

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: ) Case Nos. 78-CE-33-E  
 ) 78-CE-33-1-E  
 JOHN V. BORCHARD aka ) 78-CE-48-E  
 JOHN V. BORCHARD FARMS )  
 and ALL AMERICAN RANCHES ) 8 ALRB No. 52  
 aka ALL AMERICAN FARMS, )  
 )  
 Respondents, )  
 )  
 and )  
 )  
 UNITED FARM WORKERS )  
 OF AMERICA, AFL-CIO, )  
 )  
 Charging Party. )

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In the Matter of: ) Case No. 82-CE-172-EC  
 )  
 BUXTON RANCHES )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 CALIFORNIA RURAL LEGAL ASSISTANCE,) )  
 )  
 Charging Party. )

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STEVE BUXTON, THE BUXTON RANCHES, ) Case No. 83-CE-22-EC  
 )  
 Respondent, )  
 ) **DECISION AND ORDER**  
 and )  
 ) **27 ALRB No. 1**  
 VIDAL LOPEZ SOTO, )  
 ) **(January 23, 2001)**  
 Charging Party. )

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KAWANO, INC.,	)	Case No.	76-CE-51-R
	)		
Respondent,	)		9 ALRB No. 62
	)		(4 ALRB No. 104)
and	)		
	)		
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO,	)		
	)		
Charging Party.	)		

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KAWANO, INC.,	)	Case Nos.	77-CE-28-X
	)		77-CE-28-A-X
Respondent,	)		77-CE-42-X
	)		
and	)		10 ALRB No. 17
	)		(7 ALRB No. 16)
	)		
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO,	)		
	)		
Charging Party.	)		

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In the Matter of:	)	Case Nos.	80-CE-263-EC
	)		80-CE-264-EC
LU-ETTE FARMS, INC., and	)		(8 ALRB No. 55)
D AND D FARMS, INC., and	)		
DERRICK RANCHES, INC., as a	)		83-CE-14-EC
Single Integrated Enterprise	)		83-CE-50-EC
and as the Successors to or	)		83-CE-53-EC
Alter Egos of LU-ETTE FARMS,	)		83-CE-82-EC
Inc., and WILLIAM H. DANIELL,	)		(11 ALRB No. 4)
an Individual, and DERRICK DANIELL,	)		
an Individual,	)		83-CE-54-EC
	)		(11 ALRB No. 20)
Respondents,	)		
	)		86-CE-45-EC
and	)		
	)		86-CE-46-EC
UNITED FARM WORKERS	)		86-CE-64-EC
OF AMERICA, AFL-CIO,	)		
	)		
Charging Party.	)		

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In the Matter of:	)	Case Nos. 79-CE-7-EC
	)	79-CE-28-EC
LU-ETTE FARMS, INC., and	)	79-CE-29-EC
D AND D FARMS, INC., and	)	83-CE-54-EC
DERRICK RANCHES, INC., as a	)	
Single Integrated Enterprise	)	
and as the Successors to or	)	
Alter Egos of LU-ETTE FARMS,	)	
Inc., and WILLIAM H. DANIELL,	)	
an Individual, and DERRICK DANIELL,	)	
an Individual,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
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In the Matter of:	)	Case Nos. 79-CE-48-EC
	)	79-CE-218-EC
LU-ETTE FARMS, INC., and	)	80-CE-22-EC
D AND D FARMS, INC., and	)	
DERRICK RANCHES, INC., as a	)	
Single Integrated Enterprise	)	
and as the Successors to or	)	
Alter Egos of LU-ETTE FARMS,	)	
Inc., and WILLIAM H. DANIELL,	)	
an Individual, and DERRICK DANIELL,	)	
an Individual,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
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In the Matter of:	)	Case No.	79-CE-4-EC
	)		
LU-ETTE FARMS, INC., and	)		
D AND D FARMS, INC., and	)		
DERRICK RANCHES, INC., as a	)		
Single Integrated Enterprise	)		
and as the Successors to or	)		
Alter Egos of LU-ETTE FARMS,	)		
Inc., and WILLIAM H. DANIELL,	)		
an Individual, and DERRICK DANIELL,	)		
an Individual,	)		
	)		
Respondents,	)		
	)		
and	)		
	)		
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO,	)		
	)		
Charging Party.	)		

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LU-ETTE FARMS, INC.,	)	Case Nos.	82-CE-29-EC
	)		82-CE-38-EC
Respondent,	)		82-CE-44-EC
	)		
and	)		10 ALRB No. 20
	)		
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO,	)		
	)		
Charging Party.	)		

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LU-ETTE FARMS, INC.,	)	Case Nos.	79-CE-125-EC
	)		79-CE-199-EC
Respondent,	)		80-CE-38-EC
	)		
and	)		12 ALRB No. 3
	)		(8 ALRB No. 91)
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO,	)		
	)		
Charging Party.	)		

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In the Matter of:	)	Case Nos.	80-CE-61-SD
	)		80-CE-65-SD
RULINE NURSERY,	)		80-CE-70-SD
	)		80-CE-87-SD
Respondent,	)		80-CE-88-SD
	)		80-CE-93-SD
and	)		80-CE-96-SD
	)		81-CE-2-SD
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO, PEDRO RIVAS,	)	8 ALRB No.	105
GUADALUPE RUIZ, and	)		
AGUSTIN MADRID,	)		
	)		
Charging Parties.	)		
_____	)		
In the Matter of:	)	Case Nos.	94-CE-12-EC
	)		94-CE-114-EC
SUN GOLD, INC.,	)		
	)		
Respondents,	)		
	)		
and	)		
	)		
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO,	)		
	)		
Charging Party.	)		
_____	)		

DECISION AND ORDER

On October 16, 2000, the El Centro Regional Director filed motions to close the above-entitled cases.<sup>1</sup> In each of these cases, full compliance with the underlying Board order(s) has not been achieved and, in the judgment of the Regional Director, there is no reasonable likelihood of achieving further compliance.<sup>2</sup>

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<sup>1</sup> The above-entitled cases have been consolidated for the purposes of this decision only.

<sup>2</sup> Normally, such cases involve uncollected back pay or bargaining makewhole awards. However, nonmonetary remedies, such as reinstatement or notices to employees, might also be uneffectuated where the respondent has gone out of business or otherwise is no longer an agricultural employer.

Presently, the Board has no established procedures or standards for closing cases without full compliance. Consequently, regional directors have been without guidance as to the circumstances in which the Board will consider closing such cases or as to the information required to support a motion to close. The Board therefore takes this opportunity to establish procedures and standards for motions to close cases without full compliance.<sup>3</sup> The Regional Director may re-file the motions in accordance with these newly adopted procedures and standards.

Where, in the judgment of the regional director, there is no reasonable likelihood that further efforts will result in full or additional compliance with the Board's order in a fully adjudicated case, the regional director may file a motion to close the case. Motions to close such cases shall be filed with the Board and served on the parties in accordance with Title 8, California Code of Regulations, sections 20160 and 20166. Parties shall have thirty (30) days from the date of service to file a response to the motion to close. A reply, if any, shall be filed within ten (10) days after service of the response. No further pleadings shall be filed in support of or in opposition to the motion unless requested by the Executive Secretary. A decision by the Board to close a case without full compliance is not intended as a waiver of the right to reopen such a case in the event that circumstances change so that further compliance efforts may be fruitful.

The motion shall contain the case name and number(s), the number(s) of the underlying Board decision(s), a brief summary of the case and the remedies ordered by the Board, the date the case was released for compliance, and a detailed description of what has been done and what remains to be done to achieve full compliance with the Board's order in the case,

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<sup>3</sup> The choice of whether to proceed by formal rulemaking or by ad hoc adjudication "lies primarily in the informed discretion of the administrative agency." (*ALRB v. Superior Court* (1976) 16 Cal.3d 392, 413, citing *Securities Commission v. Chenery Corp.* (1947) 332 U.S. 194, 203.)

including monetary amounts still owed. In addition, the motion shall contain a chronological summary of key steps taken to achieve compliance and a detailed description of the steps taken to achieve full compliance, factors preventing full compliance, and the reasons why there is no reasonable likelihood that further efforts will be successful. For example, the description should include, but is not limited to, efforts to settle and any remaining potential for settlement, court enforcement efforts, including liens and judgments, asset searches, bankruptcy proceedings, debtor examinations, current status of the respondent(s)' assets and business activities, and the possibility of derivative liability or individual liability of corporate officers. The regional director shall submit declarations and such other documents that evidence the efforts to achieve compliance and shall certify to the Board in such supporting declaration that the facts stated in the motion and its supporting papers are true and correct or, if based on information and belief, are believed to be true and correct.

#### ORDER

The motions to close filed on October 16, 2000 in the above-entitled cases are hereby DENIED, without prejudice to re-filing in accordance with the procedures and standards established in this Decision.<sup>4</sup>

DATED: January 23, 2001

GENEVIEVE A. SHIROMA, Chair

GLORIA A. BARRIOS, Member

HERBERT O. MASON, Member

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<sup>4</sup> Member Richardson did not participate in this decision.

## CASE SUMMARY

**JOHN V. BORCHARD, ET AL.,** one of 13 consolidated cases  
(UFW)

Case No. 78-CE-33-E, et al.  
27 ALRB No. 1

### Background

On October 16, 2000, the El Centro Regional Director filed motions to close thirteen cases, which were consolidated for the purposes of this decision. In each of these cases, full compliance with the underlying Board order(s) has not been achieved and, in the judgment of the Regional Director, there is no reasonable likelihood of achieving further compliance. These cases involve uncollected back pay or bargaining makewhole awards. In some instances, nonmonetary remedies, such as reinstatement or notices to employees, might also be uneffectuated where the respondent has gone out of business or otherwise is no longer an agricultural employer.

### Board Decision

The Board first pointed out that presently there are no established procedures or standards for closing cases without full compliance and that, therefore, regional directors have been without guidance as to the circumstances in which the Board will consider closing such cases or as to the information required to support a motion to close. To resolve this problem, the Board utilized this decision to establish procedures and standards for motions to close cases without full compliance.

Where, in the judgment of the regional director, there is no reasonable likelihood that further efforts will result in full or additional compliance with the Board's order in a fully adjudicated case, the regional director may file a motion to close the case. Motions to close such cases shall be filed with the Board and served on the parties in accordance with Title 8, California Code of Regulations, sections 20160 and 20166. Parties shall have thirty (30) days from the date of service to file a response to the motion to close. A reply, if any, shall be filed within ten (10) days after service of the response. The motion shall contain the case name and number(s), the number(s) of the underlying Board decision(s), a brief summary of the case and the remedies ordered by the Board, the date the case was released for compliance, and a detailed description of what has been done and what remains to be done to achieve full compliance with the Board's order in the case, including monetary amounts still owing. In addition, the motion shall contain a chronological summary of key steps taken to achieve compliance and a detailed description of the steps taken to achieve full compliance, factors preventing full compliance, and the reasons why there is no reasonable likelihood that further efforts will be successful. The regional director shall submit declarations and such other documents that evidence the efforts to achieve compliance. The Board denied the motions to close as filed on October 16, 2000, without prejudice to re-filing in accordance with these newly-established procedures and standards.

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