

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FRUDDEN PRODUCE, INC., DENNIS)	
FRUDDEN dba)	
FRUDDEN PRODUCE, INC., and)	
FRUDDEN ENTERPRISES, INC.,)	Case Nos. 79-CE-338-SAL
)	79-CE-338-2-SAL
Respondent,)	
)	
and)	
)	
)	
UNITED FARM WORKERS OF)	13 ALRB No. 3
AMERICA, AFL-CIO,)	(8 ALRB No. 42)
)	
Charging Party.)	

SUPPLEMENTAL DECISION AND MODIFIED ORDER

In accordance with the unpublished decision of the Court of Appeal of the State of California for the First Appellate District, Division Four, in Frudden Enterprises, Inc. v. Agricultural Labor Relations Bd. (December 17, 1986) Case No. A031047, the Agricultural Labor Relations Board (ALRB or Board) has today vacated its Supplemental Decision and Order in Frudden Produce, Inc., et al. (1985) 11 ALRB No. 6. In its decision the court interpreted its previous decision and remand in Frudden Enterprises, Inc. v. Agricultural Labor Relations Bd. (April 25, 1984) Case No. A018374, as authorizing the Board only to delete the provision in the Board's Order requiring the respondent to restore the status quo ante. We will comply with the court's decision by modifying our Order in 8 ALRB No. 42 to conform to the court's interpretation of the first Frudden case (Case No. A018374).

MODIFIED ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Frudden Produce, Inc., et al., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to rehire any employee because of his or her strike activity or union activity.

(b) Discriminatorily adding additional tomato harvesters to replace employees because of their strike or union activity, or otherwise discriminating against any employee in regard to his or her tenure of employment, or any term or condition of employment because of his or her strike activity or union activity.

(c) In any like or related manner interfering with, restraining, or coercing any employee(s) in the exercise of their right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

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

(a) Offer all former hand-crew strikers, listed in Appendices A and B of our original Decision and Order and all former machine-crew strikers, listed on Appendix C of that Decision, immediate and full reinstatement to their former

positions or to 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 they incurred as a result of Respondent's refusal to reinstate them, together with interest thereon computed at the rate of seven percent per annum. The former machine-crew strikers shall be offered reinstatement in accordance with the preferential hiring list described on page 11 of our original Decision. The backpay provided for herein shall be computed in accordance with established Board precedent.

(b) 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.

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

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time between August 29, 1979, and the time such Notice is mailed.

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees assembled on company time and property, at times and places to be determined by the Regional Director. Following the reading, a 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 employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and during the question-and-answer period.

(g) 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: February 20, 1987

JOHN P. McCARTHY, Acting Chairman

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board or ALRB) issued a complaint which alleged that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board has found that we violated the Agricultural Labor Relations Act (ALRA or Act) by discriminating against employees by failing and refusing to rehire those employees who had gone out on strike and that we thereby interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by section 1152 of the ALRA. The Board has ordered 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 this is true, 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 rehire any employee, or otherwise discriminate against any employee because of his or her membership in, or activity on behalf of, the United Farm Workers of America, AFL-CIO, or any lawful strike or other concerted activity for mutual aid or protection of employees.

ALSO, WE WILL NOT discriminatorily add more harvesting machines to replace employees because they participated in union or strike activity.

WE WILL OFFER all the machine crew and hand crew employees who went on strike in August 1979, substantially equivalent jobs and we will pay each of them any money they lost because we refused to rehire them, plus interest computed at the rate of seven percent per year.

Dated:

FRUDDEN PRODUCE, INC. et al.

By: _____
Representative Title

If you have 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 112 Boronda Road, Salinas, California. The telephone number is (408) 443-3160. 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

Frudden Produce, Inc., et al.
(UFW)

13 ALRB No. 3
Case Nos. 79-CE-338-SAL
79-CE-338-2-SAL
(8 ALRB No. 42)
(11 ALRB No. 6)

BOARD DECISION

In *Frudden Enterprises, Inc. v. Agricultural Labor Relations Bd.* (1984) Case No. AQ18374 (*Frudden I*), the Court of Appeal for the First Appellate District affirmed the Board's findings of unfair labor practices including Respondent's failure to reinstate strikers and discriminatory replacement of hand-crew strikers by mechanical harvesters. (See *Frudden Produce, Inc.* (1982) 8 ALRB No. 42.) However, the court annulled the Board's status quo ante remedy and remanded the case to the Board for reformulation of a remedial order. In *Frudden Produce, Inc.* (1985) 11 ALRB No. 6, the Board defined in detail the method of calculating backpay owed to the discriminatorily replaced hand-crew strikers. In addition, the Board modified the interest rate on the backpay award to the Lu-Ette rate. In *Frudden Enterprises, Inc. v. Agricultural Labor Relations Bd.* (1986) Case No. A031047 (*Frudden II*), the court set aside the Board's Decision at 11 ALRB No. 6 in its entirety. It construed the *Frudden I* remand order as authorizing the Board to only delete the status quo ante provision of the Order in 8 ALRB No. 42. In *Frudden II* the court directed the Board to vacate 11 ALRB No. 6, and issue a new supplemental decision and order modifying *Frudden, supra*, 8 ALRB No. 42, consistent with its interpretation of *Frudden I*.

The Board complied with the Court's order by issuing a Supplemental Decision and Modified Order wherein it deleted the status quo ante portion of its Order at 8 ALRB No. 42. The Board also issued an order vacating its Decision at 11 ALRB No. 6 in its entirety.

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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.