

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BEN AND JERRY NAKASAWA d/b/a)	
NAKASAWA FARMS AND B. J. HAY)	
HARVESTING,)	
)	
Respondents,)	Case Nos . 82-CE-123-EC
)	82-CE-140-EC
and)	82-CE-179-EC
)	
GUSTAVO CARRENO, BALTAZAR CHAVEZ,)	
ROSENDO DE LA TORRE, TOMAS DE)	
LEON, ANTONIO GARCIA, ISIDRO)	
GARCIA, PABLO GARCIA, REFUGIO)	
MINERO, JOSE OLIVARES, CARLOS)	
PULIDO, SALVADOR PULIDO, DAVID)	12 ALRB No. 12
ROJAS, FEDERICO SALGADO CHAVEZ,)	(10 ALRB No. 48)
RUBEN SILVA, ABRAHAM SOLIS AND)	
RAMON SOLIS,)	
)	
<u>Charging Parties .</u>)	

SUPPLEMENTAL DECISION AND ORDER

On December 13, 1984, the Agricultural Labor Relations Board (ALRB or Board) issued a Decision and Order in this matter. (Ben and Jerry Nakasawa (1984) 10 ALRB No. 48.) On February 3, 1986, Division One of the Fourth Appellate District of the California Court of Appeal issued an unpublished decision affirming in part, reversing in part and remanding the Board's Decision and Order. (Ben and Jerry Nakasawa, et al . v. ALRB (1986) No. D002623.) The Court remanded the Decision to the Board to modify its Order so as to eliminate the finding that Ben and Jerry Nakasawa (Employers) violated section 1153(c)^{1/} of the Agricultural Labor Relations Act (ALRA or Act). (Id. at p . 3, fn. 2 .) The

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

Court also remanded the Decision to the Board to clarify its conclusion regarding alleged discriminatee Salvador Pulido. (Id. at p. 9-10.)

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

The Board wishes to correct an inadvertant omission raised by the Court's remand and to amend its findings of discriminatory discharges by the Employers to include Salvador Pulido. The Board previously noted that Salvador Pulido engaged in protected concerted activities known to the Employers, was warned by supervisor Guadalupe Gonzales that he would be fired if he attended meetings of employees, that he attended those meetings, was terminated in December of 1981, requested reinstatement in August of 1982 and was denied reinstatement without explanation. As such, a prima facie case of a violation was established. (See, e.g., Lawrence Scarrone (1981) 7 ALRB No. 13.) Pulido was described as an excellent employee by a previous supervisor for the Employers and the Employers did not rebut the evidence of unlawful refusal to rehire in 1982. Therefore, no business defense to the prima facie case was established. (See, e.g., Rivcom Corp. v. ALRB (1983) 34 Cal.3d 743, 759.) We therefore reiterate our affirmation of the ALJ findings regarding Pulido.

We accordingly issue a new Order in this case, which conforms to the Court's decision.

ORDER

By authority of Labor Code section 1160.3 the Agricultural Labor Relations Board (ALRB or Board) hereby orders that Respondents Nakasawa Farms and B. J. Hay Harvesting, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging or refusing to hire or to consider for employment or assigning discriminatory assignments or otherwise discriminating against any of its agricultural employees because of their participation in protected activities;

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

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

(a) Offer to the employees listed below, who were unlawfully denied employment from June to August 1982, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for all losses of pay and other economic losses incurred by them as a result of their denial of employment by Respondents, such backpay award to be computed in accordance with established Board precedents, together with interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55:

David Rojas

Baltazar Chavez Garcia

Toraas de Leon Torres
Antonio Garcia Barrios
Abraham Solis Delgado
Refugio Minero Perez
Salvador Pulido

Gustavo Adolfo Carreno Valenzuela
Jose Olivares
Federico Salgado Guzman
Pablo Garcia
Ramon Solis Hernandez

(b) Preserve, and upon request, make available to the Board or its agents for examination, photocopying, and otherwise inspecting all records relevant and necessary to a determination of the amounts of backpay and interest due to the affected employees under the terms of this Order.

(c) Sign the Notice to Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies thereof in each language for the purposes set forth hereinafter.

(d) Post copies of the attached Notice in conspicuous places on its property for sixty 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.

(e) Mail copies of the attached Notice, in all appropriate languages, within thirty days after the date of issuance of this Order to all agricultural employees employed by Respondents during the period from June 1982 to June 1983.

(f) Arrange for a representative of Respondents or a Board agent to distribute and read the attached Notice, in all appropriate languages, to the assembled employees of Respondents on company time and property at times and places 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 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 Respondents to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(g) Notify the Regional Director in writing, within thirty days after the date of issuance of this Order, of the steps which have been taken to comply with it. Upon request of the Regional Director, Respondents shall notify him or her periodically thereafter in writing of further actions taken to comply with this Order.

Dated: June 25, 1986

JOHN P. McCARTHY, Member

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

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 (ALRB or Board) issued a complaint that alleged that we, Nakasawa Farms and B. J. Hay Harvesting, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by discriminating against employees for organizing themselves to protest changes in working conditions. 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 farm workers in California these rights:

1. To organize yourselves;
2. To form, join or help union;
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 or 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 that forces you to do, or stops you from doing any of the things listed above.

WE WILL NOT terminate or refuse to hire or consider for employment or otherwise discriminate against any employees, previous employee or applicant for employment because he or she has exercised any of the above-state rights.

WE WILL OFFER David Rojas, Baltazar Chavez Garcia, Gustavo Adolfo Carreno Valenzuela, Tomas de Leon Torres, Jose Olivares, Antonio Garcia Barrios, Federico Salgado Guzman, Abraham Solis Delgado, Pablo Garcia, Refugio Minero Perez, Salvador Pulido, and Ramon Solis Hernandez their jobs back and pay them any money they lost because we refused to rehire them.

Dated:

B. J. HAY HARVESTING

NAKASAWA FARMS

By: _____
Representative Title

By: _____
Representative Title

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 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.

CASE SUMMARY

Ben and Jerry Nakasawa, etc.

12 ALRB No. 12

Case No. 82-CE-123-EC, et al.

SUPPLEMENTAL BOARD DECISION

In Ben and Jerry Nakasawa (1984) 10 ALRB No. 48, the Board determined that Nakasawa Farms discriminated against a group of agricultural employees because of their union and concerted activities. The Court of Appeal for the Fourth Appellate District, Division One enforced the Board's Decision and remanded the matter to the Board to clarify the scope of the Board's Order. The Court directed modification of the Board's Order in light of the Court's finding that insufficient evidence supported the Board's determination that Nakasawa Farms violated section 1153(c) of the Act. The Board also clarified the scope of its remedial Order to include a discriminatee previously named and the Board iterated the basis for its modified Order.

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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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