Tracy, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, LP and ARNAUDO BROTHERS, INC.,	)	Case Nos. 2015-CE-006-VIS 2017-CE-003-VIS
Respondents,	)	
and	)	
UNITED FARM WORKERS OF AMERICA,	)	44 ALRB No. 07
Charging Party.	)	(August 16, 2018)

DECISION AND ORDER

On March 29, 2018, Administrative Law Judge Mary Miller Cracraft (the "ALJ") issued a Decision and Recommended Order on Stipulated Record in Case Nos. 2015-CE-006-VIS and 2017-CE-003-VIS involving respondents Arnaudo Brothers, LP and Arnaudo Brothers, Inc. ("Arnaudo") and charging party and certified union United Farm Workers of America (the "UFW"). The ALJ found that Arnaudo violated the Agricultural Labor Relations Act (the "ALRA" or "Act") by failing to bargain in good faith with the UFW over wage rates between November 10, 2014, and March 25, 2015, and by failing to provide the UFW with notice and an opportunity to bargain over the discretionary aspects of a medical plan Arnaudo

implemented in or around April 2016. The ALJ's recommended order included non-monetary remedies for the two bargaining violations but not makewhole.

Arnaudo did not file exceptions to the ALJ's decision with the Agricultural Labor Relations Board (the "ALRB" or "Board"). The General Counsel of the ALRB filed three exceptions with the Board, contending that makewhole should have been awarded as a remedy both for the 2014-2015 violation and the 2016 violation.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the remedies ordered by the ALJ in part. The Board agrees that it is not appropriate to award bargaining makewhole for the 2014-2015 violation. However, the Board concludes that it is appropriate to order a remedy making employees whole for economic losses incurred as a result of Arnaudo's failure to bargain over the discretionary aspects of the medical plan implemented in 2016. The amount of such losses, to the extent that any were incurred, shall be determined in compliance proceedings. The Board shall modify the ALJ's recommended order accordingly.

I. Factual Background

The factual background of this case, based upon the record stipulated to by the parties, is set forth in detail in the ALJ's decision. However, to summarize the facts that relate to the remedial issues raised by the General Counsel's exceptions, in February 2013 Arnaudo and the UFW were referred to Mandatory Mediation and Conciliation ("MMC") pursuant to Labor Code section 1164 *et seq*. In September 2014, mediator Matthew Goldberg (the "Mediator") issued a supplemental report ordering a two-year contract effective January 1, 2014, through December 31, 2015, but "remanding" the matter of second-year wage rates to

the parties for negotiation. The Board rejected this report and remanded the matter to the Mediator with instructions to file a report resolving the second-year wage issue. (*Arnaudo Bros., LP* (2014) 40 ALRB No. 9.)

The ALJ found that, following the Board's order, the UFW attempted to initiate "voluntary" bargaining (i.e., bargaining outside of the formal MMC process) with Arnaudo. However, between November 10, 2014 and March 25, 2015, Arnaudo repeatedly failed to respond to the UFW's communications or make any counter-proposal to the UFW's wage proposal, thereby breaching its duty to bargain in good faith. No exception was taken to these conclusions.[1]

The parties ultimately met with the Mediator, submitted their positions, and, on April 6, 2015, the Mediator issued a "Second Supplemental Report" setting second-year wage rates. The report also directed Arnaudo to make whole workers who had not received the contractual pay increases under the MMC contract. On April 23, 2015, the Board ordered the Mediator's report, as modified by the April 6, 2015 Second Supplemental Report, into effect as a final order of the Board. (*Arnaudo Bros, LP* (2015) 41 ALRB No. 3.)

On May 29, 2015, Arnaudo filed a petition for review of the Board's final MMC order in the Fifth District Court of Appeal. (*Arnaudo Bros., LP v. ALRB,* Case No. F071598.) The Board moved to dismiss the petition on the grounds the court lacked jurisdiction because

[1] Due to the conclusion that Arnaudo unlawfully failed to bargain in good faith in the context of the parties' "voluntary" negotiations, the ALJ found it unnecessary to reach the issue of whether Arnaudo's conduct within the MMC process could form the basis of a finding of bad faith bargaining. We agree that it was not necessary to reach that issue and we do not rely upon the ALJ's alternative discussion of this issue.

the petition was untimely filed. On October 30, 2015, the court of appeal granted the Board's motion and dismissed the petition.

Prior to April 2016, Arnaudo did not offer a medical plan to its employees, nor did the MMC contract require it to do so. In or around April 2016, Arnaudo began offering a medical plan to its employees. Its purpose for doing so was to comply with the requirements of the federal Affordable Care Act.[2] The parties stipulated that Arnaudo did not notify or offer to bargain with the UFW before offering the medical plan to its employees. The ALJ found that, even if implementation of the plan was required by federal law, Arnaudo was required to provide the UFW with notice and an opportunity to bargain over the discretionary aspects of the change and its failure to do so violated the Act. No exception was taken to this conclusion.

II. The ALJ's Recommended Remedies

As remedies for the violations found, the ALJ recommended standard non-monetary remedies, including notice posting, mailing, and reading.[3] With respect to monetary remedies, the ALJ recommended denying bargaining makewhole as a remedy for the 2014-2015 failure to bargain. The ALJ observed that paragraph 11 of the unfair labor practice complaint (the "Complaint") stated that "Respondent paid the wages established in the mediated contract through December 31, 2015." Based upon this, the ALJ found that "no

[2] Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 *et seq*.

[3] With respect to the 2016 violation, the ALJ recommended that Arnaudo "be ordered to negotiate with UFW regarding those items of the health insurance plan that allow for discretion or flexibility." However, the ALJ's recommended order does not include specific language to this effect. Therefore, we shall modify the order to include this requirement.

bargaining make whole relief is required for the specific violation at issue" and that "[t]o hold otherwise would unreasonably conflate this unfair labor practice proceeding with the MMC process and would deny due process to those involved." The ALJ also recommended denying a monetary remedy for the 2016 violation, finding that, because Arnaudo did not have medical insurance prior to implementing the 2016 plan, no employee could have been financially harmed by the implementation.

III. The General Counsel's Exceptions to the ALJ's Recommended Remedies

The General Counsel filed exceptions to the ALJ's decision, all of which relate to the recommended remedies. More specifically, the General Counsel challenges the ALJ's recommendation to award no makewhole for the 2014-2015 and 2016 violations.

With respect to the 2014-2015 violation, the General Counsel argues that the record does not support the ALJ's conclusion that Arnaudo paid the wages required under the MMC contract. The General Counsel contends Arnaudo paid the contract wages only for the final two to three months of the contract (September or October 2015 through December 31, 2105) and never paid wages retroactively for the remainder of the contract period. The General Counsel asserts that the complaint, on which the ALJ relied in reaching her conclusion, contains "some ambiguous language" and was "inartfully" drafted, but that it was not intended as an admission that Arnaudo paid the contract wages. She argues that the consequences of the ambiguous drafting of the complaint should not be borne by aggrieved employees who will be denied a remedy.

The General Counsel further argues that the Board should award makewhole in this case notwithstanding that the makewhole period would fall entirely within the effective

dates of the MMC contract. The General Counsel asserts that, under Board precedent, the MMC contract is effectively unenforceable and the allegedly unpaid contract wages likely will never be paid. Under these circumstances, the General Counsel contends the existence of the MMC contract should not be an impediment to awarding makewhole.

With respect to the 2016 violation, the General Counsel argues that the ALJ misconstrued the proper measure of makewhole. In the General Counsel's view, the appropriate measure is not the difference between the pre-April 2016 status quo (no medical insurance) and the plan implemented by Arnaudo, but the difference between Arnaudo's unilaterally implemented plan and the plan that would have been negotiated through good faith bargaining, based upon factors such as other medical plans typically found in UFW-negotiated contracts. The General Counsel also disputes the ALJ's conclusion that employees could not have been financially harmed through the implementation of Arnaudo's plan, arguing that there was not an adequate record on which to base such a conclusion.

IV. Discussion and Analysis

A. Bargaining Makewhole Remedy for the 2014-2015 Violation

As discussed below, we conclude that the ALJ correctly determined that the allegations of the Complaint foreclosed the General Counsel's argument that Arnaudo did not pay the wages mandated under the MMC contract. Furthermore, even if the Complaint did not preclude that argument, we would find that bargaining makewhole could not be awarded within the effective dates of the MMC contract.

i. The Effect of the Complaint Allegations

As the General Counsel correctly points out, "[a]ctions before the Board are not subject to the technical pleading requirements of a private lawsuit." (*Ruline Nursery Co. v. ALRB* (1985) 169 Cal.App.3d 247, 268.) However, it is also true that an admission made in a pleading filed before the Board is generally binding on the party that made it. (*Hickam* (1979) 4 ALRB No. 73 [where respondent admitted in its answer that it refused to bargain, "that admission would constitute a sufficient basis for our finding" of an unfair labor practice]; *Boydsten Electric, Inc*. (2000) 331 NLRB 1450, 1451 ["such an admission has the effect of a confessory pleading, and its principal characteristic is that it is conclusive upon the party making it"], quoting *Academy of Art College* (1979) 241 NLRB 454, 455, enfd. (9th Cir. 1980) 620 F.2d 720; *Peyton v. Cly* (1960) 184 Cal.App.2d 193, 195-196 ["It is elemental that a party is bound by the admissions of his own pleadings … and may not make a contention based on a statement of fact contrary thereto"].)

In this case, paragraphs 10 and 11 of the Complaint allege as follows:

> 10. The mediated contract covered calendar years 2014 and 2015 and it expired on December 31, 2015.
>
> 11. Respondent paid the wages established in the mediated contract through December 31, 2015.

The ALJ read these allegations as establishing that Arnaudo paid all the wages established in the MMC contract. We agree with the ALJ's interpretation of the unambiguous words chosen by the General Counsel. While the General Counsel now argues that Arnaudo paid the contract wages only in the waning months of the contract, no such allegation is present in the complaint, nor did the General Counsel ever amend the Complaint to include it.

Furthermore, the record to which the General Counsel stipulated contains no evidence of non-payment of wages by Arnaudo.[4] Under these circumstances we find, in agreement with the ALJ, that the allegations in the Complaint foreclose an award of bargaining makewhole as a remedy for the 2014-2015 violation.[5]

ii. The Effect of the MMC Contract

Even if we were to find that makewhole was not foreclosed in this case due to the allegations in the Complaint, that remedy would be not be available because the makewhole period would fall entirely within the effective dates of the MMC contract. In *Gerawan Farming, Inc*. (2018) 43 ALRB No. 1, the Board ordered bargaining makewhole as a remedy for an employer's bad faith "surface bargaining." In determining the length of the makewhole period, the Board concluded that makewhole should terminate as of the effective date of an MMC contract that had been ordered into effect in a final Board order. (*Gerawan Farming, Inc., supra*, 43 ALRB No. 1 p. 59.) The MMC contract in question had not been implemented, and the Board's MMC order was still undergoing judicial review. Nevertheless, the Board found that preventing "overlap" between a makewhole remedy and the MMC contract was necessary to avoid a punitive remedy. (*Ibid*; see *William Dal Porto & Sons, Inc. v. ALRB*

[4] Arnaudo in its answer to the Complaint admitted the allegations of paragraphs 10 and 11.

[5] The General Counsel argues that, at page 26 of the ALJ's decision, the ALJ erroneously treated certain statements in the General Counsel's Brief on Stipulated Record as admissions concerning Arnaudo's payment of MMC contract wages. We find that the portion of the ALJ's decision in question was describing the statements in the General Counsel's brief, rather than giving them binding effect. The ALJ's conclusion was explicitly based upon "[t]he parties' pleadings," not the General Counsel's brief.

(1987) 191 Cal.App.3d 1195, 1204 [makewhole is remedial in nature and may not be imposed in a punitive fashion].) The Board also rejected an argument that makewhole should run until the date that the MMC contract was implemented, finding that such an order would also "clearly be punitive." (*Gerawan Farming, Inc., supra,* 43 ALRB No. 1, p. 59.)

The General Counsel acknowledges the *Gerawan* decision but argues that it is distinguishable from the instant case. The General Counsel argues that in the *Gerawan* case both the ALRB and the union are "actively and diligently" seeking enforcement of the Board's MMC order through appellate litigation, unfair labor practice proceedings, and an enforcement action in the Superior Court for Sacramento County. In contrast, Arnaudo's petition for review of the MMC order was dismissed as untimely, resulting in no enforceable judgment arising out of the appellate litigation. Furthermore, the General Counsel represents that no superior court enforcement action was filed, and that the failure to implement the MMC contract was not alleged as an unfair labor practice. Thus, while judicial enforcement of the Gerawan contract "is a very real possibility," enforcement of the Arnaudo MMC contract has not been sought, and it is "not at all clear" that the contract could be enforced at this stage. The General Counsel concludes that an MMC contract that has not been implemented, and which is unlikely to be enforced, should not act as a bar to a makewhole award.

We find that the rationale of the *Gerawan* decision is applicable to the instant case. In fact, because the Gerawan MMC contract was subject to a pending judicial challenge, the Board was aware of the possibility that the contract would be ruled unenforceable. Thus, the potential or purported unenforceability of the MMC contract does not distinguish this case from the *Gerawan* case. It could be argued that because the time to seek review of the

Arnaudo MMC contract passed without a timely petition for review the prospects for enforcing the Arnaudo contract were relatively favorable.[6] However, the responsibility for enforcing the terms of a contract arrived at through the MMC process, as with ordinary collective bargaining agreements, lies principally with the parties to the contract. Beyond enforcement actions under Labor Code section 1164.3, subdivision (f), there are multiple means by which to enforce an MMC contract, including submitting a dispute regarding compliance to contractual grievance arbitration, filing an unfair labor practice charge, and filing a suit for breach of a collective bargaining agreement under Labor Code section 1165. To the extent enforcement was not pursued in a timely manner, it does not justify treating the MMC contract as "illusory" as the General Counsel argues.[7]

Accordingly, we conclude that the rationale of *Gerawan Farming, Inc.*, *supra*, 43 ALRB No. 1 is applicable to this case and, even if Arnaudo did not pay retroactive wage increases required under the MMC contract, the Board could not award a makewhole remedy whose term would lie within the effective dates of the MMC contract.

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[6] As the General Counsel points out, because Arnaudo's petition was untimely filed, the appellate court was without jurisdiction to hear it and it could not produce an enforceable judgment. By the time the appellate court dismissed Arnaudo's untimely petition in October 2015, the 60-day period for seeking superior court enforcement of the MMC order under Labor Code section 1164.3, subdivision (f) had passed. However, the untimeliness of Arnaudo's petition for review was plain on its face and was further highlighted when the Board moved to dismiss the petition as untimely. At that point, an action under Labor Code section 1164.3, subdivision (f) could have been timely filed.

[7] The record was not developed, and we make no finding, concerning what legal actions, if any, the parties took to enforce the MMC contract. Likewise, we cannot determine on this record, assuming *arguendo* that Arnaudo did not comply with the retroactive wage provisions of the contract, whether any particular legal option for enforcing those provisions was or is viable.

B. Monetary Remedy for the 2016 Violation

The ALJ denied a monetary remedy for Arnaudo's failure to bargain over the discretionary aspects of the employee medical plan that it unilaterally implemented in April 2016. The ALJ reasoned that because the unilateral change provided employees with a benefit they did not previously have, employees could not have suffered any financial loss due to the change. The General Counsel argues that the ALJ misconstrued the proper measure of makewhole and that makewhole should not simply compensate employees for economic losses caused by the unilateral change but should "put them in the economic position they would have been in had the employer bargained in good faith" based upon evidence such as medical plans found in other UFW-negotiated contracts. The General Counsel also argues that the ALJ improperly assumed that employees could not have been harmed by the unilateral implementation without sufficient support in the record.

i. The Distinction Between the Monetary Remedy for Discrete Unilateral Changes and Bargaining Makewhole

In determining the proper measure of a monetary remedy for Arnaudo's failure to bargain over the discretionary aspects of the 2016 medical plan, a distinction must be drawn between the type of compensatory remedy that the Board orders for a discrete unilateral change and "bargaining makewhole." The National Labor Relations Board ("NLRB") has long included as part of its standard remedy for unlawful unilateral changes, including changes to employee benefits, an order directing that affected employees be made whole for economic losses caused by the unilateral change. (*Goya Foods of Florida* (2011) 356 NLRB 1461, 1462 ["Losses relating to [unilateral changes to] insurance benefits are an injury for which the Board

has been making employees whole for over 65 years"].) When this type of remedy is ordered, the amount of compensable employee losses is the difference between employee earnings and benefits under the unilaterally changed terms of employment and the earnings and benefits employees would have received absent those changes. (*Emerald Green Building Services, LLC* (2016) 364 NLRB No. 109 pp. 48-49 ["To the extent that the Respondent's unilateral actions have adversely affected employees . . . the Respondent must make them whole, with interest, for the difference between their current wages and benefits and the wages and benefits in existence prior to the unilateral changes"]; *Arrow Door and Sash Co*. (1986) 281 NLRB 1108, 1109 [where employer unilaterally implemented its own health plan in place of an existing union plan, the employer was ordered to reimburse employees for "any additional expenses they may have incurred . . . as a result of the Respondent's unlawful implementation of its own health plan"].)

In contrast, "bargaining makewhole" is a remedy that compensates employees for economic losses caused by an employer's unlawful failure to bargain in good faith, which causes a failure to reach overall agreement on a contract. (Lab. Code, § 1160.3; *William Dal Porto & Sons, Inc. v. ALRB, supra*, 191 Cal.App.3d 1195, 1207 [the Board may award bargaining makewhole only where, "but for the employer's unlawful refusal to bargain, the parties would have concluded a collective bargaining agreement"].) The Legislature vested the Board with the power to award this type of remedy, which the NLRB has held is not available under the National Labor Relations Act. (*Highland Ranch v. ALRB* (1981) 29 Cal.3d 848, 866 fn. 7.) When the Board awards bargaining makewhole, it "determine[s] what wages and benefits the parties would have agreed to if the employer had entered into collective bargaining

with the union when it was obligated to do so." (*Ibid*.) The Board has previously held that the bargaining makewhole remedy is not awarded in cases involving only discrete unilateral changes. (*Warmerdam* (1996) 22 ALRB No. 13, p. 24, fn. 11 [stating that "the Board has never considered such a [bargaining makewhole] remedy appropriate for a discrete unilateral change in working conditions" and it has been reserved for situations where an extensive bargaining history permits the remedy to be "evaluated in terms of the totality of circumstances"]; *Mario Saikhon, Inc*. (1986) 12 ALRB No. 4 [denying bargaining makewhole as a remedy for implementation of a single unilateral change due to a lack of evidence of "bad faith or surface bargaining"]; *N.A. Pricola Produce* (1982) 7 ALRB No. 49 [distinguishing between cases involving an overall failure to bargain that "frustrates the ability to reach any agreement at all" and cases involving discrete unilateral wage increases].)

Thus, the General Counsel's argument that the Board should apply a "bargaining makewhole" standard under which employees are compensated for having been denied the economic benefits that would have been achieved had Arnaudo bargained in good faith over the discretionary aspects of the 2016 medical plan is not sound. The ALJ correctly determined that the monetary remedy for Arnaudo's failure to bargain over this discrete change would consist of the difference between the affected employees' earnings and benefits under the unilaterally changed terms of employment and the earnings and benefits they would have received absent those changes.

ii. The ALJ's Denial of a Monetary Remedy for Arnaudo's Failure to Bargain Over the Implementation of the 2016 Medical Plan

The General Counsel disputes the ALJ's conclusion that employees could not have suffered any adverse financial impact from Arnaudo's failure to bargain over the discretionary aspects of the 2016 medical plan and argues that there was not an adequate record developed to support that conclusion. As discussed above, an order making employees whole for lost wages and benefits is part of the standard remedy for an unlawful unilateral change. Typically, the amount of economic losses is determined in compliance proceedings. While, as discussed above, we reject the General Counsel's proposed method for calculating the amount of economic losses, we agree that at this stage the record is not sufficient to support a conclusion that employees could not have suffered any economic losses from the violation. Accordingly, we shall modify the ALJ's recommended remedy to include a monetary remedy. In compliance proceedings, the General Counsel shall have the burden of establishing that employees suffered financial losses resulting from Arnaudo's failure to bargain over the discretionary aspects of the implementation of the 2016 medical plan under the standards discussed above while Arnaudo may argue that there were no financial losses.

V. Conclusion

The portion of the ALJ's recommended remedy denying a bargaining makewhole remedy for Arnaudo's unlawful failure to bargain in good faith between November 10, 2014 and March 25, 2015 is affirmed. The portion of the ALJ's recommended remedy denying a monetary remedy for Arnaudo's failure to provide the UFW with notice and an opportunity to bargain over the discretionary aspects of the implementation of an employee medical plan in or around April 2016 is reversed. The amount of economic losses, if any, shall be determined in compliance proceedings.

ORDER

Pursuant to Labor Code section 1160.3, Respondents Arnaudo Brothers, LP and Arnaudo Brothers, Inc., their officers, agents, labor contractors, successors, and assigns shall:

1. Cease and desist from:

   (a) Delaying engaging in collective bargaining negotiations by refusing to answer e-mails, phone calls, and messages requesting bargaining and requesting meeting dates to determine the second-year wage rates for employees in the following appropriate unit:

   All agricultural employees of Arnaudo Brothers, LP and Arnaudo Brothers, Inc. in San Joaquin County.

   (b) Unilaterally implementing a health care plan without notifying the United Farm Workers of America (the "UFW") or providing an opportunity to negotiate about such plan.

   (c) In any like or related manner interfering with, restraining, or coercing their agricultural employees in the exercise of the rights guaranteed them by section 1152 of the Agricultural Labor Relations Act (the "Act").

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

   (a) Provide notice and an opportunity to bargain to the UFW concerning the discretionary aspects of the health care plan implemented in or around April 2016.

   (b) Make their agricultural employees whole for all losses of pay or other economic losses they have suffered as a result of the implementation of the discretionary aspects of the April 2016 health care plan changes, plus interest thereon, computed in accordance with established Agricultural Labor Relations Board ("ALRB") precedent, including interest in accordance with *Kentucky River Medical Center* (2010) 356 NLRB No. 8 and *Rome Electrical Systems, Inc*. (2010) 356 NLRB No. 38.

   (c) Upon request of the Regional Director, sign the attached Notice to Agricultural Employees (the "Notice") and, after its translation by an ALRB agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

   (d) Mail signed copies of the Notice to the last known address of all agricultural employees they employed, including those employed by farm labor contractors, during the period from November 1, 2014 to April 1, 2015.

   (e) Grant ALRB agents access to work sites where the agricultural employees in the above bargaining unit work at mutually arranged times in order to read the Notice to them and to answer questions employees may have about their rights under the Act outside the presence of supervisory personnel.

   (f) Compensate employees for the time spent during the Notice reading and the following question and answer period at the employees' regular hourly rates, or each employee's average hourly rate based on their piece-rate production during the prior pay period.

   (g) Post copies of the Notice, in all appropriate languages, in conspicuous places on its property, for sixty (60) days, the period(s) and place(s) to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

   (h) Provide access during the notice-posting period to ALRB agents to ensure compliance with the notice-posting requirements of this Order.

(i) Provide a signed copy of the Notice to each person they hired for work as an agricultural employee during the 12-month period following the issuance of the ALRB's Order in this case.

(j) Notify the Regional Director in writing within thirty (30) days after the date of issuance of this Order of the steps Arnaudo Brothers, LP and Arnaudo Brothers, Inc. have taken to comply with the terms and, on request, also notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order until notified that full compliance has been achieved.

DATED: August 16, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall III, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After a stipulated record in which all parties had an opportunity to present evidence, the Agricultural Labor Relations Board (the "ALRB") found that we violated the Agricultural Labor Relations Act ("Act") by failing to bargain in good faith with your representative, the United Farm Workers of America (the "UFW"), as alleged in a complaint issued by the ALRB's General Counsel.

The ALRB has told us to post, publish, and abide by the terms of this Notice. The Act is a law that gives you and all other farm workers in California the following rights:

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
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 ALRB;
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 you have these rights, we promise that:

WE WILL NOT engage in collective bargaining with the UFW with no intention of reaching a collective bargaining agreement for our agricultural employees in San Joaquin County, California.

WE WILL NOT change your wages, hours, or terms and conditions of employment such as health care insurance without first notifying the UFW and providing an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of any of the rights set out above.

WE WILL bargain in good faith with the UFW.

WE WILL make any members of the bargaining unit whole who were negatively affected by our refusal to bargain with the UFW about health care insurance.

DATED: _____ ARNAUDO BROTHERS, LP and ARNAUDO BROTHERS, INC.

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 (ALRB). One ALRB office is located at 1642 W. Walnut Avenue, Visalia, CA 93477, telephone number (559) 627-0995.

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

ARNAUDO BROTHERS, LP and
ARNAUDO BROTHERS, INC.
(United Farm Workers of America)

44 ALRB No. 07
Case Nos. 2015-CE-006-VIS
2017-CE-003-VIS

Background

On March 29, 2018 Administrative Law Judge Mary Miller Cracraft (the "ALJ") issued a decision finding that respondents Arnaudo Brothers, LP and Arnaudo Brothers, Inc. ("Arnaudo") unlawfully failed to bargain with charging party United Farm Workers of America (the "UFW") over wage rates for a mandatory mediation and conciliation ("MMC") contract in 2014-2015 and over the discretionary aspects of Arnaudo's implementation of an employee medical plan in 2016. The ALJ did not order monetary remedies for either violation. The General Counsel of the ALRB filed exceptions arguing that makewhole should have been awarded for both violations.

Board Decision

The Board affirmed in part and reversed in part the ALJ's recommended remedy. With respect to the 2014-2015 violation, the Board found that the General Counsel's complaint conceded that Arnaudo paid all wages required by the MMC contract, which overlapped with the makewhole period and, thus, precluded a makewhole award. The Board also found that, under the rationale of *Gerawan Farming, Inc*. (2018) 43 ALRB No. 1, bargaining makewhole could not be awarded because awarding makewhole within the effective dates of an MMC contract would result in a punitive remedy. With respect to the 2016 medical plan implementation, the Board held that the proper measure of the monetary remedy for a discrete unilateral change is the difference between the affected employees' earnings and benefits under the unilaterally changed terms of employment and the earnings and benefits they would have received absent those changes, rejecting the General Counsel's argument that a "bargaining makewhole" measure should be applied. The Board held that, because there was not an adequate record to support the ALJ's conclusion that employees could not have suffered economic losses resulting from the implementation of the medical plan, a monetary remedy should be included and the amount of economic losses, if any, should be determined in compliance proceedings.

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