Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA, AFL-CIO, Respondent,	)	Case No. 80-CL-4-SAL
and	)	
ODIS SCARBROUGH, An Individual, Charging Party.	)	9 ALRB No. 17

SUPPLEMENTAL DECISION AND ORDER

On October 9, 1981, Administrative Law Judge (ALJ)[1/] William A. Resnick issued his Decision and proposed Order in this proceeding, recommending, inter alia, that Respondent United Farm Workers of America, AFL-CIO (UFW or Union) be ordered to ask Sun Harvest, Inc., to reinstate Charging Party Odis Scarbrough and that Respondent UFW pay Scarbrough backpay, plus interest, from the date of his unlawful discharge, at Respondent's request, on January 8, 1980, and from the date of his unlawful layoff on September 4, 1979. On December 30, 1982, the Agricultural Labor Relations Board (Board) issued its decision in United Farm Workers of America AFL-CIO (Severo Pasillas, et al) (1982) 8 ALRB No. 103 (hereinafter referred to as UFW (Pasillas)), affirming the ALJ's findings and conclusions that the UFW violated section 1154(b) by

[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. 30, 1983.)

causing Scarbrough's September 4, 1979, layoff, but rejecting the ALJ's recommended order that Respondent UFW pay backpay and interest to Scarbrough for the period from January 8, 1980, to the end of the backpay period. The Board dismissed the allegation that the UFW's causing Scarbrough's January 8, 1980, discharge was a violation of Labor Code section 1154(b), on the grounds that the UFW had restored him to good standing, had successfully requested Sun Harvest, Inc., to reinstate him, and had admitted its obligation to make him whole.

On January 10, 1983, Charging Party's counsel filed a motion for reconsideration of the Board's dismissal of the allegation that Respondent UFW violated section 1154(b) by causing Scarbrough's January 8, 1980, discharge. General Counsel filed a response, joining Charging Party in its motion. On February 2, 1983, the Board granted the Charging Party's motion and vacated that portion of its Decision and Order in UFW (Pasillas), supra, 8 ALRB No. 103 which disposed of the Charging Party's case, Case No. 80-CL-4-SAL.

Pursuant to the provisions of section 1146 of the Labor Code, the Board has delegated its authority in this proceeding to a three-member panel.

After careful consideration of the Charging Party's motion for reconsideration and the responses of Respondent and the General Counsel, the Board has concluded that Respondent violated Labor Code section 1154(b) by requesting Sun Harvest, Inc., to lay off Odis Scarbrough on September 4, 1979, and to discharge

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him on January 8, 1980.[2/]

We shall therefore order Respondent UFW to make Scarbrough or his estate whole for all losses of pay and other economic losses he suffered as a result of Respondent's unlawful discrimination against him.[3/]

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) orders that Respondent United Farm Workers of America, AFL-CIO (UFW), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Sun Harvest, Inc., or any other agricultural employer to discriminate against any agricultural employee in violation of section 1153(c) and/or (a) of the Act or discriminating against any such employee with respect to whom membership in the UFW has been suspended, terminated, or denied without affording such employee the due process rights

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[2/] The Board, in reaching this conclusion, affirms the ALJ's findings of fact and conclusions of law with regard to both the layoff and the discharge. To the extent the ALJ's Decision is unclear, however, we find that the UFW conceded the lack of adequate due process at Scarbrough's trial in the decision of its Public Review Board.

[3/] It has come to the Board's attention, through post-hearing motions and correspondence from the parties, that Scarbrough was reinstated by Sun Harvest, Inc., at the UFW's request, at some time after the UFW's Public Review Board ordered Scarbrough returned to membership in good standing. We are also aware that Scarbrough has died. We therefore find that Respondent has been relieved of its obligation to request Scarbrough's reinstatement and that the estate of Odis Scarbrough is entitled to backpay from September 4, 1979, and from January 3, 1980, until the date of his reinstatement. (See Biscayne Television Corp. (1962) 137 NLRB 430 [50 LRRM 1169].)

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) Immediately expunge from the Union's membership records any indication that Odis Scarbrough was suspended from membership in good standing on October 11, 1979, and restore any rights or privileges of membership which he may have lost as a result of said suspension.

(b) Make whole Odis Scarbrough, or his estate, for all losses of pay and other economic losses he has suffered as a result of Respondent UFW's discrimination against him, on September 4, 1979, and January 8, 1980, 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) With the cooperation of Sun Harvest, Inc., and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amounts of backpay and interest due 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) 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 Sun Harvest, Inc., at any time during the period from September 4, 1979, until the date on which said Notice is mailed. The UFW shall seek the cooperation of Sun Harvest, Inc., in obtaining the names and addresses of the employees to whom said Notice shall be mailed.

(f) Post copies of the attached Notices in all appropriate languages, in conspicuous places at all its offices and union halls throughout the State of California 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.

(g) With the consent of Sun Harvest, Inc., arrange for a representative of the UFW or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all Sun Harvest 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 any management or union representatives, to answer any questions the employees may have concerning the Notice and/or their rights under the Act. The UFW shall reimburse Sun Harvest, Inc., for the employees' wages during this reading and question-and-answer period. The Regional Director shall determine a reasonable rate of compensation to be paid by the UFW to Sun Harvest, Inc., and relayed by Sun Harvest, Inc., to all non-hourly wage employees in order to compensate them for time lost at

this reading and during the question-and-answer period.

(h) 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.

Dated: April 15, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

NOTICE TO MEMBERS

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, United Farm Workers of America, AFL-CIO (UFW), had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we had violated the law by suspending the union membership of Odis Scarbrough on October 11, 1979, by causing his discharge by Sun Harvest, Inc., on January 8, 1980, and by causing his layoff on September 4, 1979. The Board has told us to post and publish this Notice. We will 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 do anything, in the future, which forces you or any other farm worker to do, or to refrain from doing, any of the things listed above.

WE WILL NOT discriminate against, or suspend or terminate the UFW membership of any agricultural worker in violation of the Act and WE WILL NOT cause or attempt to cause any agricultural employer to discharge or otherwise discriminate against any farm worker with respect to his or her employment.

WE WILL make whole Odis Scarbrough or his estate, for all losses of pay and other economic losses he has suffered as a result of the UFW's discrimination against him, plus interest.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

By: _____

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, CA 93907. The telephone number is (408) 433-3161. 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

United Farm Workers
of America AFL-CIO (Scarbrough)

Case No. 80-CL-4-SAL
9 ALRB No. 17

ALJ DECISION

The ALJ concluded that Charging Party Scarbrough was unlawfully discharged by Sun Harvest, Inc., at the UFW's request, for failure to maintain his UFW membership in good standing. The UFW violated Labor Code section 1154(b) by causing this discharge since the UFW suspended Scarbrough's membership without providing a fair union disciplinary hearing.

BOARD DECISION

The Board initially reversed the ALJ's conclusion on the ground that the UFW's Public Review Board had already given Scarbrough the relief he sought from the Board. Having granted a motion for reconsideration, the Board affirmed the ALJ, found a violation of section 1154(b) and ordered the UFW to pay backpay to Scarbrough, or his estate. No reinstatement was ordered because evidence showed that Scarbrough was reinstated by Sun Harvest, at the UFW's request.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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