

(1984.) ___ U.S. ___ [116 LRRM 2001].

The Board requested the parties to address, in supplemental briefs, the impact of Ellis on the settlement. The Charging Parties, the UFW and the General Counsel all filed supplemental briefs, and the General Counsel filed a reply brief responding to arguments raised by the UFW in its supplemental brief. Thereafter, shortly following the issuance of the California Supreme Court's decision in San Jose Teachers' Association v. Superior Court of Santa Clara County and Sandra Abernathy, et al. (1985) 38 Cal.3d 839 (hereinafter San Jose Teachers), the UFW submitted a letter brief regarding the impact of that case on the settlement. The General Counsel then submitted a memorandum in response.

The Board has reconsidered the settlement in light of the recent decisions of the United States and California Supreme Courts and the parties' submissions and has decided to affirm its original decision to approve the settlement, with minor modifications which, if accepted by the Respondent, will be automatically incorporated into the settlement.

Like the charging parties in UFW (J. Jesus Conchola) (1980) 6 ALRB No. 16, the Charging Parties in the instant proceeding are agricultural employees of employers under contract with the UFW who objected to the UFW's requirement that they submit to the Union the holiday pay for "Citizen's Participation Day" (CPD) provided for in the collective bargaining agreement. They refused to make payment directly or to authorize their employer to deduct the requisite amount from their earnings and

remit it to the Union, claiming that the Union spends the money for political purposes unrelated to its role as exclusive collective bargaining representative of the employees. Only one of the Charging Parties, Cervando Perez, was actually discharged at the request of the Union, for loss of good standing, pursuant to the Union security provision of the collective bargaining agreement between his employer and the UFW. By the settlement negotiated between the General Counsel and the UFW, the Union agreed (1) to reinstate all Charging Parties to good standing with the Union and to "see to it" that Perez' employer reinstates him to his former or substantially equivalent job, (2) to make Cervando Perez whole for all economic losses occasioned by his discharge, and (3) to implement a CPD rebate procedure (modeled on the plan of the United Auto Workers) for objecting members whereby, if members objected to the Union's use of the fund, their CPD contributions would be placed in an escrow account pending determination of the proportion of the fund used "for activities or causes primarily political in nature." That proportion of the objecting member's CPD pay would be rebated to the member, and a three-step procedure was outlined for the member to appeal the determination of the rebateable proportion. Until notified of this option, a member could not be declared in bad standing and caused to be discharged, disciplined or fined for refusing to authorize his or her holiday pay to be paid to the CPD fund. The settlement did not specify time limits for the rebate or payment of interest on the rebateable proportion.

11 ALRB No. 32

The Board's Order approving the Settlement Agreement, issued on June 14, 1982, further explained the terms of the agreement by adopting the Union's broad definition:

The Respondent has broadly defined the term "activities or causes primarily political in nature" to include contributions to political candidates, partisan political associations, and to social, economic, and ideological groups unrelated to trade union activities to which reasonable objection might be made.

In Ellis, the U.S. Supreme Court upheld the challenge of railroad employees to their union's expenditure of their dues for what they characterized as political and ideological activities. The employees had all paid their dues and applied for a rebate under the union's rebate procedure. They protested (1) the adequacy of the union's "pure rebate" procedure and (2) the union's refusal to rebate dues spent on six specific expenditures. The Court held that a "pure rebate" scheme was impermissible because it constituted an "involuntary loan" and suggested "acceptable alternatives" would be "advance reduction of dues and/or interest-bearing escrow accounts." The Court then went on to analyze the specific expenditures at issue, using a statutory "free-rider" test supplemented by a First Amendment test for expenditures that passed the statutory test. The test was alternately described as "whether the challenged expenditures are necessarily or reasonably incurred for the purposes of performing the duties of an exclusive representative of the employees in dealing with the employer on labor management issues" and "activities and undertakings normally or reasonably employed to implement or effectuate the duties of the union."

(116 LRRM 2007.) The Court found that the union could compel dissenting members to finance union conventions, social activities and publications (deducting a proportion reflecting the number of lines devoted to political issues), but not general organizing of other bargaining units or litigation unrelated to bargaining or grievances.

In San Jose Teachers the California Supreme Court had the opportunity to consider the scope and effect of Ellis. A teacher's union without a discharge provision in its collective bargaining agreement had sued dissenting unit members for agency fees and the dissenters attempted to defend with the claim that some of the dues would be used for purposes other than collective bargaining. The court granted summary judgment for the union, holding that the dissenters would have to pay and make use of the union's escrow/rebate scheme and then turn to the Public Employment Relations Board if they were dissatisfied with the rebate. In dicta, the court stated:

If the agency shop clause in this case had been of the classic variety, i.e., dependent upon removal from employment for its enforcement, employees seeking to enjoin its enforcement would not be entitled to such relief, at least absent a showing that the amounts computed by the union and placed in escrow (or offset against the agency fee) were unreasonably low or that the rebate procedures adopted by the union were unfair. (38 Cal.3d 857.)

The California Court adopted a narrow reading of Ellis citing to the U.S. Supreme Court's post-Ellis dismissal for want of a substantial federal question, of two Michigan agency fee

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cases.^{2/}

General Counsel and the remaining Charging Parties contended, inter alia, in their supplemental briefs that the Settlement Agreement was of the "pure rebate" type rejected by the Ellis court and that the Board should rescind its approval of the order. They urge us to reopen the record to examine the specific uses to which the Union applies the CPD payments and to analyze whether union members can be compelled to contribute to those uses. The Charging Parties requested us to analyze compellability by means of the Supreme Court's test in Ellis while the General Counsel argued that the statutory "reasonableness" test formulated by the First District Court of Appeal in Pasillas v. ALRB (1984) 156 Cal.App.3d 312, 352^{3/} (Pasillas) is more appropriate.

Along with its supplementary brief, the UFW submitted a declaration by Legal Director Barbara Macri that the UFW had

^{2/}In one of those cases, Gibson v. White Cloud Ed. Assn. (1984) ___ U.S. ___ [105 S.Ct. 236], the union successfully sought to force the firing of dissenting unit members who refused to pay the agency fees. The Michigan Supreme Court held that the dissenters' right to an examination of union expenditures was conditioned on full payment of dues directly to the union and not into an escrow account. The dissenters' option to seek a declaratory judgment in court with respect to compellability of expenditures was held to be a sufficiently prompt and efficient remedy to protect their interests.

^{3/}The Court of Appeal in Pasillas held,

[I]n cases of expulsion or suspension [from the union] placed before the Board pursuant to section 1153, subdivision (c), review, an internal rule forming the basis for the underlying charge shall be deemed a

(fn. 3 cont. on p. 7.)

complied with the Settlement Agreement in all respects excepting the backpay payment to Cervando Perez which was being litigated before an Administrative Law Judge at the time. The Union argued that the Board should either reaffirm its approval of the Settlement or dismiss the complaint in its entirety because "[t]here certainly can be neither a statutory violation nor any constitutional compulsion to rebate any portion of dues not even alleged to have been paid."

The UFW argues that a dissenting unit member must first pay dues in order to "perfect a claim" against the Union for improper expenditures. In its supplemental letter brief, the Union cites San Jose Teachers as further support for the proposition that "no union members' complaint may be entertained in protest against the amount of dues spent on partisan political expenditures until the dues have, in fact, been paid." However, in Pasillas the First District Court of Appeal cited to Legislative history in support of its suggestion that the Board's

(fn. 3 cont.)

'reasonable' term or condition of membership only if the Board determines (1) that the rule is reasonable in its relation to legitimate union goals and functions, and (2) that, after balancing union interests and the interest of the worker, application of the rule is reasonable in that particular case at hand. In determining that the rule is reasonable in its application, the Board must find that no less severe sanction than suspension or expulsion will, in that particular case and under the circumstances existing at the time of the disciplinary action, be effective to serve the union interests advanced by the rule.

[Footnote omitted.]

(156 Cal.App.3d at 355-356.)

supervisory jurisdiction under section 1153(c)^{4/} includes the situation where the Union had expelled or suspended a member and thereby created a threat of discharge from his or her employment under a union security agreement. (156 Cal.App.3d at p. 350, fn. 24, and pp. 353-5.) We reject the Union's request to dispose of the settlement by dismissing the charges, noting that the rebate procedure was not available at the time the charges were filed. At least one of the original Charging Parties was actually discharged for nonpayment, and the others' good standing was terminated, subjecting them to threat of loss of employment.

In one respect, however, we find merit in the Union's ripeness argument. Once the union has established^{5/} a procedure that protects objecting members against improper expenditure of their dues and provides for an appropriate rebate procedure, an objecting member must attempt to utilize that procedure before this Board will intervene. As the U.S. Supreme Court noted in Brotherhood of Railway & SS Clerks v. Alien (1963) 373 U.S. 126 [83 S.Ct. 1158] (Alien), "It is a lesson of our national history of industrial relations that resort to litigation to settle the rights of labor organizations and employees very often proves unsatisfactory ... If a union agreed upon a formula for

^{4/}Unless otherwise noted, all code references are to the California Labor Code.

^{5/}The union's agreement to use such a procedure, as in the instant settlement, or a representation by the union that it uses such a procedure, as in San Jose Teachers, is adequate to prove "establishment" of the procedure for purposes of triggering the objecting member's obligation to utilize the procedure.

ascertaining the proportion of political expenditures in its budget, and made available a simple procedure for allowing dissenters to be excused from having to pay this proportion of moneys due from them under the union-shop agreement, prolonged and expensive litigation might well be averted." (83 S.Ct. at 1164.)

In Ellis the court indicated that, although a "pure rebate" procedure would not be appropriate since it constituted, in effect, an "involuntary loan," an "acceptable alternative" would be a system in which rebateable funds were placed in an interest-bearing escrow account. (Ellis, *supra*, 116 LRRM at 2005.) In San Jose Teachers the California Supreme Court had the opportunity to consider the issue of compulsory dues in the light of Ellis and previous Supreme Court decisions. The California Court cited the holding of the U.S. Supreme Court in Machinists v. Street (1961) 367 U.S. 740 [81 S.Ct. 1784]:

... the dissenting employees' "grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection, not from the enforcement of the union-shop agreement by the mere collection of funds." [Citation omitted.] By placing a portion of the employees' fees in an escrow account, the union renders itself unable to spend those funds. Thus, the employees' First Amendment (and statutory) right not to have their fees spent for political or ideological purposes is protected. (38 Cal.3d at 860.)

The instant settlement agreement would go beyond the procedural requirements of Ellis and San Jose Teachers by placing an objecting employee's entire CPD contribution in escrow pending the union's determination of the rebateable proportion. (See San Jose Teachers, *supra*, 38 Cal.3d at 852, n. 7.) However,

we have conditioned our approval upon a one-year rebate limit and payment of interest on the escrowed amount. In addition, the proviso of paragraph F2(i)(1), limiting the timeliness of objection to the two-week period following the objecting party's union membership date, is unreasonably restrictive and burdensome and could result in impermissible expenditures of dues from objecting members. A final condition of our approval of the settlement, therefore, is the deletion of that proviso.^{6/}

With regard to the standard set forth in the Settlement Agreement for rebate of a proportion of dues equal to the proportion of expenditures "political in nature," we find that such a standard as 'further interpreted in the Board's approval order, is broad enough to encompass any expenditures deemed non-compellable using either the Ellis or Pasillas tests for compellability. Whether the union's application of the standard violates statutory or constitutional^{7/} rights of dissenting members, however, is another issue which cannot become ripe for review by this Board until the Union has had the opportunity to apply the standard under the rebate procedure. Absent payment

^{6/} As an assurance to the objecting employees that their CPD contributions, once made, will in fact be held in escrow, Member McCarthy would further condition approval of the settlement on the inclusion of an addendum to the settlement which provides verification of the escrow account by the escrow holder. He would require this verification to include the location and identification number of the escrow account.

^{7/} Although the requisite state 'action is not present for purposes of First Amendment protections (see Pasillas v. ALRB, supra, 156 Cal.App.3d at 339-347), the settlement standard is broad enough to cover both statutory and constitutional tests for union expenditures.

of dues and formal objection by a dissenting member, the Union's obligation to consider compellability and rebate a noncompellable proportion does not arise. The Board's authority to exercise its "supervisory" function under section 1153(c) cannot be so broad as to require the Union to apply its rules in the abstract. (See Pasillas, supra, 156 Cal.App.3d at 350, fn. 24 and 353-355.) Therefore, we decline at this time to adopt the position of either the General Counsel, who urges us to consider the compellability of specific union expenditures in light of the Pasillas "reasonableness" test, or of Charging Parties who advocate the application of the Ellis "free rider" and First Amendment guidelines.

Rather, we shall approve the Settlement and attached Notice to Employees, with the above-mentioned modifications. If objecting members, upon paying their CPD dues and notifying the Union of their objections, are dissatisfied with the rebate awarded pursuant to the Union's procedures,^{8/} they may seek Board review of the Union's determination.^{9/}

MODIFIED ORDER

PLEASE TAKE NOTICE that upon application of the Acting Regional Director, and after careful consideration of the Charging Parties' objections, and the post-remand submissions of the

^{8/} In order to enable dissenting members to evaluate the adequacy of the rebate, the Union must provide the members with an itemized accounting of expenditures which it deems to be compellable and therefore not subject to rebate.

^{9/} Charging Parties may seek review in a supplemental compliance proceeding without the necessity of filing a new charge.

General Counsel, Charging Parties and United Farm Workers of America, AFL-CIO (UFW), the attached Unilateral Settlement Agreement is hereby APPROVED, subject to elimination of the timeliness proviso in paragraph F2(i)(1), page 7, lines 5-8 and subject to the condition that the noncompellable portion of objecting members' Citizens Participation Day (CPD) dues be rebated, with interest, within one year of payment with an accounting of all expenditures deemed compellable for which any CPD dues were retained and subject to the Notice to Employees attached to the Settlement being amended consistent with these modifications. Respondent has established a rebate procedure with an escrow component that conforms to the guidelines set forth in UFW (J. Jesus R. Conchola) (1980) 6 ALRB No. 16 and, if subject to interest and time limits, to those in Ellis v. Brotherhood of Railway Employees, etc. (1984.) __ U.S. __ [116 LRRM 2001]. Objecting union members may request a direct refund of that portion of their dues and CPD contributions that are used for purposes that are "primarily political in nature," broadly defined by Respondent to include "contributions to political candidates, partisan political associations, and to social, economic, and ideological groups unrelated to trade union activities to which reasonable objection might be made." All

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parties are hereby ordered to comply with the provisions of the Settlement Agreement.

Dated: December 19, 1985

JYRL JAMES-MASSINGALE, Chairperson

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

CASE SUMMARY

UNITED FARM WORKERS OF AMERICA,
AFL-CIO, (GILES BREAUX, et al.)

11 ALRB No. 32
Case No. 78-CL-21-MC1)

Board Decision Approving Settlement

The Board requested remand of its earlier Order approving a unilateral settlement in order to reconsider the approval in the light of the U.S. Supreme Court's Decision in *Ellis v. Brotherhood of Railway Employees, etc.* (198-4) __ U.S. __ [116 LRRM 2001] (*Ellis*). The Charging Parties, employees who had refused to pay their Citizen's Participation Day (CPD) dues to the UFW, claiming the dues would be used for noncompellable political purposes, had sought judicial review of the Board's approval of the unilateral settlement between the General Counsel and the Respondent Union. In pertinent part, the settlement provided a procedure by which a union member who objected to payment of CPD dues could have his or her dues placed in an escrow account pending a determination by the Union of the proportion of dues which it would rebate to the member, reflecting the proportion spent for "activities or causes primarily political in nature." The Board originally approved the settlement by an Order explicitly incorporating the Union's expansive definition of "primarily political in nature," which includes social, economic, and ideological groups unrelated to trade union activities to which reasonable objection might be made.

On remand from the court, the Board held that the settlement, if modified to delete the restrictions on timely objections and to require the return of rebated funds, with interest, within one year of payment, complied with constitutional and statutory guidelines set forth in *UFW (Jesus R. Conchola)* (1980) 6 ALRB No. 16 and *Ellis*. Citing *Brotherhood of Railway and SS Clerks v. Alien* (1963) 373 U.S. 126 [83 S.Ct. 1158] and *San Jose Teachers Assn. v. Superior Court of Santa Clara County* (1985) 38 Cal.3d 839, the Board rejected the arguments of General Counsel and Charging Parties that a hearing be convened to examine the nature of the UFW's dues expenditures and determine in advance of dues payment the proportion of dues which is noncompellable. Rather, the Board indicated that it would only review the Union's expenditures if objecting members first paid their dues and complied with the Union's rebate procedure and if they were ultimately dissatisfied with the Union's determination of the rebateable proportion.

Member McCarthy would further condition approval of the settlement on inclusion of an additional provision for verification of the

escrow account as an assurance to objecting employees that their CPD contributions, once made, will in fact be held in escrow.

* * *

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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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
)
 UNITED FARM WORKERS OF)
 AMERICA, AFL-CIO,)
)
 Respondent,)
)
 and)
)
 CERVANDO PEREZ, et al.,)
)
 Charging Parties.)
)

Case No. 78-CL-21-M



STIPULATED SETTLEMENT AGREEMENT

The United Farm Workers of America, AFL-CIO (hereinafter called Respondent), and the General Counsel of the Agricultural Labor Relations Board (hereinafter ALRB or Board), by and through the ALRB Regional Director for the Salinas Regional Office, hereby STIPULATE AS FOLLOWS:

A. Upon charges filed by the Charging Parties in case number 78-CL-21-M, receipt of which charges is hereby acknowledge by Respondent, the General Counsel of the ALRB, by the Regional Director of the Salinas office, acting pursuant to authority granted in California Labor Code section 1140 through section 1166.3 of the Agricultural Labor Relations Act (hereinafter the Act) and section 20220 of the Board' Regulations, contained in Part II of Title 8 of the California Administrative Code, issued a complaint against the Respondent on April 16, 1979 together with a Notice of Hearing thereon and a First Amended Complaint on July 4, 1979 with Notice of Hearing thereon. True copies of the aforesaid complaints were, served on Respondent and Charging Parties on April 16,

1979 and July 4, 1979, respectively, receipt of which copies is hereby acknowledge by all parties.

B. Respondent is now and has been at all times material herein, a labor organization within the meaning of Labor Code section 1140.4(f).

C. Charging Parties are agricultural employees -employed by West Coast Farms and J.J. Crosetti, agricultural employers within the meaning of Labor Code section 1140.4(c).

D. For the purposes of this case, all parties hereto waive the hearing, Administrative Law Officer's decision, the filing of exceptions and briefs, oral arguments before the Board and all further findings of fact and conclusions of law by the Board, and all farther and other proceedings to which the parties may be entitled under the Act and the Regulations of the Board except that the Board's power to apply to the court for enforcement under the final paragraph of Labor Code section 1160.8 is not waived.

E. The entire record herein 'shall consist of the following documents: this Stipulated Settlement Agreement and the Notice to Employees; the charges, the complaint and Notice of Hearing, and amendments thereto, copies of which pleadings are attached hereto as exhibits A through D and incorporated herein by reference; the order dismissing portion of First Amended Complaint, dated November 2, 1979 and attached hereto as exhibit E; the order dismissing portion of First Amended Complaint dated January 15, 1982 and attached hereto as exhibit

F; the Respondent's administrative letter dated December 3, 1981 which established the rebate procedure described in paragraph 2(i)(1) of this Stipulated Settlement Agreement, and is attached hereto as exhibit G; the administrative letter no. 2 volume 27 of the United Auto Workers, dated June 5, 1975, attached hereto as exhibit H, and the United Farm Workers constitution, attached hereto as exhibit I.

F. Upon this Stipulated Settlement Agreement (hereinafter settlement or agreement) and said record, and without any further notice of proceedings herein, the Board may enter an order approving this settlement and ordering compliance with its provisions and a superior court in a county referred to in the final paragraph of Labor Code section 1160.8 may, upon application of the Board, order the following, to which Respondent hereby agrees: Respondent and each of its officers, agents successors and assigns, (each) shall:

1. Cease and desist from:

a) failing to adopt the rebate procedure for Citizenship Participation Day dues set forth in paragraph 2(i)(1) and declaring a member in bad standing and causing him/her to be discharged, disciplined or fined for refusing to authorize his/her holiday pay to be paid to Respondent's "Citizenship Participation Day Committee" (hereinafter CPD) unless the member has first been afforded the opportunity to object as provided in paragraph 2(i)(1);

b) restraining and coercing an agricultural employee in the exercise of his/her rights guaranteed in Labor

Code section 1152.

c) causing or attempting to cause an agricultural employer to discriminate against an employee or to discriminate or attempt to discriminate against an employee by imposing as a membership requirement an unreasonable term and condition. In any other manner interfering with, restraining, or coercing employees in the exercise of their California Labor Code section 1152 rights to self-organization and to engage in concerted activities or to refrain from engaging in any and all such activities.

2) Take the following affirmative action which will effectuate the policies and purposes of the Act:

a) Respondent shall immediately reinstate to good standing without the necessity to make any payment for back dues for the period of expulsion, if any, or without the necessity to make any back payment for CPD monies, if any, all Charging Parties herein and so notify each Charging Party's respective employer;

b) Respondent shall cease and desist from conducting any trial or utilizing any internal union procedure currently pending against any of the Charging Parties that arise from the charges underlying the complaint being resolved by this settlement agreement;

c) Respondent shall see to it that Charging Party, Cervando Perez, if he has not already been reinstated or declined reinstatement, is reinstated to his same or substantially equivalent job. with West Coast Farms without prejudice to his

seniority and other benefits and at the hourly wage rate he would have been entitled to had he continued to work in his previous job. The agreement to reinstate shall terminate upon Charging Party's declining reinstatement or upon Charging Party's failure to respond to recall, whichever comes first. The offer of reinstatement shall not be extended or revived;

d) Respondent will make Cervando Perez whole for any lost wages since the date it caused his discharge. Respondent will make whole any other Charging Party who has lost wages as the result of any actions taken by the Respondent with respect to CPD. The backpay period for Cervando Perez shall be calculated from the date of discharge, July 26, 1978, to ten (10) days following receipt of the Respondent's offer of reinstatement, November 10, 1980. This agreement shall not waive any appropriate defense to backpay, including but not limited to failure to mitigate damages. Additionally, backpay shall be calculated according to ALRB precedent and shall include the Respondent's right to set off any and all income as defined by the Internal Revenue Code, received during the backpay period. If Respondent and Charging Parties fail to reach an agreement on backpay, the backpay owing any Charging Party shall be determined by backpay proceedings pursuant to section 20290 of the Board Regulations.

e) Respondent shall cause the attached Notice to Employees to be signed by an authorized representative. Upon its translation by a board agent into appropriate languages as determined by the Regional Director, Respondent shall cause

the translation to be signed by an authorized representative.

f) Respondent shall post copies of the attached notice for sixty (60) consecutive days on Respondent's premises at places to be determined by the Regional Director. Respondent shall inspect each posted notice at least every other day, replace forthwith any altered or defaced notice with a fresh notice and uncover forthwith any posted notice that has become covered.

g) Respondent shall mail copies of the attached Notice to Employees of J.J. Crosetti and West Coast Farms in all appropriate languages, within thirty (30) days from Board approval of the settlement or upon receipt of the notices and employee addresses from the Regional Director. In the event that J.J. Crosetti Company is out of the row crop business, no notice will be required to J.J. Crosetti Company employees.

h) At times and places to-be determined by the Regional Director, who is to strive for maximum exposure of the notice to the Respondent's members, permit board agents or Respondent's representative chosen by the Regional Director to distribute and read the attached notice in appropriate languages to the assembled members of Respondent of J.J. Crosetti and West Coast Farms. Following the reading, allow the board agent the opportunity, outside the presence of Respondent, to answer any questions employees may have concerning the notice of their rights under the Act.

i) (1) Respondent will institute the procedure described in this paragraph and in the attached Notice to

Employees by which a union member may object to the use of any dues for activities or causes primarily political in nature. The member may perfect his objection by individually notifying the National Secretary-Treasurer of his objection by registered or certified mail; provided, however, that such objection shall be timely only during the first fourteen (14) days of union membership and during the fourteen (14) days following each anniversary of union membership. An objection may be continued from year to year by individual notification given during each annual fourteen (14) day period. The approximate proportion of the member's dues spent for such activities or causes primarily political in nature to which the member objects shall be determined by a committee of the National Executive Board, which shall be appointed by the President, subject to the approval of the National Executive Board. The member will be refunded this proportion of his/her dues.. If an objecting member is dissatisfied with the approximate proportional allocation made by the committee of the Board or the disposition of "his objection by the National Secretary-Treasurer, the member may appeal directly to the full National Executive Board and the decision of the Board shall be appealable to the Public Review Board or the United Farm Workers constitutional convention at the option of the member. The determination made by the committee of the Board shall be sufficiently detailed and substantiated by documentation so as to allow a member to process a meaningful appeal, should he desire.

(2) CPD funds collected subsequent to the date of this agreement from objecting members will be placed in an

escrow account pending determination of the proportionate refund by the Committee of the National Executive Board.

(3) This procedure is substantially identical to that employed by the United Auto Workers Union as described in its administrative letter no. 2 volume 27, dated June 5, 1978 and attached hereto as exhibit H.

(4) Consistent with the ALRB's analysis in J. Jesus R. Conchola (1980) 6 ALRB No. 16, the parties agree the CPD constitutes dues which may be collected in full, subject to a proportional rebate as outlined in this paragraph.

(5) Availability of the rebate procedure outlined in this paragraph shall be communicated by administrative letter to all Union Ranch Committees who shall notify their respective Ranch Communities at regular membership meetings.

G. This agreement, together with the other documents constituting the record as described above, shall be filed with the Board. This settlement is subject to the approval of the Board, and it shall be of no force of effect until the Board has granted such approval. Upon the Board's approval, the Respondent shall comply with the provisions of the order as set forth above immediately, or as otherwise stated, except to the extent that compliance has already occurred.

H. Notify the Regional Director of the Salinas Region, in writing, with thirty (30) days after the date of approval by the Board of this settlement agreement, of the steps it has taken to comply herewith, and continue to report periodically thereafter at the Regional Director's request, until full

compliance is achieved.

I. The superior court for 'the appropriate county may, upon petition and motion of the Board, immediately and summarily enter judgment pursuant to Labor Code section 1160.8 enforcing the order of the Board in the form set forth in paragraph F hereof. The time for review of the order of the Board may be deemed to have lapsed immediately upon issuance thereof, and Respondent expressly waives and and all defenses and objections to the immediate entry of a judgment of enforcement, including compliance with the Board's order and notice of the filing of a petition, entry of a judgment of enforcement, provided that the judgment is in the words set forth in paragraph F hereof. However, Respondent reserves its right to raise any and all defenses it may have to any subsequent enforcement of that judgment by contempt proceedings. Respondent shall be required to comply with the affirmative provisions of the Board's order after the entry of the judgment only to the extent that it has not already done so.

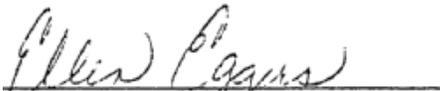
J. The entering into the execution of this settlement agreement does not constitute an admission by the United Farm Workers that it has engaged in any unfair labor practices or violated the Agricultural Labor Relations Act or any statute or regulation.

K. The parties agree that this agreement constitutes a full and complete settlement of any and all ALRA claims litigable before the Board and arising out of the Respondent's act and conduct as set forth in the First Amended Complaint, attached hereto.

L. Upon determination by the Regional Director that Respondent has fully complied with all the terms of the settlement the Regional Director will close the case.

M. This Stipulated Settlement Agreement contains the entire agreement among the parties, there being no other agreement of any kind, verbal or otherwise, which varies, alters or adds to it.

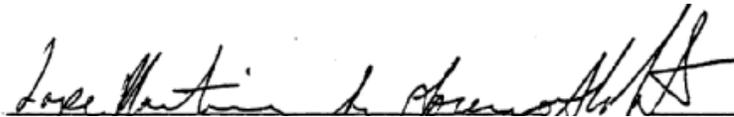
N. All parties agree that in those matters concerning which the Regional Director is given discretion, his/her decision shall be final and binding on the parties.



ELLEN EGGERS
UNITED FARMWORKERS OF
AMERICA, ALF-CIO

May 7, 1982

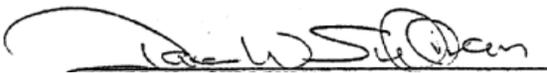
DATE



LUPE W. SULLIVAN
STAFF COUNSEL
Agricultural Labor Relations
Board

5/1082

DATE



JAMES W. SULLIVAN
STAFF COUNSEL
Agricultural Labor Relation
Board

May 3, 1982

DATE



STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

NOTICE TO EMPLOYEES

OF SETTLEMENT AGREEMENT

A COMPLAINT BASED ON CHARGES FILED BY TWELVE (12) FARM WORKERS WAS ISSUED BY THE AGRICULTURAL LABOR RELATIONS BOARD ALLEGING THAT WE VIOLATED THE LAW BY DECLARING UNION MEMBERS TO BE IN BAD STANDING WITH THE UNION AND BY THREATENING THE CHARGING PARTIES WITH DISCIPLINE AND FINES AND EXPULSIONS, AND IN ONE CASE ACTUALLY SECURING THE TERMINATION OF A MEMBER FROM EMPLOYMENT BECAUSE THE CHARGING PARTIES REFUSED TO AUTHORIZE THEIR HOLIDAY PAY TO BE PAID TO OUR "CITIZENSHIP PARTICIPATION DAY" FUND (CPD).

IN ORDER TO RESOLVE THE DISPUTE COVERED BY THIS COMPLAINT, THE UNITED FARM WORKERS AND THE GENERAL COUNSEL OF THE ALRB HAVE AGREED TO A SETTLEMENT. AS PART OF THIS SETTLEMENT, WE ARE DISTRIBUTING AND POSTING THIS NOTICE TO YOU.

THE AGRICULTURAL LABOR RELATIONS ACT IS A LAW THAT GIVES FARM WORKERS THE FOLLOWING RIGHTS:

- (1) TO ORGANIZE THEMSELVES:
- (2) TO FORM, JOIN, OR HELP UNIONS:
- (3) TO BARGAIN AS A GROUP AND TO CHOOSE WHOM THEY WANT TO SPEAK FOR THEM:
- (4) TO ACT TOGETHER WITH OTHER WORKERS TO TRY TO GET A CONTRACT OR TO HELP AND PROTECT ONE ANOTHER; AND
- (5) TO DECIDE NOT TO DO ANY OF THESE THINGS.

BECAUSE THIS IS TRUE, WE WILL NOT INTERFERE WITH, RESTRAIN, OR COERCE YOU IN THE EXERCISE OF YOUR RIGHTS UNDER THE ACT.

PLEASE BE ADVISED THAT THE FOLLOWING PROCEDURE IS AVAILABLE FOR MEMBERS WHO OBJECT TO DUES BEING SPENT FOR ACTIVITIES OR CAUSES PRIMARILY POLITICAL IN NATURE:

THE MEMBER MAY PERFECT HIS OBJECTION BY INDIVIDUALLY NOTIFYING THE NATIONAL SECRETARY-TREASURER OF HIS OBJECTION BY REGISTERED OR CERTIFIED MAIL, PROVIDED, HOWEVER, THAT SUCH OBJECTION SHALL BE TIMELY ONLY DURING THE FIRST FOURTEEN (14) DAYS OF UNION MEMBERSHIP AND DURING THE FOURTEEN (14) DAYS FOLLOWING EACH ANNIVERSARY OF UNION MEMBERSHIP. AN OBJECTION MAY BE CONTINUED FROM YEAR TO YEAR BY INDIVIDUAL NOTIFICATION GIVEN DURING EACH ANNUAL FOURTEEN (14) DAY PERIOD. THE APPROXIMATE PROPORTION OF THE MEMBER'S DUES SPENT FOR SUCH ACTIVITIES OR CAUSES PRIMARILY POLITICAL IN NATURE TO WHICH THE MEMBER OBJECTS SHALL BE DETERMINED BY A COMMITTEE OF THE NATIONAL EXECUTIVE BOARD, WHICH SHALL BE APPOINTED BY THE PRESIDENT, SUBJECT TO THE APPROVAL OF THE BOARD.

THE MEMBER WILL BE REFUNDED THIS PROPORTION OF HIS DUES. IF AN OBJECTING MEMBER IS DISSATISFIED WITH THE APPROXIMATE PROPORTIONAL ALLOCATION MADE BY THE COMMITTEE OF THE BOARD OR THE DISPOSITION OF HIS OBJECTION BY THE NATIONAL SECRETARY - TREASURER, THE MEMBER MAY APPEAL DIRECTLY TO THE FULL NATIONAL EXECUTIVE BOARD AND THE DECISION OF THE BOARD SHALL BE APPEALABLE TO THE PUBLIC REVIEW BOARD OR THE UFW'S CONSTITUTIONAL CONVENTION AT THE OPTION OF THE MEMBER.

IF YOU HAVE ANY QUESTION CONCERNING THIS SETTLEMENT, CONTACT THE FOLLOWING OFFICE OF THE AGRICULTURAL LABOR RELATIONS BOARD: SALINAS REGIONAL OFFICE, 112 BORONDA ROAD, SALINAS, CA 93907, (408) 443-3143.

DATED:

SIGNED:

FOR THE UNITED FARM WORKERS OF AMERICA, AFL-CIO