

El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VESSEY & COMPANY, INC.,	)	Case Nos . 79-CE-98-EC
MARTORI BROTHERS DISTRIBUTORS,	)	79-CE-145-EC 80-CE-112-5C
JOE MAGGIO, INC.,	)	80-CE-4-EC 80-CE-113-EC
Respondents,	)	30-CE-4-1-EC 80-CE-117-EC
and	)	80-CE-14-EC 30-CE-207-EC
UNITED FARM WORKERS	)	80-CE-74-EC 80-CE-208-EC
OF AMERICA, AFL-CIO,	)	80-CE-74-1-EC 80-CS-252-EC
Charging Party.	)	80-CE-111-EC 80-CE-253-EC
	)	13 ALRB No. 22
	)	(13 ALRB No. 17)

AMENDED DECISION AND ORDER

On October 23, 1987, the Agricultural Labor Relations Board (ALRS or Board) issued its decision in this matter, holding, inter alia, that Respondent Joe Maggio, Inc. (Maggio) violated section 1153 (c) and (a) of the Agricultural Labor Relations Act (ALRA or Act). The Board based its conclusion upon the finding that Maggio altered its original seniority system for the intended purpose of depriving returning economic strikers of their full reinstatement rights. Accordingly, the Board ordered Maggio to cease its unlawful practices and to make whole its former employees who were denied reinstatement as a result of those practices .

On October 29, 1987, pursuant to Title 8, California Administrative Code, section 20286 (c), Maggio filed a Motion for Reconsideration or Clarification of our decision in this proceeding. The Board hereby denies the Motion for Reconsideration or Clarification, but, for the reasons specified

below, the Board has decided to issue the attached Amended Order.

In 13 ALRB No. 17, the Board found that Maggio had altered its original seniority practices, imposing new hiring and recall policies designed to limit the reinstatement opportunities of returning strikers. The Board found that Maggio's discriminatory scheme to avoid rehiring the returning strikers constituted an independent violation of the Act, regardless of the permanent or temporary status of the replacement workers hired before the strikers unconditionally offered to return to work. Therefore, the Board did not believe it was necessary to make an explicit determination as to whether the replacements were hired by Maggio as either permanent or temporary employees . However, in order to avoid any confusion as to the scope of our previous Order, and to assist our compliance agents in determining . when and to whom Maggio incurred an obligation to reinstate, the Board hereby resolves the status of these replacements .

Upon receipt of unconditional offers to return to work from economic strikers, the employer must establish legitimate and substantial business justifications for its failure or refusal to immediately reinstate them to their former, or substantially equivalent, positions. (National Labor Relations Board v. Fleetwood Trailers Company, Inc. (1967) 389 U.S. 375, 373 [66 LRRM 2737]; Sam Andrews' Sons (1986) 12 ALRB No. 30.) One such justification is the hiring of permanent replacements to fill

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vacancies created by the strike. (National Labor Relations Board v. Great Dane Trailers, Inc. (1967) 389 U.S. 26 [65 LRRM 2465]; Hansen Brothers Enterprises (1986) 279 NLRB No. 98 [122 LRRM 1057] review den.) It is a well-settled principle that the burden is on the employer to prove that the replacements were hired as permanent employees and, further, that "the employer must show a mutual understanding between itself and the replacements that they are permanent." (Hansen Brothers Enterprises, supra, 279 NLRB No. 98, Slip Opn. at p. 3, emphasis in original; Associated Grocers (1980) 253 NLRB 31, 32 [105 LRRM 1633]; Sam Andrews' Sons, supra, 12 ALRB No. 30, pp. 14-16.)

Here, George Stergios, a supervisor for Maggio, testified without contradiction that many of the replacement workers specifically sought, and were given, confirmation of the permanent nature of their employment. This testimony clearly established that in the mind of Maggio's supervisor and the minds of those replacements, the nature of their employment was permanent. This mutual understanding of the permanent status of those replacements satisfies Maggio's burden of establishing legitimate and substantial business justifications for its failure to immediately reinstate certain returning economic strikers.

As a result of the Board's finding that these replacements were permanent, that portion of the Order which orders Maggio to offer to all the returning economic strikers full and immediate reinstatement to their former or substantially

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equivalent jobs is hereby amended.^{1/} The Amended Order should be, and is hereby, limited to order full and immediate reinstatement to those returning economic strikers who were deprived reinstatement solely due to Maggio's altered, discriminatory seniority system. Reinstatement and backpay will not be afforded to returning economic strikers whose seniority proves to be less than that earned by their permanent replacements under Maggio's original seniority system.

AMENDED ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (ALRB or Board) hereby orders that Respondent Joe Maggio, Inc. (also known as Maggio, Inc., dba Joe Maggio), its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to reinstate striking workers who offer, or who have offered, to return to work because of their strike activity or union activity.

(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 all of its employees who went on strike

^{1/} This Amended Order only affects the Board's holding regarding Maggio's violation of the Act. The remainder of the Board's Decision and Order at 13 ALRB No. 17 is unaffected by this Amended Decision and Order, and is final.

in January of 1979 and thereafter made unconditional offers to return to work at various times in 1930 , as listed in Appendix A. to the Third Amended Complaint herein (with the exception of lettuce harvesters), and who were deprived of reinstatement solely due to Respondent's altered, discriminatory seniority system, full and immediate reinstatement to their former or substantially equivalent jobs without prejudice to their seniority rights or any other employment rights and privileges.

(b) Reimburse all the employees who went on strike in January of 1979 and thereafter made unconditional offers to return to work at various times in 1980, as listed in Appendix A to the Third Amended Complaint herein (with the exception of lettuce harvesters), and who were deprived of reinstatement solely due to Respondent's altered, discriminatory seniority system, for all losses of pay and other economic losses they have suffered as a result of Respondent's failure or refusal to rehire them after the receipt of their unconditional offers to return to work, reimbursement plus interest to be made in accordance with the established Board precedents, plus interest thereon, computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1932) 3 ALR3 No. 55.

(c) Preserve and, upon request, make available to this Board or 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 amounts of makawhole and interest due under the

terms of this Order.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from January 1, 1980, until January 1, 1981.

(f) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(g) 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 make further reports at the Regional Director's request, until full compliance is achieved.

Dated: December 2, 1987

BEN DAVIDIAN, Chairman^{2/}

JOHN P. MCCARTHY, Member

PATRICK W. KENNING, Member

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

^{2/} The signatures of Board Members in all Board decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint that alleged that we 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 refusing to rehire strikers. 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 farm workers 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 to obtain a contract covering 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 fail or refuse to hire or reinstate, or discriminate against any employee because he or she exercises any of these rights, including the right to strike.

WE WILL offer reinstatement to all strikers who unconditionally offered to return to work with us, and were deprived of reinstatement solely due to an altered, discriminatory seniority system, into their previous jobs or to substantially equivalent jobs, without loss of seniority or other rights and privileges, and we will reimburse each of them for all pay and other money plus interest they lost because we refused to reinstate them or rehire them.

Dated:

JOE MAGGIO, INC.

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, SI 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

Vessey & Company, Inc., et al.
(UFW)

13 ALR3 No. 22
Case Nos. 79-CE-98-EC,
et al.

BOARD DECISION

In order to avoid any confusion in the scope of the previous Decision and Order (Vessey & Company, Inc., et al. (1937) 13 ALRB No. 17) regarding Respondent Joe Maggio, Inc.'s (Maggio) violation of section 1153(c) and (a) and order to offer full and immediate reinstatement to the returning economic strikers, the Board determined that the replacements hired by Maggio before receipt of the strikers' unconditional offers to return to work were permanent. As a result, the Board amended its Order to require Maggio to offer full and immediate reinstatement to those returning economic strikers who were deprived of reinstatement solely due to Maggio's altered, discriminatory seniority system.

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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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