

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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)	
CERTIFIED EGG FARMS AND OLSON)	
FARMS, INC.,)	Case Nos. 86-CE-86-SAL
)	88-CE-6-SAL
Respondent,)	
)	
and)	20 ALRB No. 1
)	(19 ALRB No. 9)
GENERAL TEAMSTERS, WAREHOUSEMEN,)	(16 ALRB No. 7)
AND HELPERS UNION, LOCAL 890,)	
)	February 10, 1994
Charging Party.)	
)	

SUPPLEMENTAL DECISION AND ORDER

Pursuant to a ruling of Judge Richard M. Silver of the Monterey County Superior Court,¹ the Supplemental Decision and Order of the Agricultural Labor Relations Board (ALRB or Board) in the above-captioned case, issued initially on June 16, 1993 and reported at 19 ALRB No. 9, is hereby reissued without modification but in accordance with revised service procedures mandated by the Court. Accordingly, the substantive provisions of the Board's prior decision and order establishing the measure of Respondent's liability for violations of the Agricultural Labor Relations Act (ALRA or Act)² are not disturbed.

¹ The ruling was issued by Minute Order on November 12, 1993 in case No. 97769.

²In Certified Egg Farms and Olson Farms, Inc. (1990) , 16 ALRB No. 7, the underlying liability phase of this proceeding, the Board found that Respondent had discriminatorily failed to process the grievances of five employees and to failed to negotiate in good faith with its employees' certified bargaining representative .

The Court found a conflict between the Act's provision governing the manner in which the Board perfects service-by-mail of its official documents on parties and the Board's regulation which purports to implement the provision and which was followed in this case. The Board acknowledges and corrects the procedural defect reflected in the regulation, and makes the change applicable to this and all subsequent cases.³

Labor Code section 1160.8 * provides that any party aggrieved by a final order of the Board may seek to have the order modified or set aside, in whole or in part, by a California Court of Appeal within 30 days of the issuance of the order. In accordance with Title 8, California Code of Regulations, section 20164, the Board's Decision and Order was served on Respondent by first class mail accompanied by a "certificate of mailing," a device of the United States Postal Service which serves to establish proof of mailing but not of receipt. After the time for filing a petition for writ of review of 19 ALRB No. 9 in the appropriate court of appeal had lapsed with no party having filed such a petition, the General Counsel of the Board proceeded to seek Respondent's voluntary compliance with the remedial provisions of the Board's order. Respondent resisted on the grounds that it had not been served with the order, had no independent knowledge of the Board's action in

³ To the extent that the Board's regulation is inconsistent with the ruling of the Court, it is hereby overruled.

⁴ All section references herein are to the California Labor Code, section 1140 et seq., unless otherwise indicated.

the case, and therefore, as an aggrieved party within the meaning of section 1160.8, had been deprived of a statutory right to timely file a judicial challenge. Since it is undisputed that Respondent received a copy of the Board's decision and order on September 13, 1993 by fax and on September 20, 1993 by certified mail, General Counsel asserted that the running of the 30-day period for seeking review effectively commenced at least upon actual notice and that Respondent's failure to seek review during the 30 day period immediately following should be construed as a waiver of the right to review. On that basis, and in accordance with section 1160.8, General Counsel asked the Monterey County Superior Court to enforce the Board's order.

Following briefing and oral argument by Respondent and General Counsel, the Court found that the Board had failed to issue the decision in conformity with the governing statutory provision, section 1151.4(a), which provides, in pertinent part, that such documents "may be served either personally or by registered mail or by telegraph." The initial mailing to Respondent was not by registered mail and there is no express allowance in the statute for mailing by "certification."

In accordance with the Court's ruling, Certified Bag Farms and Olson Farms. Inc. (1993) 19 ALRB No. 9, is reissued this date and, pursuant to section 1151.4 (a), will be served on Respondent, Charging Party and the General Counsel by registered

mail.⁵ Accordingly, Respondent is entitled to a new 30 day period in which to seek judicial intervention within the meaning of section 1160 .8 .

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Certified Egg Farms and Olson Farms, Inc., its officers, agents, successors and assigns, pay to the discriminatees named below the amount set out opposite their names, and pay to the employees in the bargaining unit \$42,312.25, the individual amount corresponding to each employee's hours of work during the makewhole period, plus interest until the day of payment, which interest shall be calculated in accordance with Board precedent as set forth in E.W. Merritt Farms (1988) 14 ALRB No. 5.

Nieves Alvarez	\$53,675.82
Berta Calderon	21,934.95
Rosa Espinoza	28,531.64
Jaime Gamez	17,102.05

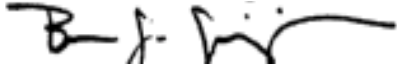
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⁵ By reissuing its decision in 19 ALRB No. 9, the Board does not waive or otherwise abandon its contention that actual notice and receipt of a Board order are sufficient to trigger the running of the 30-day period for filing a petition for review provided by Labor Code section 1160.8.

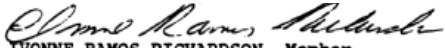
Francisco Herrera

27,550.85

DATED: February 10, 1994



BRUCE J. CTANEGIAN, Chairman


IVONNE RAMOS RICHARDSON, MEMBER

IVONNE RAMOS RICHARDSON, MEMBER



LINDA A. FRICK, MEMBER

CASE SUMMARY

**CERTIFIED EGG FARMS AND OLSON FARMS,
INC. (General Teamsters Warehousemen,
and Helpers Union Local 890)**

**20 ALRB No. 1
Case No. 86-CE-86-SAL
(19 ALRB No. 9)**

Section 1160.8 of the Agricultural Labor Relations Act (ALRA or Act) provides that any party aggrieved by a final decision and order of the Agricultural Labor Relations Board (ALRB or Board) may seek judicial review in the appropriate California court of appeal within 30 days of the Board's action. Following a full evidentiary hearing into unfair labor practice charges filed by the Union which represents the employees of Certified Egg Farms and Olson Farms, Inc. (Respondent), the Agricultural Labor Relations Board (ALRB or Board) found that Respondent had dis-criminatorily failed to process grievances filed by five employees and also failed to bargain in good faith with regard to all employees. In the subsequent compliance hearing the Board served its final decision and order, as reported at 19 ALRB No. 9, by "certificate of mailing," a process of the U.S. Postal Service which is authorized by the Board's regulations. A "certificate of mailing" is proof of mailing but not of receipt.

After the time for seeking judicial review of the Board's action had expired, with no party having appealed, General Counsel petitioned the Monterey County Superior Court to enforce the Board's order requiring Respondent to compensate the discri-minatees for monetary losses they suffered as a result of Respondent's violations of the Act. Respondent resisted compliance on the grounds that it had not received a copy of the decision and, therefore, had been denied an opportunity to timely assert a statutory right of appeal.

Although there was no dispute that the Board had indeed mailed the decision to Respondent's counsel, the Court found that the mailing was defective because it failed to comport with a strict reading of the Act's provision governing service of Board papers. ALRA section 1151.4(a) requires that service be by telegraph or personal delivery or, if by mail, by registered mail. The matter was remanded to the Board with directions to reissue the decision in accordance with the statute, rather than the regulation purporting to implement the pertinent statutory provision, and to thereby grant Respondent the opportunity to seek review in the court of appeal within 30 days of the new issuance date.

In so doing, by means of the decision herein, the Board also ruled invalid the relevant regulation insofar as it permits service by "certificate of mailing."

* * *

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