STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FRUDDEN PRODUCE, INC., DENNIS FRUDDEN, dba FRUDDEN PRODUCE COMPANY, and FRUDDEN ENTERPRISES, INC.,	)	
Respondent,	)	Case No. 82-CE-19-SAL
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	9 ALRB No. 73
Charging Party.	)	

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 Frudden Enterprises, Inc., (Respondent) have submitted this matter to the Agricultural Labor Relations Board (Board or ALRB) by way of a stipulation of facts filed with the Executive Secretary on December 6, 1982, and have waived an evidentiary hearing. Each party filed a brief on the legal issues, which concern the propriety of imposing 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.

Factual Background

The facts are not in dispute. On August 27, 1979, a representation election was conducted among Respondent's agricultural employees. In a unit of 299 eligible voters, 216 ballots were cast. The UFW received 201 votes, 4 votes were

cast for "No Union," and there were 10 challenged ballots and 1 void ballot. On August 21, 1981, the UFW was certified as the exclusive collective bargaining representative for all of Respondent's agricultural employees. (Frudden Enterprises, Inc. (1981) 7 ALRB No. 22.) On September 11, 1981, the UFW, through its President, Cesar Chavez, sent a letter to Respondent requesting that Respondent commence bargaining. Respondent received the UFW's letter, but did not respond to it. On March 15, 1982, the UFW filed the charge in this matter, alleging that Respondent had refused to bargain since on or about September 14, 1981. On April 23, 1982, Respondent, through its attorney Robert K. Carrol, sent a letter to the UFW stating that Respondent was refusing to negotiate because it questioned the validity of the certification.[1/] General Counsel issued the instant complaint based on the UFW's March 15, 1982, charge,[2/] alleging that Respondent had refused to bargain with its employees' certified bargaining representative in violation of

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[1/] Mr. Carrol's letter of April 23, 1982, refers to "off the record" meetings between Respondent and the UFW held "to discuss potential avenues of compromise concerning several legal matters involving the parties, including that of the illegal certification." Having been deliberately held "off the record," those meetings are not part of the evidence before us in this case and do not amount to affirmative responses to the UFW's request for negotiations.

[2/] The instant charge was consolidated with charge No. 79-CE-338-1-SAL and a First Amended Consolidated Complaint issued by the Salinas region's Acting Regional Director on May 12, 1982. That complaint was duly answered by Respondent on May 25, 1982. Subsequently, on June 16, 1982, the Board issued its Decision in Frudden Produce, Inc., et al. (1982) 8 ALRB No. 42, which remedied violations based on charge No. 79-CE-338-1-SAL, and those allegations were formally severed from the instant charge on September 15, 1982, by the Acting Regional Director.

Labor Code section 1153(e) and (a).[3/]

Respondent stipulates that it refused to bargain, but denies violating Labor Code section 1153(e) and (a), since it contends the UFW was not properly certified. Respondent further argues that because it has undertaken a reasonable, good faith challenge to the certification of the UFW, under our Decision in J. R. Norton Co. (1980) 6 ALRB No. 26, review denied by Court of Appeals, 4th District, Division 1, (Jan. 7, 1981), the makewhole remedy is not applicable.

The Makewhole Remedy Under the Norton Standards

The California Supreme Court in J. R. Norton Company v. ALRB (1979) 26 Cal.3d 1, struck down the Board's rule that the makewhole remedy was applicable in all cases where the refusal was utilized as a means to obtain judicial review of the Board's action in certifying the union. Such a blanket imposition of makewhole relief, the court reasoned, would discourage an employer from seeking judicial review of a meritorious claim that an election did not represent the free choice of the employees as to their bargaining representative. The first lesson from Norton, then, is that in technical refusal-to-bargain cases[4/] we must

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

[4/] An order in a certification proceeding is not directly reviewable in the courts, since it is not a "final" order within the meaning of Labor Code section 1160.8. It is only by refusing to bargain with the certified union that an employer may obtain judicial review of the Board's certification and its finding that the refusal was an unfair labor practice. (Nishikawa Farms, Inc. v. Mahony (1977) 66 Cal.App.3d 781, 787.) Such employer conduct is known as a "technical refusal to bargain."

proceed on a case-by-case basis.

In Norton, the court advised us to use the following standard in determining when to apply the makewhole remedy:

> ... the Board must determine from the totality of the employer's conduct whether it went through the motions of contesting the election results as an elaborate pretense to avoid bargaining or whether it litigated in a reasonable good faith belief that the union would not have been freely selected by the employees as their bargaining representative had the election been properly conducted. We emphasize that this holding does not imply that whenever the Board finds an employer has failed to present a prima facie case, and the finding is subsequently upheld by the courts, the Board may order make-whole relief. Such decision by hindsight would impermissibly deter judicial review of close cases that raise important issues concerning whether the election was conducted in a manner that truly protected the employees' right of free choice. As discussed above, judicial review in this context is fundamental in providing for checks on administrative agencies as a protection against arbitrary exercises of their discretion. On the other hand, our holding does not mean that the Board is deprived of its make-whole power by every colorable claim of a violation of the laboratory conditions of a representation election: it must appear that the employer reasonably and in good faith believed the violation would have affected the outcome of the election.
> (26 Cal.3d at 39.)

Evaluating the case Respondent puts before us in the light of the Supreme Court's standard, we find that Respondent is not engaging in this litigation on the basis of a reasonable good faith belief that the misconduct alleged in its post-election objections affected the outcome of the election.

It is undisputed that Respondent delayed for more than seven months in replying to the UFW's September 11, 1981 letter requesting negotiations. Its April 23, 1982 response followed by over one month the UFW's filing of charges based on Respondent's failure to bargain. Such lengthy delay indicates

that Respondent's motivation in challenging certification does not meet the standard for good faith as articulated by the Court in J. R. Norton Company v. ALRB, supra, 26 Cal.3d 1, which requires us to determine from the totality of the circumstances whether Respondent's challenge to the election results is but "an elaborate pretense to avoid bargaining." (26 Cal.3d at p. 39.)

Our negative evaluation of the motives behind Respondent's decision to litigate rather than to bargain with its employees' representative is reinforced by the findings we made in Frudden Produce, Inc. (1982) 8 ALRB No. 42, that Respondent had unlawfully discriminated in its employment practices in the 1979 and 1980 tomato seasons in order to discourage union activity among its employees and had unlawfully failed to rehire strikers who had a right to be rehired. The anti-UFW sentiment Respondent revealed in those unfair labor practices continued into 1982 and precluded the development of a bargaining relationship between Respondent and its employees' certified representative.[5/]

On the basis of the above, and the record as a whole,

[5/] Member McCarthy, unlike his colleagues, does not rely on Frudden Produce, Inc. (1982) 8 ALRB No. 42. As explained in his dissenting opinion in Holtville Farms, Inc. (1981) 7 ALRB No. 15, he does not believe that the court, in J. R. Norton Co. v. ALRB (1979) 26 Cal.3d 1, contemplated matters outside the context of a representation proceeding when it proposed that the Board examine the totality of an employer's conduct before determining makewhole liability. (See also San Justo Ranch, dis. opn. (1983) 9 ALRB No. 55.) Therefore, he would not rely

(Fn. 5 cont. on p. 6.)

we find that the makewhole remedy is appropriate in this case.[6/] The makewhole period begins on September 14, 1981, which is three days from the date the UFW mailed Respondent a request to commence negotiations. As Respondent's obligation to bargain with its

(Fn. 5 cont.)

on the Board's findings of independent unfair labor practices in Frudden. Moreover, he dissented from a major finding of the Frudden Board, stating at page 18, footnote 8, that he was not persuaded that the majority had been correct in its assessment that Respondent's decision to convert from hand to machine harvesting was grounded in other than a pre-determined business judgment as to the manner in which it henceforth would conduct its harvest operations.

[6/]Member Song concurs in finding that Respondent's seven-month delay in responding to the UFW's initial request to bargain is sufficient evidence of bad faith to warrant the imposition of the makewhole remedy. (See, e.g., San Justo Ranch/Wyrick Farms (1983) 9 ALRB No. 55.) However, he would not adopt Respondent's characterization of its conduct in this matter as a technical refusal to bargain case which requires scrutiny under the analysis set forth in J. R. Norton Co., supra, 6 ALRB No. 26. Member Song believes that the totality of the circumstances surrounding Respondent's refusal to bargain belies its assertion that its purpose was to test the validity of the certification. As the Board stated in Robert H. Hickam (1978) 4 ALRB No. 73:

> In concluding that Respondent has failed and refused to meet and bargain in good faith with the UFW we do not rely only upon Respondent's admission that it has refused to bargain ... although that admission would constitute a sufficient basis for our finding. We independently find that Respondent has failed and refused to bargain based on the totality of Respondent's conduct, which manifests an intent to use dilatory tactics in order to avoid discharging its statutory obligation.
> (Id., p. 9.)

In the instant matter, as in Hickam, ibid., Respondent failed to respond to the UFW's request to bargain for several months without indicating the purported reasons for its refusal to bargain until after the UFW filed an unfair labor practice charge. Member Song would therefore reject Respondent's belated assertion that its conduct should be viewed as a technical refusal to bargain case and would conclude that Respondent unlawfully engaged in dilatory tactics to avoid its statutory obligation to bargain with the UFW.

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 (or, if the third day falls on a Sunday or a legal holiday, on the next regular business day).

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Frudden Enterprises, 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 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 makewhole 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 September 14, 1981, until December 6, 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 September 14, 1981, 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: December 21, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

MEMBER HENNING, Concurring:

I agree with my colleagues' finding that Respondent here did not act in good faith in undertaking litigation challenging the Agricultural Labor Relations Board's (ALRB or Board) certification of the United Farmworkers of America, AFL-CIO (UFW or Union). Respondent's seven-month delay in rejecting the UFW's request for negotiations is evidence that its choice to litigate rather than to commence negotiations was a pretense to cover its basic unwillingness to accept the UFW as its employees' collective bargaining representative according to the terms and requirements of the Agricultural Labor Relation's Act (ALRA or Act).

In addition to the support for the finding of bad faith which is provided by Frudden Produce, Inc. (1982) 8 ALRB No. 42, I find further support for that finding in an assessment of the content of Respondent's objections to the election. (In J. R. Norton Co. (1980) 6 ALRB No. 26, review den. by Ct.App., 4th

Dist., Div. 1 (Jan. 7, 1981) this Board stated that "the good faith aspect requires consideration both of the employer's belief as to the validity of its objection and of the employer's motive for engaging in the litigation.") Evaluation of Respondent's belief as to the validity of its post-election objections requires that those objections be examined in the light of the legal standards which will be applied by a Court of Appeal. As we recently pointed out in San Justo Ranch/Wyrick Farms (1983) 9 ALRB No. 55, in view of the deference courts pay to determinations made by administrative agencies as to subjects within the area of special competency of such agencies (Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board (1979) 24 Cal.3d 335), a party appealing an ALRB ruling on election objections will have to show not only that its position before the Board was reasonable but also that the Board's contrary ruling was so unreasonable that it constituted an abuse of discretion. (NLRB v. Miramar of California, Inc. (9th Cir. 1979) 601 F.2d 422 [102 LRRM 2241].)

The California Supreme Court has upheld the adequacy of this Board's procedures for reviewing post-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.)

All of Respondent's post-election objections involved allegations of misconduct by UFW representatives prior to the election. Respondent alleged that violent behavior by those representatives and their violations of this Agency's regulations regarding labor organizers' taking of access to agricultural employees on their employer's property (Cal. Admin. Code, tit. 8, sec. 20900) intimidated its workforce, creating a coercive atmosphere in which a free election could not be held. The Investigative Hearing Officer (IHE) found that some UFW representatives did engage in violent behavior and did violate the regulation governing access. The only incident involving arguably serious violence occurred on August 16, 1979, when a group of some 25-50 UFW supporters, with at least one UFW organizer, rushed a field shouting and throwing tomatoes (and possibly dirt clods) at employees working around harvesting machines. They disrupted the crews' work and apparently frightened some employees. This Board in Frudden Enterprises (1981) 7 ALRB No. 22, affirmed the IHE's findings and granted Respondent's Motion to Deny Access, barring certain of the representatives from taking access on the property of any

agricultural employer in the geographical jurisdiction of the Agency's Salinas Region for a period of sixty days, and other representatives for a period of six months.

This Board will set aside an election if access violations have occurred which were of such a character as to have an intimidating and coercive impact on employees' free choice. (Ranch No. I, Inc. (1979) 5 ALRB No. 1; Sam Andrews' Sons (1978) 4 ALRB No. 59; Triple E Produce Corp. (1978) 4 ALRB No. 20; George Arakelian Farms, Inc. (1978) 4 ALRB No. 6; Martori Bros. Distributing (1978) 4 ALRB No. 5; Dessert Seed Co. (1976) 2 ALRB No. 53; K. K. Ito Farms (1976) 2 ALRB No. 51.) But it is well settled that conduct violative of the access regulation is not, per se, conduct tending to affect the free choice of employees or the outcome of an election. In Ranch No. 1, supra, 5 ALRB No. 1, for example, we concluded that a labor organization had violated the access regulation,[1/] but that "[n]o evidence was presented to indicate that these violations were of such a character as to create an intimidating or coercive impact on the employees' free choice of a collective bargaining representative." We went on to state the following general principle:

> ...Where employees have participated in a free and fair election of a collective bargaining representative, we will not deprive them of their right to collective bargaining by refusing to certify an election because of misconduct which we cannot fairly conclude affected

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[1/] The violations of the access regulation at issue in Ranch No. 1, supra, 5 ALRB No. 1 were, like those in the instant case, the subject of a Motion to Deny Access which this Board granted in Ranch No. 1 and Spudco., Inc. (1979) 5 ALRB No. 36.

> the results of [the] election. (K. K. Ito Farms, 2 ALRB No. 51, Dessert Seed Company, Inc., 2 ALRB No. 53 (1976).)

That position is fully in accord with applicable precedent under the National Labor Relations Act (NLRA).[2/] Under that Act, as under our own, the burden of proof in a post-election hearing on objections is on the party seeking to have the Board set aside the election. (NLRB v. Advanced Systems, Inc. (9th Cir. 1982) 681 F.2d 570 [110 LRRM 3089]; NLRB v. Golden Age Beverage Company (5th Cir. 1969) 415 F.2d 26 [71 LRRM 2924]; see also NLRB v. Sauk Valley Manufacturing Co., Inc. (9th Cir. 1973) 486 F.2d 1127 [84 LRRM 2674] and NLRB v. Mattison Machine Works (1961) 365 U.S. 123 [47 LRRM 2437].) This is a heavy burden, requiring an objecting party to come forward with "specific evidence ... showing not only that unlawful acts occurred, but also that they interfered with the employees' exercise of free choice to such an extent that they materially affected the results of the election." (NLRB v. Golden Age Beverage Co., supra, 415 F.2d at 30 [71 LRRM at 2926]; see also Spring City Knitting Co. v. NLRB (9th Cir. 1981) 647 F.2d 1011, 1019 [107 LRRM 3125, 3130].)

The evidence adduced at the investigative hearing established that although several violations of the access regulation occurred during the preelection period, as well as

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[2/] Section 1148 of the provides: "The Board shall follow applicable precedents of the National Labor Relations Act, as amended."

two incidents of rather limited violence,[3/] there were no preelection threats to employees which specifically referred to voting in the election, and no interference with the polling process or with employees' access to the polls. As to the incidents in which the work of employees was disrupted by union representatives and adherents, the IHE stated:

> To the extent that it is possible to determine the purpose of harassment of employees shown on this record, the evidence indicates that it was intended to cause employees to stop work and listen to union appeals, and possibly to join a strike.
> (Frudden Enterprises, Inc., supra, 7 ALRB No. 22, IHE Decision, p. 55-56.)

In support of her determination that the conduct objected to was not of such a character as to have invalidated the election as an expression of free employee choice, the IHE reasoned that the impact of the union representatives' misconduct upon the employees was equally likely to be resentment toward the Union as to be fear of the Union. She stated that:

> ...no specific threats connected with voting were made in this case, and it would seem unlikely that employees who were frightened by tactics chosen by the UFW to cause them to join a strike or to stop work to listen to organizers would react by voting for the UFW as their collective bargaining representative.
> (Ibid, p. 59.)

The IHE concluded:

> Nor is the conduct established herein sufficiently serious to warrant an inference that any of the 200 (sic) votes cast for the UFW were cast out of fear

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[3/] In addition to the field-rushing incident on August 16, 1979, mentioned above, on August 24 a UFW organizer approached a crew taking a break and engaged in a brief series of shoves and pushes with a crew foreman who told him he could not talk with employees until they finished work.

> or confusion caused by the union's tactics. (Ibid., p. 58.)

Respondent's contention that the misconduct at issue here caused an atmosphere of confusion and fear which prevented employee free choice lacks substantial support in the record of the investigative hearing. Many of the expressions the record contains of employee fear resulting from the misconduct of the UFW organizers and adherents are hearsay reports of what certain employees allegedly said to the testifying witness. As the IHE correctly observed:

> ...By itself, [such] testimony is hearsay and insufficient to support a finding that the workers mentioned were afraid, let alone to generalize about the reactions of others. (Ibid. p. 54.)

As to the most serious of the access violations, that which occurred on August 16, the testimony of three employees that they personally were frightened by the rushing of the field and throwing of missiles must be accorded its due weight -- which in context means that it must be balanced against uncontroverted evidence that many members of the crews whose work was interrupted by the union organizers and adherents remained in the field or at its side conversing peacefully with the intruders for up to a half hour after the rushing. The record does not show even that all of the employees directly involved in the August 16 incident were frightened by the misconduct that interrupted their work, let alone that the incident generated widespread fear through other crews or that such fear as it may have caused lasted until the election almost two weeks later, in which the UFW

received over 93 percent of the ballots cast.[4/]

Respondent clearly failed to meet the standard required of a party seeking to have the results of an election set aside because of coercive conduct in the preelection period:

> For conduct to warrant setting aside an election, not only must that conduct be coercive, but it must be so related to the election as to have had a probable effect upon the employees' actions at the polls. (Valley Rock Products, Inc. v. NLRB (9th Cir. 1979) 590 F.2d 300 [100 LRRM 2695].)

Given the failure of the record evidence to support Respondent's post-election objections, and the high standard Respondent will have to meet in an appellate court if it seeks to overturn our decision rejecting those objections, there is

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[4/] Neither the Decision in Frudden Enterprises Inc., supra, 7 ALRB No. 22, nor my evaluation in the instant matter of Respondent's belief in the reasonableness of its objections at the time it refused to enter into negotiations, is affected by the National Labor Relation Board's (NLRB) recent decision in Anthony and Karney Scioscia d/b/a Home & Industrial Disposal Service (1983) 266 NLRB No. 22, overruling Hickory Springs Manufacturing Co. (1978) 239 NLRB 641 [99 LRRM 1715] aff'd in the summary judgment proceeding (1980) 247 NLRB 1208 [103 LRRM 1394], enf. denied (5th Cir. 1981) 645 F.2d 506 [107 LRRM 2402]. Although the IHE in Frudden quoted dicta from Hickory Springs, she did not rely on its holding. Moreover, the central issue in that case and in Home and Industrial Disposal -- whether preelection remarks by union officials threatening violent reprisals against employees who failed to support a possible strike at some time in the future created a coercive atmosphere impeding free choice in the election -- differs in significant respects from the issue here, i.e., whether access violations by union organizers and adherents, some of which involved limited forms of violent behavior, created such an atmosphere.

little likelihood that Respondent will succeed. If Respondent actually believes otherwise, that belief is, in my opinion, unreasonable.

Dated: December 21, 1983

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

A representation election was conducted by the Agricultural Labor Relations Board (Board) among our employees on August 29, 1979. 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 August 21, 1981. 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 September 14, 1981, 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:

FRUDDEN PRODUCE, INC.,
DENNIS FRUDDEN, dba
FRUDDEN PRODUCE COMPANY, and
FRUDDEN ENTERPRISES, INC.

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.

CASE SUMMARY

Frudden Produce, Inc.,
Dennis Frudden, dba
Frudden Produce Company, and
Frudden Enterprises, Inc.

9 ALRB No. 73
Case No. 82-CE-19-SAL

BACKGROUND

After being certified by the Board on August 21, 1981, the UFW sent a request to bargain to Respondent on September 11, 1981. On April 23, 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 that Respondent's seven-month delay in responding to the UFW's request to bargain was evidence of bad faith, warranting imposition of the makewhole remedy. Accordingly the Board issued an Order, including a makewhole provision, to remedy Respondent's violation of section 1153(e) and (a) of the Act.

Member Henning concurred, stating that if Respondent believes its objections to the election are likely to be upheld by a court on appeal, that belief is unreasonable.

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