

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROYAL PACKING COMPANY,

Respondent,

and

UNITED FARM WORKERS OF AMERICA,
AFL-CIO,

Charging Party,

and

FRANCISCO LOPEZ,

Charging Party.

Case Nos. 79-CE-409-SAL
79-CE-417-SAL

12 ALRB No. 25
(8 ALRB No. 16)

SUPPLEMENTAL DECISION AND CORRECTED ORDER

On July 23, 1986, the Board issued an Order To Show Cause Why Board Should Not Reopen Compliance Case in 8 ALRB No. 16 and Order Backpay for Francisco Lopez. Both General Counsel and Respondent each timely filed a response to the order to show cause.

In the underlying proceedings, the Administrative Law Judge (ALJ) held that, in violation of Labor Code section 1153(a),^{1/} Respondent unlawfully discharged Francisco Lopez and all the members of one celery crew for engaging in protected concerted activities. As a remedy, the ALJ recommended that all the discriminatees, including Lopez, be reinstated and made whole for any losses incurred as a result of Respondent's unlawful conduct.

1. All section references herein are to the California Labor Code unless otherwise specified.

On review, the Board affirmed the rulings, findings, and conclusions of the ALJ and adopted his recommended order, with modifications. In its remedial order, the Board ordered Respondent to reinstate the members of the celery crew and Francisco Lopez to their former or substantially equivalent positions. In that portion of its order providing that the discriminatees be made whole for the economic losses suffered as a result of their discharge, the Board omitted Lopez's name, thereby providing makewhole only for the members of the celery crew. The Board has determined that the omission of Lopez's name from Paragraph 2b of its order in Royal Packing Co. (1982) 8 ALRB No. 16 was clerical error.

That determination is based on the following factors: First, the Notice to Agricultural Employees, attached to the Board's Decision and Order -- which Royal Packing was ordered to distribute and post, and which was also read to the Company's employees -- indicated that Francisco Lopez would be reinstated and reimbursed for any loss of pay due to his discharge. Second, the ALJ had provided backpay and reinstatement for Lopez in his decision and proposed order, and there is no factual or legal analysis in the Board's decision in 8 ALRB No. 16 which would support the conclusion that the Board had thereafter deliberately decided to omit backpay for Lopez. Thus, the only reasonable conclusion is that the Board inadvertently omitted Lopez's name from Paragraph 2b of the Order in 8 ALRB No. 16. Finally, the Board's decision in Royal Packing Co. (1982) 8 ALRB No. 48 offers persuasive evidence of the Board's intent to award backpay to

Lopez.^{2/}

On the basis of the above, the record as a whole,^{3/} and the responses filed by Respondent and General Counsel, we find that the omission of Francisco Lopez's name from that portion of the order in 8 ALRB No. 16 which provided for backpay for those discriminatees whom we found to have been unlawfully discharged by Respondent was clerical error.

Paragraph 2b of our previous Order is hereby corrected

//////////

//////////

//////////

2. The Board's decision in Royal Packing Co., supra, 8 ALRB No. 48 has a confusing history. After issuance of the Board's decision in Royal Packing Co., supra, 8 ALRB No. 16, Royal Packing filed a petition for writ of review. (Royal Packing Co. v. Agricultural Labor Relations Bd., Case No. 1 Civil No. A016719.) The Board requested a remand in order to reconsider the evidence upon which it based its finding that Royal Packing had unlawfully discharged Francisco Lopez. The Board received an order from the Court of Appeal remanding the case to the Board, and thereafter issued its decision in Royal Packing Co., supra, 8 ALRB No. 48. In that decision, the Board again found that the Company unlawfully discharged Lopez, and the Board also added Lopez's name to the Paragraph 2b of the Order, noting that the order was substantially identical to that issued in 8 ALRB No. 16. Some ten months later, the Court of Appeal issued a second order indicating that the prior remand order was inadvertently sent to the Board due to clerical error, and that, since the prior order had not been filed with the clerk or entered in the minutes, it was ineffective. The court went on to deny the request for remand. The Board was without jurisdiction to issue its order in 8 ALRB No. 48 since the case was before the Court of Appeal. That order is void and the Board today has issued an order vacating its Decision and Order in Royal Packing Co., supra, 8 ALRB No. 48.

3. Neither Respondent nor General Counsel pointed to any facts in the record which would support a conclusion that the Board deliberately decided to withhold the backpay remedy from Lopez. Nor did either party cite to any Board decision in which the Board has, without explanation, ordered reinstatement but not backpay.

and that Order is replaced by the following._4/

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Royal Packing Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging, laying off, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any concerted activity protected by section 1152 of the Act.

(b) In any like or 00related manner interfering with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code section 1152.

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

(a) Immediately offer to the employee-members of celery harvest crew no. 1 who were discharged on or about October 23, 1979, and to Francisco Lopez, full reinstatement to their former jobs or equivalent employment without prejudice to their seniority or other employment rights or privileges.

(b) Make whole the employee-members of celery harvest crew no. 1 who were not rehired to work for celery harvest

4. It should be noted that, with the exception of Lopez's reinstatement, Respondent has complied with the provisions of the Board's previously issued order in this matter.

crew no. 2 for any loss of pay and other economic losses they have suffered as a result of their discharge on or about October 23, 1979, and make whole Francisco Lopez for any loss of pay and other economic losses he incurred as a result of his discharge on or about November 2, 1979,^{5/} reimbursement to be made according to the formula stated in J & L Farms (1980) 6 ALRB No. 43, plus interest thereon at a rate of seven percent per annum.

(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 amount of backpay 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 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

5. The attached Notice to Agricultural Employees is a duplicate of the Notice attached to the Board's earlier decision in 8 ALRB No. 16, which Notice was presumably mailed, posted and read to Respondent's employees. The Notice erroneously indicates that Lopez was discharged on or about November 7, 1979, rather than on November 2, 1979. The record herein indicates that Lopez was discharged on November 2, 1979, and we so found when we adopted the ALJ's finding on that point. The error in the date on the Notice cannot affect Lopez's right to receive backpay for the period beginning with the date of the unlawful discharge.

of this Order, to all employees employed by Respondent at any time during the period from January 1980 until the date on which the said Notice is mailed.

(f) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places on its property, the period and places of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be 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 its 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 this Notice or employees' 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 therewith, and continue to report

//////////

//////////

//////////

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

Dated: December 4, 1986

JOHN P. McCARTHY Member JORGE

CARRILLO, Member

PATRICK W. HENNING, Member

CASE SUMMARY

Royal Packing Company
(UFW)

12 ALRB No.25
79-CE-409-SAL,
79-CE-417-SAL
(8 ALRB No. 16)

BOARD DECISION

The Board found that the omission of discriminatee Francisco Lopez's name from that part of its order in Royal Packing Co. (1982) 8 ALRB No. 16 which provided for backpay for employees unlawfully discharged by Respondent was clerical error. The Board based its conclusion that the omission was clerical error on (1) the Notice to Agricultural Employees attached to the decision and order in 8 ALRB No. 16 which indicated that Lopez would be reimbursed for any loss of pay due to his discharge, and (2) the fact that the ALJ provided for reinstatement and backpay for Lopez, and the Board's decision does not include any factual or legal analysis supporting a conclusion that the Board had thereafter deliberately decided to omit backpay for Lopez. Lastly, the Board found that its now vacated decision in Royal Packing Co. (1982) 8 ALRB No. 48 offered persuasive evidence of the Board's intent to provide backpay for Lopez. After determining that the error was clerical, the Board issued a supplemental decision and order correcting its prior order in 8 ALRB No. 16, to provide for backpay for Francisco Lopez.

* * *

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

* * *