

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, LP, and	)	Case Nos.	2012-CE-030-VIS
ARNAUDO BROTHERS, INC.,	)		(40 ALRB No. 3)
)		
Respondent,)		
)		
	)	ORDER GRANTING	
and	)	APPLICATION FOR SPECIAL	
	)	PERMISSION TO APPEAL ALJ	
UNITED FARM WORKERS OF	)	DECISION DENYING REQUEST	
AMERICA,	)	FOR CONSIDERATION OF	
	)	MAKEWHOLE REMEDY	
)		
<u>Charging Party.</u>	)	Admin. Order No.	2014-30

On October 3, 2014, the United Farm Workers of America (the “UFW”) filed an Application for Special Permission to Appeal ALJ Decision Denying UFW Request for Consideration of Makewhole Remedy. The application appeals the September 26, 2014 order of Administrative Law Judge Douglas Gallop (the “ALJ”) denying the UFW’s request that the parties be permitted to brief the issue of whether there should be an award of bargaining makewhole in this matter. The General Counsel joins in the UFW’s application. Respondent Arnaudo Brothers, LP and Arnaudo Brothers, Inc. (“Arnaudo”) opposes the application.

The UFW contends that a specific request for bargaining makewhole was omitted by the General Counsel from the amended complaint mistakenly. However, the amended complaint did request “all such other relief available under the Act that may be just and proper to remedy the unfair labor practices alleged herein.” The ALJ’s

September 26, 2013 decision did not address bargaining makewhole and no party took exception to the omission. This matter is currently on remand before the ALJ for further proceedings on the issue of whether the UFW disclaimed interest in representing the bargaining unit.

The California Supreme Court has held that “[t]he Board has broad discretion in choosing the most appropriate remedy and there is nothing in the ALRA or the regulations to suggest that the Board may grant only those remedies specifically requested in the prayer for relief.” (*Harry Carian v. ALRB* (1985) 39 Cal.3d 209, 233.) Labor Code section 1160.3 authorizes the Board to order remedies, including, where appropriate, bargaining makewhole, upon a finding that a person named in a complaint has engaged, or is engaging in an unfair labor practice.

The UFW’s application for special permission to appeal is GRANTED. We find that the UFW made an adequate showing of the necessity of interim relief and further find that this issue cannot be addressed effectively through exceptions. (Board Regulation 20242(b); *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11.) The parties are granted leave to brief the issue of whether an award of bargaining makewhole pursuant to Labor Code section 1160.3 is appropriate in this case. Any such briefing shall be included in the post-hearing briefs filed after the conclusion of the remand hearing in this case. The ALJ shall include a ruling on the makewhole issue in his supplemental decision unless his conclusions regarding the disclaimer issue render the makewhole issue moot. In the event that it is determined that an award of bargaining makewhole is appropriate, the duration of the makewhole period shall be

determined in the compliance phase. However, the duration of any makewhole period shall not extend beyond the date that exceptions to the September 26, 2013 decision of the ALJ were due (i.e. October 21, 2013) or the date on which Arnaudo commenced good faith bargaining with the UFW, whichever is earlier. (See *Mario Saikhon, Inc.* (1987) 13 ALRB No. 8 p. 16.)

Dated: October 15, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member