

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

LJ-ETTE FARMS, INC.,)	
)	
Respondent,)	Case Nos. 83-CE-14-EC
)	83-CE-50-EC
and)	83-CE-53-EC
)	83-CE-82-EC
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	11 ALRB No. 4
Charging Party.)	

DECISION AND ORDER

On February 3, 1984, Administrative Law Judge (ALJ) James Wolpman issued the attached Decision in this matter. Thereafter, Respondent timely filed exceptions to the ALJ's Decision, and a brief in support thereof, and General Counsel filed a brief in response to Respondent's exceptions.

Pursuant to the provisions of Labor Code section 1146,^{1/} the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm the ALJ's rulings, findings and conclusions^{2/} and to adopt

^{1/} All section references herein are to the California Labor Code unless otherwise specified.

^{2/} We find sufficient precedents of this Board upon which to rest our Decision herein (i.e., Cal. Admin. Code, tit. 8, §§ 20230, 20232; John Gardoni (1982) 8 ALRB No. 62). We also take into consideration certain authorities of the National Labor Relations

his proposed Order,^{3/} as modified.^{4/}

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Lu-Ette Farms, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminatorily discharging or suspending agricultural employees because of their participation in protected concerted and union activities and/or their participation in Board processes.

(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 Agricultural Labor

(fn. 2 cont.)

Board (NLRB) which we find persuasive. (See, e.g., O. R. Cooper & Son (1976) 225 NLRB 1235 [92 LRRM 14-32]; Sullivan Magee & Sullivan, Inc. (1977) 229 NLRB 543 [96 LRRM 1489]; Sherwood Coal Co. (1980) 252 NLRB 4-97 [105 LRRM 1354]; Galesburg Construction Co. (1981) 259 NLRB 722 [109 LRRM 1009].) Moreover, we observe that the complaint contained explicit language apprising Respondent of its obligation to timely file an answer as well as the consequences for failure to so comply. Respondent herein is not a stranger to the proceedings of this Board. (Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55; Admiral Packing Company, et al (1981) 7 ALRB No. 43.)

^{3/} Although the overall context of paragraph 10 of the complaint is no longer valid, the substantive allegations of the operative provisions of the complaint contemplate independent violations of the Agricultural Labor Relations Act which do not depend for their unlawful character on the facts asserted in the aforementioned paragraph.

^{4/} In section (e) of our Order, we have provided for the Notice to be mailed to all employees employed during the year after January 1, 1983, and have therefore limited the mailing period recommended by the ALJ.

Relations Act (Act).

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

(a) Offer to Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal and Rodolfo Garcia immediate and full reinstatement to their former -or substantially equivalent positions, without prejudice to their seniority or other employment rights or privileges.

(b) Make whole Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal, Rodolfo Garcia and those additional individuals named in Attachment "A" for all losses of pay and other economic losses they suffered as a result of their discharges and suspensions, 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) Preserve 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.

3.

(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 Respondent at any time during the period from January 1, 1983 to January 1, 1984.

(f) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and places(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) 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 the employees may have concerning the Notice 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.

(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

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report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: March 1, 1985

JYRL JAMES-MASSENGALE, Chairperson

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

ATTACHMENT "A"

CREWS A AND B

CREW A

1. Fernando Trejo
2. Felipe Moran
3. Jose Gpe. Gutierrez
4. Cesar Campos
5. Hector Canales
6. Marco G. Valenzuela
7. Gustavo Villareal
8. Ramon S. Salsameda
9. Victor Pineda
10. Gerardo Vega
11. Lucio Gonzalez
12. Ruben Franco
13. Rafael Panela
14. Salvador Vargas G.
15. Rosendo Velasquez
16. Lino Ramirez
17. Seferino Montiel
18. Juan Rodriguez
19. Jose G. Diaz
20. Ricardo Alvarez
21. Amadeo Lopez
22. Francisco Galindo
23. Feliz Reytez
24. Pablo Macias
25. Socorro Mendibel
26. Enrique Gonzalez
27. Isidro Jimenez
28. Juan Morales
29. Margarito Hernandez
30. Rafael Carrizosa
31. Ricardo Lepe
32. Juan Pablo Lepe
33. Jose T. Ruiz
34. Antonio Contreras
35. Gilberto Rivera
36. Ignacio Gonzalez
37. Jose Garcia S.
38. Gustavo Garcia S.
39. Arturo Pizeno
40. Luis Ruiz
41. Santiago Gamez
42. Alfredo Guerrero
43. Jorge Ferrer
44. Francisco Gracia
45. Marcos Acevedo
46. Jesus Madonado
47. Rogelio R. Herrero
48. Carlos Rodriguez
49. Eduardo Burgos

50. Felisendo Najar
51. Pedro Naranjo
52. Benjamin Lopez
53. Robert Miller
54. Felipe Montante
55. Benjamin Gacuan

CREW B

1. Cirgio Martinez
2. Benjamin Viceno
3. Jesus Carmona
4. Raul Recendis
5. Jose Cisneros
6. Pablo Alatorre
7. Francisco Gutierrez
8. Manuel J. Silva
9. Jose Cruz Beserra
10. Serjio Ozuna
11. Antonio Ranjel
12. Raul Avila
13. Marcos Acevedo
14. Jaime A. Perez
15. Crisanto Armenta
16. Alfonso Burruel
17. Rene Duarte
18. Manuel Zabrerera
19. Arturo Parra
20. Jose Zamora
21. Hector Garcia
22. Victor Vargas
23. Jesus Robles V.
24. Jesus M. Chavez
25. Jesus Torres
26. Ignacio Gonzalez
27. Ignacio Bernal
28. Teodolo Yanez
29. David Adams
30. Raul Tafoya
31. Ernesto Zavala
32. Francisco Moran
33. Eliceo Alamis
34. Luis Ruiz
35. Milton Charles
36. Robert Miller
37. Everett Bedford Jr.
38. Carlos Ruiz
39. Marco A. Valenzuela
40. Jose Gpe. Gutierrez

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Lu-Ette Farms, Inc., had violated the law. The Board found that, we did violate the law by suspending and/or discharging employees Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal and Rodolfo Garcia for their participation in protected concerted activities or their involvement in Board processes. The Board also found that we violated the law by suspending members of Crew A and Crew B because of their participation in protected concerted activities. 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 (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 discharge or suspend, or in any other way discriminate against, any agricultural employee because of his or her union activities, protected concerted activities, or because he or she seeks to utilize the procedures established by the Act.

WE WILL reinstate Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal and Rodolfo Garcia to their former or substantially equivalent position, without loss of seniority or other privileges, and WE WILL reimburse them for any pay or other money they lost as a result of their suspensions and discharges, plus interest.

WE WILL also reimburse the members of Crew A and Crew B who were suspended on February 21, 1983, for engaging in protected concerted activities for any pay or other money they lost as a result of their suspension.

Dated:

LU-ETTE FARMS, 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. One office is located at 319 Waterman Avenue, El Centro, California, 92243. The telephone number is (619) 353-2130.

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

Lu-Ette Farms, Inc.
(UFW)

11 ALRB No. 4
Case Nos. 83-CE-14-EC,
et al

ALJ DECISION

Finding that the Employer-Respondent had not established good cause for its failure to timely file answers to either of two complaints, the Administrative Law Judge (ALJ) invoked the rule that allegations in a complaint will be deemed to be true unless specifically denied or explained in an answer. On that basis, he granted the Motions filed by the United Farm Workers of America, AFL-CIO (Union) and General Counsel for Summary (Default) Judgment.

BOARD DECISION

The Board affirmed the ALJ's Decision. Accordingly, the allegations in the complaint, which now constitute findings of fact and conclusions of law, establish that in early 1983, Respondent discharged six employees because of their Union or other protected activities and/or participation in the Board's processes and, in addition, suspended for one day the members of two entire crews in retaliation for their having requested time-and-a-half for holiday pay, a protected concerted activity. Respondent was ordered to reinstate the discharged employees with backpay and to compensate the crews for the period of their unlawful suspension.

* * *

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:)	Case No. 83-CE-14-EC
)	83-CE-50-EC
LU-ETTE FARMS, INC.,)	83-CE-53-EC
)	83-CE-82-EC
Respondent,)	
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Charging Party.)	

Appearances:

Eugene Edward Cardenas, Esq.
El Centro, California for
General Counsel

Ronald E. Hull
El Centro, California
for Respondent

Esteban Jaramillo
Calexico, California
for Charging Party

Before: James Wolpman
Administrative Law Judge

RULING AND DECISION OF THE ADMINISTRATIVE LAW JUDGE

STATEMENT OF THE CASE

On October 25, 1983, before the assignment of prehearing and hearing dates in this matter, the United Farm Workers (UFW) filed a Motion to Make Allegations of Complaint True and a Motion for Summary Judgment. (Board Ex. 9.) Both motions were based on the failure of Respondent to answer either the original or consolidated complaint. (Board Exs. 6 & 8.) Thereafter, the UFW filed supplemental points and authorities in support of its motions. (Board Ex. 11.) The General Counsel also filed its support for the motions, including points and authorities and certain documents. (Board Ex. 10)

The Executive Secretary noticed the motions for hearing on January 17, 1984, and directed Respondent to submit its written response by January 6, 1984. (Board Ex. 12.) The response was filed (Board Ex. 13); and, on the day before the hearing, Respondent filed a further opposition to the motions, a proposed answer, and a declaration from the owner of the company. (Board Ex. 14; Resp. Ex. 4.) On the day of the hearing, the General Counsel filed a response to the opposition. (Board Ex. 15.) All parties appeared at the hearing evidence was presented, and additional argument was heard.

This ruling and decision is based on the entire record of the proceeding, including the testimony and exhibits received and the arguments and contentions presented both before and during the hearing.

ISSUES

The motions raise two issues: (1) were the original and the consolidated complaint properly served on the Respondent,

and (2), if so, has Respondent established good cause for its failure to file timely answers?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. SERVICE

Findings. The following facts are undisputed:

1. The original Complaint was sent by certified mail to Lu-Ette Farms at its correct address: P.O. Box 865 Holtville, California 92250, but was returned unclaimed on June 6, 1983. (Board Ex. 6 & 10(A); TR. 4-6.)

2. On June 14, 1983, the Complaint was hand delivered by Board Agent Mike Castro to the principal place of business of the Respondent located at 536 Olive Avenue, Holtville, California. (Board Ex. 10(B); TR. 4.)

3. The Consolidated Complaint was sent to Respondent by certified mail on August 30, 1983, at the above post office box; and, at the same time, Board Agent Enrique Gastelum hand delivered a copy to the above street address. (Board Exs. 8 & 10(C); TR. 4.)

4. On September 9, 1983, the Consolidated Complaint sent by certified mail was returned unclaimed. (Board Ex. 10 (D); TR. 5.)

Conclusions. Respondent contends that the services of the complaints were invalid because the El Centro Regional Director failed to serve either the attorneys who had been representing Lu-Ette or the lay representative who was then representing the company. As authority, Respondent relies on section 20430(b) of the Regulations.

Section 20430 is not applicable to complaints. The manner of their service is set forth in section 20400. That section provides for service on "the persons required to be served" in person, or by registered or certified mail, or by delivery to the principal place of business. The Statute, in section 1160.2, names "the person against whom [the] charge was made" as the only person required to be served with a copy of the complaint. The Regulations, in section 20221, require service on both the respondent and the charging party, but on no one else.

The failure to serve a representative of the respondent does not, therefore, invalidate the services.^{1/}

II. GOOD CAUSE FOR FAILING TO FILE TIMELY ANSWERS.

A respondent who has been properly served has 10 days to answer or otherwise respond. (Regulations, section 20230.) Here, no answer was submitted prior to the filing of the motions. (TR. 6.) The answer that was submitted the day before the hearing came seven months after service of the original complaint and four and one-half months after service of the consolidated complaint. At no time did Respondent seek an extension of the time limits set forth in the Regulations. (TR. 6.)

Section 20232 of the Regulations provides: "Any allegation

1. In view of the fact that both the original and the consolidated complaints were served by leaving copies at Respondent's principal place of business, there is no need to discuss the contention that the Regional Director was both aware and bound by Respondent's policy of refusing to accept certified mail. (See Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55, pp. 4-5, ALJ Dec pp. 7-11.)

not denied shall be considered admitted." The Notice of Hearing served on Respondent warned: "Unless respondent does [file a timely answer], all allegations in the Complaint shall be deemed to be true and may be so found by the Board." (Board Exs. 6 & 8.)

Before the Board will accept a late answer, the respondent must establish good cause for its failure to abide the time limits established in section 20230. (John Gardoni (1982) 8 ALRB No. 62.) Respondent asserts good cause and offers several factual justifications for its failure to answer on time.^{2/}

1. Reliance on former counsel. In previous ALRB proceedings Respondent was represented by attorneys Sarah Wolfe and Larry Dawson of the firm Dressier, Quesenbery, Laws and Barsamian. This representation was provided through Respondent's membership in Western Growers Association (WGA). (TR. 7-8.) However, in March 1983, Wolfe and Dawson wrote a letter to the Executive Secretary of the ALRB, with a copy to Respondent, to advise that their firm could no longer represent Lu-Ette because its membership in WGA had been terminated for failure to pay required fees. (G. C. Ex. 1.) The letter is clear and to the point; it specifically mentions the

2. In support of its showing, Respondent presented a declaration under penalty of perjury from Bill Daniell, the owner of Lu-Ette Farms. (Resp. Ex. 4.) Both the General Counsel and the UFW objected to its admission as hearsay the effect of which would be to deprive them of cross-examination, and I reserved ruling on its admission. (TR. 15-18.) While I am sympathetic to counsel's dilemma, there is a long established reluctance on the part of courts and administrative agencies to permit final disposition of substantive controversies by default. *Livingston Powered Metal v. N.L.R.B.* 3d Cir. 1982) 669 F.2d 133; *Weitz v. Yankosky* (1966) 63 Cal. 2d 849, 854-55.) That policy, taken together with the failure to the Notice of Hearing (Board Ex. 12) to state that the rules of evidence would govern the hearing on these motions, impels me to admit the Declaration and to consider the facts there alleged.

charge upon which the original complaint is based and two of the four charges upon which the consolidated complaint is based.^{3/} I therefore conclude that Respondent had no reasonable basis for believing that its former counsel would answer the instant complaints.^{4/}

2. The role of Ronald Hull. Mr. Hull is the Manager of the Imperial Valley Vegetable Growers Association. (TR. 7.) After leaving WGA, Lu-Ette joined that association, and it undertook to represent the company in collective bargaining with the UFW. (Resp. Ex. 1; TR. 9-10.) In addition, Hull communicated with the ALRB representatives who were investigating the instant charges and was contacted by them about possible settlement and about the failure of the Respondent to answer the complaints. (Resp. Ex. 2; G.C. Exs. 2 & 3; TR. 12.) He is not an attorney, but he did agree to appear for Lu-Ette in connection with the instant motions. (Resp. EX. 4.)

Daniell nowhere indicates that Hull had undertaken formal representation of Lu-Ette in the unfair labor practice proceedings. In his declaration he describes Hull's role as having "agreed to

3. Of the two charges not mentioned, one (83-CE-82-EC) had not yet been filed. As for the other (83-CE-50-EC), I do not find its omission significant because the letter clearly states that termination of WGA membership precludes representation by its counsel; the failure to mention the one charge, therefore, appears to have been inadvertent.

4. In his declaration, Daniell asserts that WGA attorneys were served with "all legal documents relating to Lu-Ette Farms, Inc." This is incorrect. Neither the original nor the consolidated complaint was served on WGA as its counsel. This would have been apparent from the proof of service which Respondent received when it was served by delivery at its principal place of business. (Board Exs. 6 & 8.)

make an appearance." Nowhere does he indicate that he had relied upon Hull to answer the complaints.

Even if Hull had undertaken formal representation, the failure to answer would still be unjustified. Hull testified that he was unaware of the issuance of the complaints (TR. 8, 19), but Lu-Ette was properly served and therefore Daniell was on notice. His failure to inform his agent is no excuse unless he had reason to believe the agent already knew. But Daniell asserts no such belief; nor is there any evidence upon which to infer one. Instead, there is Hull's contrary testimony that he knew nothing of the complaints, and the absence of his name on the proofs of service which Daniell received.

Also left unexplained is Hull's failure promptly to answer or seek permission to answer the complaints in September 1983, when he did learn of their existence. (TR. 19-20.)

3. Respondent's financial difficulties. In his declaration, Daniell asserts that respondent lacks funds to retain private counsel.

While financial difficulties might conceivably be grounds for an extension of time or a continuance, they do not entitle a respondent simply to ignore the existence of a valid administrative proceeding¹. (See Lai Gong (1982) 264 NLRB No. 144.) That is what happened here.

4. Lack of prejudice. Respondent next contends that neither the charging party, the general counsel, nor the discriminatees have been prejudiced by its delay in answering the complaints. (TR. 18-19.)

This is by no means clear. Had the respondent promptly answered, the matter might well have been set for hearing; instead, no answer was filed and the case had to proceed down a different path, one that would have been unnecessary if respondent had abided the regulations. It is not therefore possible to assert lack of prejudice as a legitimate consideration. Moreover, lack of prejudice will only be taken into account where there is "at least . . . some excuse for the delay in question." (Benjamin v. Palmo Mfg. Co. (1948) 31 Cal.2d 523, 531-32.) Here, no such excuse, however slight, was forthcoming.

5. Meritorious defense. Respondent has, in conclusionary terms, alleged a meritorious defense to the allegations in the complaint. (Resp Ex. 4; Board Ex. 14.) While such an allegation would have sufficed under California civil procedure to fulfill one of the conditions for setting aside a default (see former C.C.P. section 473); it is not, standing alone, enough to justify denial of the motion under the "balancing of the equities" analysis utilized by the Third Circuit in Livingston Powered Metal v. N.L.R.B., supra. It is too conclusionary for that.

I therefore conclude that Respondent has not established good cause for its failure to file timely answers to the original and consolidated complaints. The Motion to Make Allegations of Complaint True and the Motion for Summary Judgment are granted.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

Pursuant to the above ruling and to section 20232, which provides, "Any allegation not denied shall be considered admitted," I find that the operative allegations of the consolidated complaint

have been admitted as true and make the following findings of fact and conclusions of law.

1. A true and correct copy of the charge number 83-CE-14-EC was filed by the UFW as charging party on January 17, 1983, and was duly served on respondent on January 17, 1983.^{5/}

2. A true and correct copy of the charge number 83-CE-50-EC was filed by the UFW as charging party on February 23, 1983, and was duly served on respondent on February 23, 1983.

3. A true and correct copy of the charge number 83-CE-53-EC was filed by the UFW as charging party on February 28, 1983, and was duly served on respondent on February 25, 1983.

4. A true and correct copy of the charge number 83-CE-82-EC was filed by the UFW as charging party on March 23, 1983, and was duly served on respondent on March 17, 1983.

5. Respondent is now, and at all times relevant herein, has been an agricultural employer within the meaning of Labor Code section 1140.4(c).

6. Charging party is now, and at all times relevant herein has been a labor organization within the meaning of section 1140.4(f) of the Act.

7. The charging party was certified by the ALRB on September 29, 1976, as the exclusive bargaining representative of respondent's agricultural employees. (75-RC-41-R). At all relevant

5. Because respondent did not establish good cause for its belated filing of the answer, it has forfeited the right to contest the allegations in the complaint -- including the right to contest service of the charges (as distinguished from the complaint which triggered the requirement of an answer).

times herein the charging party was the certified representative of respondent's agricultural employees.

8. At all times material herein the following named persons have been supervisors within the meaning of section 1140.4(j) of the Act and/or agents of the respondent acting on its behalf:

William Howard (Bill) Daniell	Owner
Tom Daniell	Owner
Luis Avila	General Supervisor
Lupe Estrada	Foreman
Mike Munoz	Foreman
Tony Martinez	Foreman
Yolanda Munoz	Supervisor

9. On or about January, 1979, the agricultural employees of respondent went out on strike.

10. In Admiral Packing, et. al., 7 ALRB No. 43, a case in which Lu-Ette Farms is named as a co-respondent, the Board held that the strike called against Lu-Ette converted into an unfair labor strike as of February 21, 1979 by "virtue of the employers illegal conduct (bad faith bargaining) as of that date."

11. On October 20, 1981, an administrative law officer's decision issued in Lu-Ette Farms, Inc., 80-CE-263-EC, et. al. where the ALO found that respondent had violated sections 1153(a) and (c) of the Act by failing and refusing to reinstate strikers who had made unconditional offers to return to work. This decision was affirmed by the Board on August 18, 1982, in 8 ALRB No. 55.

12. In December of 1981, the General Counsel sought

injunctive relief pending the final resolution in Lu-Ette Farms, Inc., 80-CE-263-EC, et. al. On January 4, 1982, the Superior Court of Imperial County issued a preliminary injunction enjoining Lu-Ette Farms, Inc., and its agents from failing and refusing to reinstate the strikers to their former employment positions.

13. In late January and early February, 1982, some of the unfair labor practice strikers including Felipe Moran were allowed to return to work by respondent pursuant to the court's injunctive order.

14. On or about January 13, 1983, respondent by through its agent William Howard (Bill) Daniell discriminatorily discharged its agricultural employees Felipe Moran and Rodolfo Garcia because of their real or suspected participation in and support for union activities.

15. On February 21, 1983 respondent by and through its agent, Bill Daniell and Tom Daniell, discriminatorily suspended, for a one day period, the members of crew A and crew B because of their participation in protected concerted activity. Said crew members are named in Attachment "A", which is attached and incorporated herein.

16. On February 22, 1983, respondent by and through its agent Bill Daniell discriminatorily suspended its agricultural employees Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, and Gustavo Villareal and subsequently discharged these same employees on March 9, 1983 because of their participation in protected concerted activity and their involvement in the ALRB processes which culminated in 8 ALRB No. 55. (TR. 34-35.)

17. By the acts described in paragraphs 14, 15 and 16 above, respondent has interfered with, restrained and coerced agricultural employees in the exercise of rights guaranteed by section 1152 of the Act, in violation of section 1153(a) of the Act.

18. By the acts described in paragraph 14 above, respondent has discriminated in regard to terms and conditions of employment against union supporters in order to discourage membership in said union, in violation of Labor Code section 1153(c).

19. By the acts described in paragraph 16, respondent has discriminated in regard to terms and conditions of employment against agricultural employees because of their participation in ALRB processes, in violation of Labor Code section 1153(d).

REMEDY

Having found that Respondent violated section 1153(a), (c) and (d) of the Act, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act as delineated in the following order. In fashioning such affirmative relief, I have taken into account the nature of the instant violations and prior litigation before the ALRB in which respondent has been adjudged guilty of violating the Act, as described in the above findings of fact and conclusions of law.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Lu-Ette Farms, Inc., its owners, officers, agents, successors, and assigns shall:

1. Cease and desist from discriminatorily discharging or suspending agricultural employees because of their participation in protected concerted and union activities and/or their participation in ALRB processes.

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

(a) Offer Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal and Rodolfo Garcia immediate and full reinstatement to their former positions or substantially equivalent positions, if their former positions no longer exist, without prejudice to their seniority and other rights and privileges of employment.

(b) Make Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal, Rodolfo Garcia and those additional individuals named in Attachment "A" whole for any economic losses suffered by them as a result of their discharges and suspensions, such amounts to be computed in accordance with established Board precedents, with interest thereon computed in accordance with the principles set forth in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

(c) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, 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 back pay period and the amount of back pay 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 Respondent at any time during the period from January 1, 1983 to the date of mailing.

(f) Provide a copy of the attached notice, in the appropriate language, to each employee hired by respondent during the 12-month period following a remedial order.


(g) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and places(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.

(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 the 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.

DATED: February 3, 1984



JAMES WOLPMAN
Chief Administrative Law Judge



NOTICE OF AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. The Board found that we did violate the law by suspending and then discharging employees Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal for their participation in concerted protected activities and their involvement in ALRB processes, and by discharging employees Felipe Moran and Rodolfo Garcia because of their real or suspected participation in and support for union activities. The Board also found that we violated the law by suspending members of Crew A and Crew B because of their participation in protected concerted activity.

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 discharge or suspend, or in any other way discriminate against, any agricultural employee because of his or her union activities, protected concerted activities, or because he or she seeks to utilize the procedures established by the Agricultural Labor Relations Act.

WE WILL reinstate Felipe Moran, Francisco Moran, Pablo Valenzuela, Marcos Valenzuela, Gustavo Villareal and Rodolfo Garcia to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they lost as a result of their suspensions and discharges, plus interest.

WE WILL also reimburse the members of Crew A and Crew B who were suspended on February 21, 1983, for engaging in protected concerted activity for any pay or other money they lost as a result of their suspension.

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One is located at 319 Waterman Avenue, El Centro, California, telephone (619) 353-2130.

DATED:

LU-ETTE FARMS, INC.

By:

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

ATTACHMENT "A"

CREW A & B

CREW A

1. Fernando Trejo
2. Felipe Moran
3. Jose Gpe. Gutierrez
4. Cesar Campos
5. Hector Canales
6. Marco G. Valenzuela
7. Gustavo Villareal
8. Ramon S. Salsameda
9. Victor Pineda
10. Gerardo Vega
11. Lucio Gonzalez
12. Ruben Franco
13. Rafael Panela
14. Salvador Vargas G.
15. Rosendo Velasquez
16. Lino Ramirez
17. Seferino Montiel
18. Juan Rodriguez
19. JOSG G. Diaz
20. Ricardo Alvarez
21. Amadeo Lopez
22. Francisco Galindo
23. Feliz Reytez
24. Pablo Macias
25. Socorro Mendibel
26. Enrique Gonzalez
27. Isidro Jimenez
28. Juan Morales
29. Margarito Hernandez
30. Rafael Carrizosa
31. Ricardo Lepe
32. Juan Pablo Lepe
33. Jose T. Ruiz
34. Antonio Contreras
35. Gilberto Rivera
36. Ignacio Gonzalez
37. Jose Garcia S.
38. Gustavo Garcia S.
39. Arturo Pizeno
40. Luis Ruiz
41. Santiago Gamez
42. Alfredo Guerrero
43. Jorge Ferrer
44. Francisco Gracia
45. Marcos Acevedo
46. Jesus Madonado
47. Rogelio R. Herrero
48. Carlos Rodriguez
49. Eduardo Burgos

50. Felisendo Najar
51. Pedro Naranjo
52. Benjamin Lopez
53. Robert Miller
54. Felipe Montante
55. Benjamin. Gacuan

CREW B

1. Cirgio Martinez
2. Benjamin Viceno
3. Jesus Carmona
4. Raul Recendis
5. Jose Cisneros
6. Pablo Alatorre
7. Francisco Gutierrez
8. Manual J. Silva
9. Jose Cruz Beserra
10. Serjio Ozuna
11. Antonio Ranjel
12. Raul Avila
13. Marcos Acevedo
14. Jaime A. Perez
15. Crisanto Armenta
16. Alfonso Burruel
17. Rene Duarte
18. Manuel Zabrerera
19. Arturo Parra
20. Jose Zamora
21. Hector Garcia
22. Victor Vargas
23. Jesus Robles V.
24. Jesus M. Chavez
25. Jesus Torres
26. Ignacio Gonzalez
27. Ignacio Bernal
28. Teodolo Yanez
29. David Adams
30. Raul Tafoya
31. Ernesto Zavala
32. Francisco Moran
33. Eliceo Alamis
34. Luis Ruiz
35. Milton Charles
36. Robert Miller
37. Everett Bedford Jr.
38. Carlos Ruiz
39. Marco A. Valenzuela
40. Jose Gpe. Gutierrez