

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PHILLIP D. BERTELSEN, INC.,)	
dba COVE RANCH MANAGEMENT,)	
)	Case Nos. 84-CE-23-F
Respondent,)	85-CE-6-F
)	85-CE-48-D
and)	
)	
FAUSTINO CARRILLO; and UNITED)	
FARM WORKERS OF AMERICA,)	18 ALRB No. 1
AFL-CIO,)	(16 ALRB No. 11)
)	(12 ALRB No. 27)
Charging Parties.)	April 1, 1992

SUPPLEMENTAL DECISION AND ORDER ON REMAND

In 16 ALRB No. 11, issued on August 23, 1990, the Agricultural Labor Relations Board (ALRB or Board) ordered the respondent, Phillip D. Bertelsen, Inc. (Respondent), to pay designated sums, plus interest, to 14 individuals for the losses they sustained due to their discriminatory discharge by Respondent.¹ Respondent's defense in the compliance proceeding leading to the Board's decision in 16 ALRB No. 11 was that it was prohibited by the Migrant and Seasonal Workers Protection Act (MSPA) from reinstating the discriminatees or providing backpay. The relevant provision of MSPA, which has since been superseded by the Immigration Reform and Control Act of 1986 (IRCA), prohibited labor contractors from knowingly employing any alien not lawfully admitted for permanent residence or authorized by

¹Respondent's liability for the discriminatory discharges was adjudicated in 12 ALRB No. 27.

the Attorney General to accept employment. The Board held in 16 ALRB No. 11 that Respondent had failed to meet its burden to establish that the discriminatees were in fact not authorized to work in the United States. The Board therefore found it unnecessary to address several other issues pertinent to Respondent's defense, including the applicability of MSPA.

In Phillip D. Bertelsen, Inc. v. ALRB, Case No. F014575, issued January 7, 1992, the Court of Appeal for the Fifth Appellate District held that while Respondent's proof did not conclusively establish that the discriminatees were not authorized to work in the United States, the evidence was sufficient to create a presumption that they were not so authorized, such that the burden shifted to the discriminatees to show that they were authorized to work at the times in question. The Court thus reversed the Board's order and remanded the matter to the Board to allow the discriminatees to offer any proof they might have of their authorization to work. The Court further ordered that: "Once the Board determines this limited issue consistent with the procedure we have outlined herein, it shall proceed to decide any remaining issues necessary to reaching a complete decision." (Case No. F014575, slip opinion, p. 18.)

ORDER

Consistent with the Court's remand order and the need to have a complete record before deciding any remaining issues in this case, the Board hereby remands this matter to Chief Administrative Law Judge James Wolpman for the taking of any

further evidence concerning the discriminatees' authorization to work during the times in question. It is further ordered that, should such evidence be forthcoming, the Administrative Law Judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of fact, and conclusions of law. The provisions of Title 8, California Code of Regulations, section 20282 et seq. shall apply.

DATED: April 1, 1992

BRUCE J. JANIGIAN, Chairman²

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

²The 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.

CASE SUMMARY

PHILLIP D. BERTELSEN
dba COVE RANCH MANAGEMENT
(Faustino Carrillo and UFW)

18 ALRB No. 1
Case Nos. 84-CE-23-F, et al.
(16 ALRB No. 11)
(12 ALRB No. 27)

Background

In 16 ALRB No. 11, the Board ordered the respondent, Phillip D. Bertelsen (Bertelsen), to pay designated amounts to 14 discriminatees. Bertelsen's defense in that compliance proceeding was that it was prohibited by the Migrant and Seasonal Workers Protection Act (MSPA) from reinstating or paying backpay to the discriminatees. The Board held that Bertelsen failed to establish that defense because it was not conclusively proven that the discriminatees were not authorized to work in the United States during the time in question. The Board therefore found it unnecessary to address several other issues pertinent to Bertelsen's defense, including the applicability of MSPA.

The 5th District Court of Appeal agreed that Bertelsen's proof was not conclusive, but held that the evidence was sufficient to create a presumption that the discriminatees were not authorized to work, such that the burden shifted to the discriminatees to show that were so authorized. The Court thus reversed the Board's order and remanded the matter to the Board to allow the discriminatees the opportunity to offer any proof they might have.

Decision

Consistent with the Court's remand order and the need to have a complete record before deciding any remaining issues in the case, the Board remanded the matter to the Chief ALJ for the taking of any further evidence concerning the discriminatees' authorization to work during the times in question.

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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.