STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROBERT J. LINDELEAF, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 82-CE-54-SAL 9 ALRB No. 35

DECISION AND ORDER

Pursuant to California Administrative Code, title 8, section 20260, Charging Party, United Farm Workers of America, AFL-CIO (UFW), the General Counsel, and Robert J. Lindeleaf (Respondent) have submitted this matter to the Agricultural Labor Relations Board (Board or ALRB) by way of a stipulation of facts[1/] filed with the Executive Secretary on November 1, 1982, and have waived an evidentiary hearing. Each party filed a brief on the legal issues, which concern the applicability of the makewhole remedy for Respondent's admitted failure and refusal to enter into negotiations with the UFW, the certified bargaining agent of its agricultural employees.

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[1/] The parties stipulated, inter alia, that the record in this case shall include "[t]he entire record and Board Decision in Case No. 80-RC-54-SAL, including but not limited to the Objections to the Election and to Conduct Affecting the Results Thereof, the declarations filed in support of the objections, and the Request for Review of Partial Dismissal of Objections to Election...."

Factual Background

The facts are not in dispute. On March 23, 1982, the UFW was certified as the exclusive collective bargaining representative for all of the agricultural employees of Robert J. Lindeleaf. (Robert J. Lindeleaf (1982) 8 ALRB No. 22.) On March 26, 1982, the UFW, through its negotiator Paul Chavez, sent a letter to Respondent requesting that Respondent commence bargaining. Respondent received the UFW's letter, but did not respond to it. On May 11, 1982, Paul Chavez sent another letter to Respondent, repeating the UFW's request to commence negotiations. On May 21, 1982, Respondent, through its attorney James G. Johnson, sent a letter to the UFW stating that Respondent was refusing to negotiate because it questioned the validity of the certification. Respondent stated that it would seek judicial review of all the objections originally filed in its petition to set aside the election, including those objections dismissed without hearing and those dismissed after hearing. On June 25, 1982, the UFW filed an unfair labor practice charge against Respondent. On August 9, 1982, General Counsel issued a complaint based on the charge, alleging that Respondent had refused to bargain with its employees' certified bargaining representative in violation of Labor Code section 1153(e) and (a).[2/]

Legal Standard

In J. R. Norton Company (1980) 6 ALRB No. 26, review

[2/] All section references herein are to the California Labor Code unless otherwise stated.

denied by Court of Appeal, Fourth District, Division One, January 7, 1981, hearing denied March 14, 1981, this Board gave effect to the ruling of the California Supreme Court in J. R. Norton Company v. ALRB (1979) 26 Cal.3d 1 and set forth a two-pronged test for the applicability of the makewhole remedy in technical refusal-to-bargain cases. In such cases, we first determine whether the employer's litigation posture was reasonable at the time of its refusal to bargain. If we find it was unreasonable, our inquiry ends and we order the makewhole remedy. If we find the employer's litigation posture was reasonable, we then determine whether the employer acted in good faith in seeking judicial review of the certification. If we find that the employer was acting in bad faith, we will impose the makewhole remedy for its technical refusal-to-bargain, but if we find it acted in good faith a makewhole order will not be issued. (J. R. Norton Company, supra, 6 ALRB No. 26.)

It is undisputed that Respondent has refused to bargain with the UFW. By refusing to bargain with its employees' certified collective bargaining representative, Respondent has violated section 1153(e) and (a). General Counsel and the UFW contend that, in view of this Board's disposition of Respondent's post-election objections, Respondent's litigation posture was unreasonable at the time of its refusal to bargain.

Respondent has advanced no persuasive argument, and we see none, why any of the grounds Respondent previously alleged for setting aside the election should now be, in effect, relitigated. Like the National Labor Relations Board (NLRB),

we have consistently maintained a policy against relitigation of election objections in subsequent unfair labor practice proceedings if, as here, there is no newly discovered or previously unavailable evidence to be considered. (Ron Nunn Farms (1980) 6 ALRB No. 41, review den. by Ct. App., 1st Dist., Div. 3, Oct. 1, 1981; Julius Goldman's Egg City (1979) 5 ALRB No. 8; Ken Lee, Inc. (1962) 137 NLRB 1642 [50 LRRM 1471]; Pittsburgh Plate Glass Co. v. NLRB (1941) 313 U.S. 146 [8 LRRM 425].) Our review herein of Respondent's post-election objections does not, therefore, go to their merits. Having previously considered the merits of Respondent's objections and rejected them for reasons we still consider proper, we evaluate in the present case only whether the matters Respondent chose to litigate in lieu of entering into negotiations with the UFW present close issues or raise "important issues concerning whether the election was conducted in a manner that truly protected the employees' right of free choice." (J. R. Norton v. Agricultural Labor Relations Board, supra, at p. 39; see also D'Arrigo Brothers of California (1980) 6 ALRB No. 27; Charles Malovich (1980) 6 ALRB No. 29, review den. by Ct. App., 5th Dist., June 18, 1981; High and Mighty Farms (1980) 6 ALRB No. 31.)

A clear statement of reasons, with supporting legal authorities, for the dismissal of each of Respondent's election objections which was not set for hearing, was included in the Executive Secretary's Notice of Allegations to be Set for Hearing and Order of Partial Dismissal of Objections to Election and in this Board's Order Granting in Part and Denying in Part

Employer's Request for Review. Similarly, the IHE and the Board stated clearly the factual and legal bases for ruling that Respondent failed to establish that the election should have been set aside and certification refused for reasons alleged in those objections which were the subject of the hearing.

The California Supreme Court has upheld the adequacy of this Board's procedures for reviewing election objections and dismissing those not supported by sufficient evidence and those making allegations which, even if true, would not warrant setting aside the election. As the Court stated in J. R. Norton Co. v. Agricultural Labor Relations Bd., supra, 26 Cal.3d 1, at p. 17,

> Labor Code section 1156.3, subdivision (c), does not require the Board to hold a full hearing in every case in which a party merely files a petition objecting to the conduct of a representation election. Rather, it is permissible for the ALRB to promulgate reasonable rules and regulations setting forth a requirement that a prima facie case must be presented in objections and supporting declarations before a hearing will be held concerning election misconduct. We thus concur in the view expressed by the Court of Appeal in Radovich v. Agricultural Labor Relations Bd. (1977) 72 Cal.App.3d 36, 45 [140 Cal.Rptr. 24]: "Otherwise, naked assertions of illegality unclothed with the raiments and accouterments designed to protect against an onslaught of inconsequential or frivolous or dilatory acts unsupported by even the undergarments of a prima facie case would frustrate the state policy as set forth in Labor Code section 1140.2." (Fn. omitted.)

Neither the objections which were dismissed by the Executive Secretary nor those which were the subject of a hearing raised novel questions of statutory interpretation or difficult legal issues. This is not a close case "rais[ing] important issue concerning whether the election was conducted in a manner

that truly protected employees' right of free choice." (J. R. Norton v. ALRB, supra, 26 Cal.3d 1,39.) Rather, the objections all involved allegations of misconduct by UFW representatives and participants in the election, and Respondent failed to produce evidence establishing that any such conduct tended to affect the election results or would warrant setting the election aside. Factual findings by this Board on such allegations are entitled to judicial deference. (Tex-Cal Land Management v. Agricultural Labor Relations Board (1978) 24 Cal.3d 902.) Therefore we have consistently held that the pursuit of judicial review based on such objections is unreasonable. (J. R. Norton Company, supra, 6 ALRB No. 26; George Arakelian Farms, Inc. (1980) 6 ALRB No. 28; C. Mondavi & Sons (1980) 6 ALRB No. 30, review den. by Ct. App., 1st Dist., Div. 1, May 20, 1981; hearing den. June 24, 1981; Waller Flowerseed Co. (1980) 6 ALRB No. 51, review den. by Ct.App., 2d Dist., Div. 5, Jan. 9, 1981.) Accordingly, we find that Respondent's posture in continuing to litigate these objections is unreasonable, and we conclude that at the time it refused to bargain with the UFW, Respondent did not have the reasonable litigation posture which is required by J. R. Norton Company v. ALRB, supra, 26 Cal.3d 1, and J. R. Norton Company, supra, 6 ALRB No. 26. In these circumstances, we need not address the question whether Respondent acted in good faith in rejecting the Union's request for negotiations in order to seek judicial review of its election objections. (Holtville Farms, Inc. (1981) 7 ALRB No. 15, review den. by Ct. App., 4th Dist., Div. 1, Dec. 31, 1981, hearing den.

May 27, 1982.) We note, however, that Respondent's failure to answer the Union's first request for negotiations and its two-month delay in responding to the Union's request suggest a dilatory, bad faith approach to the subject of negotiations, and the lack of substance in its objections itself suggests that Respondent may have elected to litigate primarily as a means of deferring to a later time its bargaining obligation.

On the basis of the above, and the record as a whole, we find that the makewhole remedy is appropriate in this case. The makewhole period begins on March 29, 1982, which is three days from the date the UFW mailed Respondent a request to commence negotiations. As Respondent's obligation to bargain with its employees' certified representative began upon receipt of the UFW's letter, the remedy to correct Respondent's failure and refusal to discharge that obligation should appropriately take effect as of the same date. In accordance with the terms of California Administrative Code, title 8, section 20480, mail is presumed received three days from mailing, excluding Sundays and legal holidays.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Robert J. Lindeleaf, his 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 section 1155.2(a) of

the Act, 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 any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

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 agreement is reached, embody the terms thereof in a signed contract.

(b) Make whole its present and former agricultural employees 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, the period of said obligation to extend from March 29, 1982, until November 4, 1982, and continuing thereafter, until such time as Respondent commences good faith bargaining with the UFW which results in a contract or bona fide impasse.

(c) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and otherwise copying, all records in its possession relevant and

necessary to a determination, by the Regional Director, of the makewhole period and the amounts of makewhole and interest due 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, in all appropriate languages, in conspicuous places on its property 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 Notice which has been altered, defaced, covered, or removed.

(f) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from March 29, 1982, until the date on which the said Notice is mailed.

(g) Provide a copy of the attached Notice in the appropriate language, to each agricultural employee hired by Respondent during the 12-month period following 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 all of its agricultural employees on company time and property at time(s) and place(s) to be determined 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 and/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 in order to compensate them for time lost at this reading and during 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 Respondent has taken to comply with its terms and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

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 commencing on the date on which Respondent commences to bargain in good faith with the UFW.

Dated: June 14, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, 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 September 4, 1980. 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 March 23, 1982. When the UFW asked us to begin to negotiate a contract, we refused to bargain so that we could ask the court to review the election. 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, 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 employees employed by us at any time on or after March 29, 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: ROBERT J. LINDELEAF

By: _____
Representative Title

If you have a question 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 112 Boronda Road, Salinas, California, 93907. The telephone number is (408) 443-3161.

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

Robert J. Lindeleaf
(UFW)

Case No. 82-CE-54-SAL
9 ALRB No.35

BACKGROUND

After being certified by the Board on March 23, 1982, the UFW sent requests to bargain to Respondent on March 26, 1982, and May 11, 1982. On May 21, 1982 Respondent notified the UFW that it was refusing to bargain in order to seek judicial review of the certification.

BOARD DECISION

Based on a stipulation of facts submitted by the parties, who waived a hearing before an ALJ, the Board decided that the makewhole remedy should be imposed for Respondent's admitted failure and refusal to bargain with the UFW. The Board found unreasonable Respondent's litigation posture, which was based on evidence and arguments which had been rejected by the Board and which did not raise a close case or important issues concerning whether the election was conducted in a manner that truly protected the employees' right of free choice. Accordingly the Board issued an Order, including a makewhole provision, to remedy Respondent's violation of section 1153(e) and (a) of the Act.

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