. 22, and to issue a final Order in this matter. We find merit in the position of General Counsel and Charging Party that the delay and uncertainty imposed on this and related cases by litigating the applicability of the makewhole remedy for the period from July 31, 1981 to April 15, 1982 in a remanded hearing would not effectuate the purposes of the Act. (See 8 Cal. Admin. Code section 20222.) Accordingly, we hereby amend our Decision in 9 ALRB No. 22 by deleting all language following the first sentence in the first full paragraph on page 11, and substituting therefor the following final Order:

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, F & P Growers Association, 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) 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) Make whole all agricultural employees employed by Respondent at any time during the periods April 15, 1982 until September 20, 1982, and from September 21, 1982 until the date on which Respondent commences good faith bargaining with the UFW which leads to a contract or a bona fide impasse, for all losses of pay and other economic losses they have suffered as a result of Respondent's failure and refusal to bargain in good faith with the UFW, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(c) Preserve and, upon request, make available to the Board or its agents for examination, photocopying and otherwise copying, all records relevant and necessary to a determination of the amounts of makewhole and interest due its employees under the terms of this order.

(d) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into

all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice at conspicuous locations on its premises for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may become altered, defaced, covered or removed.

(f) 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.

(g) 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 July 31, 1981, and to all employees employed by Respondent at any time between July 31, 1981 and the date of issuance of this Order.

(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice in all appropriate languages to the assembled employees of Respondent on company time, at such time(s) and place(s) 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.

(i) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps that 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.

Dated: May 24, 1983

ALFRED H. SONG, Chairman

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

A representation election was conducted by the Agricultural Labor Relations Board (Board) among our employees on June 23, 1978. The majority of the voters chose the United Farm Workers of America, AFL-CIO (UFW), to be their union representative. The Board found that the election was proper and officially certified the UFW as the exclusive collective bargaining representative of our agricultural employees on July 10, 1978. On July 31, 1981, we refused to bargain with the UFW. The Board has found that we have violated the Agricultural Labor Relations Act by refusing to bargain collectively with the UFW. The Board has told us to post and publish this Notice and to take certain additional actions. We shall do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT refuse to bargain with the UFW, as exclusive collective bargaining representative of our employees, over a contract.

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 at any time on or after April 15, 1982, during the period when we refused to bargain with the UFW, for any money which they may have lost as a result of our refusal to bargain, plus interest.

Dated:

F & P GROWERS ASSOCIATION

By: _____

(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 528 South "A" - Street, Oxnard, California 93030. The telephone number is (805) 486-4475.

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

F & P Growers Association

9 ALRB No. 28
(9 ALRB No. 22)
Case No. 82-CE-7-0X

PRIOR BOARD DECISION

In F & P Growers Association (1983) 9 ALRB No. 22, the Board granted General Counsel's Motion for Summary Judgment finding Respondent liable for its refusal to bargain with the UFW and granted summary judgment awarding makewhole beginning on April 15, 1982, a reasonable period of time after issuance of the Board's Decisions in Cattle Valley Farms and Nick J. Canata (March 25, 1982) 8 ALRB No. 24 and Nish Noroian Farms (March 25, 1982) 8 ALRB No. 25. As to the makewhole remedy from July 31, 1981, the date of Respondent's initial refusal to bargain, to April 15, 1982, the Board refused to adopt the ALJ's recommendation to grant makewhole on summary judgment and ordered the case remanded for hearing on the appropriateness of makewhole for that period.

SUPPLEMENTAL AND AMENDED BOARD DECISION

After issuance of 9 ALRB No. 22 but before the remand hearing, the General Counsel moved to amend the complaint to delete the prayer for makewhole for the period at issue in the Remand Order. At the same time, General Counsel moved the Board for reconsideration of its Decision in 9 ALRB No. 22. The Board granted the motion to amend the complaint and the motion to reconsider 9 ALRB No. 22. Noting that the amendment of the complaint obviated the need for a hearing, the Board vacated its Remand Order and issued a final Order ordering Respondent to make its employees whole commencing on April 15, 1982 for the refusal to bargain.