

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COASTAL BERRY COMPANY, LLC,	)	Case Nos. 99-CE-1-SAL
	)	99-CE-2-SAL
Respondent,	)	99-CE-3-SAL
	)	99-CE-4-SAL
and	)	99-CE-5-SAL
	)	99-CE-6-SAL
SERGIO LEAL, ERNESTO ROBLES,	)	99-CE-7-SAL
YOLANDA LOBATO, PAULINO VEGA,	)	99-CE-9-SAL
HILARION SILVA, JOSE GUADALUPE	)	99-CE-10-SAL
FERNANDEZ, ALVARO GUZMAN,	)	99-CE-11-SAL
MARIANO ANDRADE, JORGE PEREZ,	)	99-CE-12-SAL
HILDA ZUNIGA, and JUAN PEREZ,	)	(26 ALRB No. 3)
)	
Charging Parties,	)	28 ALRB No. 7
)	
and	)	(July 22, 2002)
)	
COASTAL BERRY OF CALIFORNIA)	
FARM WORKERS COMMITTEE,)	
)	
Intervenor.)	
_____)		

SUPPLEMENTAL DECISION AND ORDER

This case is on remand pursuant to a decision of the Sixth District Court of Appeal, *Coastal Berry Company v. Agricultural Labor Relations Board* (2001) 94 Cal.App.4th 1. In that decision, the Court set aside the Agricultural Labor Relations Board's (ALRB or Board) order in *Coastal Berry Company, LLC* (2000) 26 ALRB No. 3

and remanded the case to the Board for reconsideration in accordance with the standards and principles outlined by the Court.

The underlying facts involve a work stoppage on July 1, 1998 at Coastal Berry Company, LLC (Coastal) by a group of Coastal employees opposed to the organizing efforts of the United Farm Workers of America, AFL-CIO (UFW). After a peaceful demonstration at Coastal's Beach Street compound, the group proceeded to Silliman Ranch and entered the fields in an attempt to persuade those not observing the strike to stop working. The conduct of the group included, inter alia, physical confrontations, destruction of packed berries, and the blocking and assault of a vehicle containing Coastal's president, David Smith. On July 2, 1998, Coastal and the anti-UFW group reached an agreement that included a pledge not to discipline strikers for their July 1¹ conduct. Nevertheless, some months later Coastal discharged a number of those whom it believed took part in the July 1 incident, including the charging parties in this case.

The principal theory utilized by the General Counsel at hearing was that by virtue of the July 2 agreement Coastal had condoned the misconduct and therefore could not lawfully discharge strikers based on that conduct. In its original decision, a majority of the Board concluded that the July 2 agreement was invalid as against public policy, rendering the condonation doctrine inapplicable. The Board then proceeded to determine whether any of the charging parties were lawfully discharged for engaging in strike misconduct that removed their strike activity from the protection of the Agricultural

¹ All dates refer to calendar year 1998 unless otherwise specified.

Labor Relations Act (ALRA or Act). The Board concluded that the following charging parties were unlawfully discharged and ordered their reinstatement: Paulino Vega, Jose Guadalupe Fernandez, Alvaro Guzman, Hilarion Silva, Sergio Leal, Juan Perez, and Mariano Andrade. The Board also ordered the reinstatement of Ernesto Robles, who was the subject of a settlement agreement arrived at during the hearing but never memorialized. The Board upheld the discharges of Yolanda Lobato, Hilda Zuniga, and Jorge Perez. The reinstatement of the first seven individuals listed was the subject of Coastal's petition for review in the Court of Appeal, and of the Court's decision; therefore, it is the status of these seven individuals that must be addressed on remand.² Consequently, the Board's original analysis regarding condonation and its earlier findings regarding Robles, Lobato, Zuniga, and Jorge Perez are no longer at issue.

Subsequent to the Court's decision, the Board provided the parties the opportunity to file briefs on the issue of the application to the charging parties of the standards set forth in *Clear Pine Mouldings, Inc.* (1984) 268 NLRB 1044. On February 15, 2002, Coastal filed its brief on remand. No other party filed a brief. In addition, Coastal filed a motion for issue preclusion or to reopen the record. This motion was based on the General Counsel's alleged failure to provide witness declarations containing exculpatory evidence from two election cases involving Coastal (Case Nos. 98-RC-1-SAL and 99-RC-4-SAL). In response to this motion, the Board ordered an in camera

² Coastal also appealed the denial of its motion for sanctions against the General Counsel for failure to adhere to discovery obligations, but the Court found it unnecessary to address this issue in light of its remand order. In its original decision, the Board did not address this issue expressly. It is addressed in this decision below.

inspection of the declarations in the two cases. On May 21, 2002, Administrative Law Judge Douglas Gallop (ALJ) issued his supplemental decision after conducting an in camera inspection of the declarations. He concluded that, to the extent there were declarations that should have been produced by the General Counsel, Coastal suffered no prejudice to the presentation of its case. On June 5, 2002, Coastal filed exceptions to the ALJ's supplemental decision, taking issue with the ALJ's conclusions with regard to sixteen of the declarations.

The Board has reviewed the record in light of the instructions from the Court and, as explained below, has concluded that of the seven individuals at issue, three were unlawfully discharged by Coastal: Paulino Vega, Hilarion Silva, and Juan Perez. The Board has concluded that the other four individuals at issue, Jose Guadalupe Fernandez, Alvaro Guzman, Sergio Leal, and Mariano Andrade, were lawfully discharged for engaging in serious strike misconduct. In light of these conclusions, Coastal's exceptions to the ALJ's supplemental decision are moot, save for those that relate to Vega, Silva, and Juan Perez. For the reasons stated below, the Board finds no merit in these remaining exceptions.

DISCUSSION

The principal error cited by the Court was the Board's failure to apply the proper standard for evaluating serious strike misconduct, that enunciated in *Clear Pine Mouldings, Inc.* (1984) 268 NLRB 1044. Under the *Clear Pine Mouldings, Inc.* standard, a striker may be found to have engaged in serious strike misconduct, thus causing the striker to lose the protection of the Act if his or her conduct in the course of the strike

“may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act.” Under the standard mistakenly applied by the Board in its original decision, abusive threats were not considered serious strike misconduct unless accompanied by “violence or physical acts or gestures that would provide added emphasis or meaning to the words.” (*Coronet Casuals* (1973) 207 NLRB 304, 305.) Other errors identified by the Court will be discussed *infra* in conjunction with the particular charging parties to which they apply.

Before analyzing the discharges of the seven charging parties under the principles outlined by the Court, there is a preliminary matter to address. In its original decision, after finding that the rushing of the fields at Silliman Ranch in order to prevent nonstriking employees from working was unprotected activity, the Board stated that Coastal “would have been privileged to discharge any Charging Parties but for the agreement to forgive such conduct”.³ The Court criticized the Board’s subsequent individual analysis of strike misconduct, stating “thus, if protestors who rushed the fields engaged in unprotected conduct by interfering with the workers there, it was unnecessary to proceed to determine whether their individual actions constituted ‘serious strike misconduct’.” (94 Cal. App. 4th at p. 9.) We do not believe that this passage of the Court’s opinion requires the Board to reverse its prior decision as to all seven of the charging parties at issue and to forego any individual analysis of strike misconduct. Rather, we believe it is a reflection that in its original decision the Board did not make itself clear that its statement was not intended to be a finding that all of the charging

³ The Board majority went on to find the agreement unenforceable.

parties took part in the unprotected activity. It is one thing to say that much of the conduct of the group in general was unprotected, and another to say that specific individuals engaged in the unprotected conduct. The former is all that was intended by the Board's earlier statement. As the Court itself pointed out, "an employer's determination not to reinstate a striker must be based on evidence that the striker personally engaged in strike misconduct." (94 Cal.App.4th at p. 10, fn. 4, citing *Meditate of New Mexico, Inc. v. NLRB* (10th Cir. 1995) 72 F.3d 780, 790.) With this clarification, the Board may proceed to examine the individual conduct of each of seven charging parties at issue on remand.

Paulino Vega and Hilarion Silva

The Court affirmed the essential findings underlying the Board's original conclusion that Vega and Silva did not engage in serious strike misconduct. First, the Court affirmed the factual finding that the demonstration at the Beach Street facility (which preceded the invasion of Silliman Ranch) was a peaceful work stoppage that enjoyed the protection of the Act. With regard to Vega and Silva specifically, the Court said the following:

As to some of the employees, the result will undoubtedly be the same. Silva and Vega, for example, did not engage in any conduct that could be construed as tending to coerce or intimidate, particularly in light of the finding—which is supported by substantial evidence—that they did not intend to block the closing of the gate.
(94 Cal.App. 4th at p. 11.)

There is nothing else in the Court's opinion that casts doubt on the validity of the Board's conclusions as to these two individuals. Nor is there evidence in the record of any other misconduct by these two individuals.

Coastal asserts in its exceptions to the ALJ's supplemental decision that Declaration No. 7 provides evidence that the blocking of the gate was intentional. This assertion is based on the ALJ's description of the declaration including the comment that Fernandez, one of the leaders of the group, was seen in one of the vehicles blocking the gate. However, we have reviewed the declaration and it merely indicates that Fernandez was riding in one of these vehicles when the group left to go to Silliman Ranch. It does not indicate that Fernandez directed that the vehicle be parked so as to block the gate or even that Fernandez was in the vehicle when it was parked. Thus, the declaration provides no basis for reopening the hearing or reconsidering the original conclusion that Vega and Silva did not engage in serious strike misconduct that would warrant their discharge, and Coastal was not prejudiced by the General Counsel's failure to produce it. Consequently, the Board affirms its original conclusion that the discharges of Vega and Silva violated the Act.

Juan Perez

Juan Perez was discharged for threatening and assaulting Efren Vargas. In his original decision, the ALJ found that, while Perez' brother Jorge Perez did assault Vargas, Juan Perez acted primarily as a peacemaker in separating his brother and Vargas. The Board adopted this finding in ordering Juan Perez' reinstatement. Nothing in the Court's decision would alter the analysis of this incident, and Coastal concedes this issue

in its brief on remand.⁴ However, Coastal argues that the record contains evidence that Juan Perez uttered coercive insults at Vargas, as well as at Sandra Rocha and Ramon Gallegos, as they were attempting to work. With regard to the incident with Rocha, the ALJ found that, at most, Juan Perez called those working “drunken kiss-asses.” With regard to the incident with Vargas, the ALJ credited Juan Perez’ testimony that he acted as peacemaker and simply asked Vargas to stop working, backing away when Vargas began swearing at him. The ALJ similarly credited Juan Perez’ denial that he engaged in any violence or threats in the incident involving Gallegos. We find nothing in the record that provides any basis for disturbing the ALJ’s credibility determinations.⁵ Based on these determinations, and assuming that Coastal established a good faith belief that Juan Perez engaged in serious strike misconduct, we find that the General Counsel successfully established that Juan Perez did not engage in such conduct.

Moreover, while it is true that serious strike misconduct may consist solely of verbal threats unaccompanied by any physical element, yelling insults at non-striking employees and imploring them to stop working does not constitute such misconduct.

⁴ One of Coastal’s exceptions to the ALJ’s supplemental decision relates to a declaration describing the assault on Vargas. We find that the ALJ correctly concluded that Coastal suffered no prejudice from the General Counsel’s failure to produce the declaration. As the ALJ pointed out, prior to the hearing Coastal had received a redacted version of this declaration, which by its contents makes the declarant readily identifiable. The ALJ also noted that the incidents described were the subject of both a videotape and extensive testimony of other witnesses and his factual findings would not have differed had the declarant testified consistent with the declaration.

⁵ The Board will not disturb an ALJ’s demeanor-based credibility determinations unless the clear preponderance of evidence demonstrates that they are in error. (*Standard Dry Wall Products* (1950) 91 NLRB 544; *Nichols Farms* (1994) 20 ALRB No. 17.)

(See, e.g., *Caliope Designs* (1989) 297 NLRB 510.) Indeed, such conduct, even if boorish, is the rule, not the exception, in strike situations. Here, we find that calling those continuing to work “drunken kiss-asses” was neither a threat nor otherwise coercive. Therefore, the Board shall affirm its original conclusions as to Juan Perez and again order his reinstatement with back pay.

Mariano Andrade

Andrade was discharged for attacking Efren Vargas, for destroying crates of berries, and for throwing empty cartons at David Smith’s truck. As to the attack on Vargas, the ALJ made a finding identical to that regarding Juan Perez, i.e., that the evidence shows that he was acting primarily as a peacemaker, not a combatant. Nor did he find any evidence that Andrade destroyed berries. Further, he credited Andrade’s denial that he engaged in such conduct. While Andrade admitted throwing boxes at Smith’s truck, the ALJ opined that no one else was discharged solely for this conduct and others not discharged who engaged in this conduct easily could have been identified. Therefore, he concluded that it was doubtful that Andrade would have been discharged solely for this conduct. The Board’s findings in the underlying decision paralleled those of the ALJ.

In this instance, the Court’s decision is instructive. The Court disapproved the Board’s basis for disregarding Andrade’s admitted throwing of the boxes at Smith’s truck, i.e., a failure to discharge others for this conduct. Further, the Court cited several cases where the throwing of various objects at vehicles, nonstriking employees, or company officials was held to constitute serious strike misconduct. (See, e.g., *General*

Chemical Corp. PBA, Inc. (1984) 270 NLRB 998; *GSM, Inc.* (1987) 284 NLRB 174-175.) Indeed, this Board held in *Sunrise Mushrooms, Inc.* (1996) 22 ALRB No. 22 that throwing rocks at company and nonstriking employees' vehicles constituted serious strike misconduct. The Board adopted the following passage from the decision of the ALJ in that case:

The throwing of objects at vehicles, in the presence of striking or non-striking employees, constitutes coercive strike misconduct. It is immaterial whether the objects cause only slight damage, or no damage at all, since the conduct itself is highly coercive. (Citations omitted.)

In light of the above authority, coupled with Andrade's admission that he threw boxes at Smith's truck, we find that he engaged in serious strike misconduct warranting discharge. Therefore, the Board shall reverse its original decision and find that Coastal did not violate the Act in discharging Andrade.

Jose Guadalupe Fernandez

Fernandez was discharged for his conduct surrounding the blocking of Smith's truck, including resisting arrest. The ALJ concluded that Fernandez did not commit serious strike misconduct, characterizing his resistance to arrest as minor and his blocking of Smith's truck momentary. The ALJ also discounted Fernandez' throwing of objects at the truck because others who were readily identifiable in the videotapes of the incident were not disciplined for this conduct. The ALJ also credited Isabel Rendon's testimony that Fernandez directed Jose Flores to take boxes away from her so that she could not work, but the ALJ did not discuss this incident in his analysis. In its original decision, the Board affirmed the ALJ's conclusions.

The Court found the Board's original conclusions as to Fernandez to be flawed in three respects. One, the Court found that the Board failed to consider the seriousness of Fernandez' behavior as reflected in the credited testimony of Deputy Sheriff Robin Mitchell. Two, the Board improperly considered the fact that others were not disciplined for throwing objects at the truck. Three, the Board failed to consider that promoting or encouraging misconduct by others may constitute serious strike misconduct. (*GSM, Inc., supra.*) In light of these holdings by the Court, it is clear that the Board's original conclusion that Fernandez' discharge was unlawful cannot stand.

As discussed above, in accordance with the Court's decision and applicable precedent, the throwing of objects at Smith's truck constitutes serious strike misconduct. Further, Deputy Sheriff Mitchell described the situation as very dangerous and a near riot, in which Fernandez appeared to be a leader of the group and was a chief instigator of the group's actions. Moreover, she described the group not only as blocking the truck's exit and throwing empty cartons at it, but also rocking it side to side. She called for back up in part because she was afraid that a "lynch mob" was forming. (Transcript, Vol. IV, p. 556.) While the ALJ may have been correct in concluding that Fernandez' resistance to arrest itself did not necessarily constitute serious misconduct, the acts described above that preceded his arrest clearly provide lawful grounds for his discharge. Therefore, we

find that Fernandez was lawfully discharged for serious strike misconduct.⁶ In light of this result, any issues regarding the failure of the General Counsel to produce declarations reflecting additional evidence of misconduct by Fernandez are moot.

Sergio Leal

Leal, who was widely identified as a leader of the group that opposed the UFW and sponsored the July 1 work stoppage, was discharged for repeatedly threatening to destroy Coastal and for participating in efforts to forcibly prevent coworkers from working on July 1. As the ALJ pointed out, the investigative report compiled by Coastal's attorney made no mention of the latter allegation. The record revealed no evidence of Leal coercing non-striking employees or otherwise interfering with their work in any other manner, save for his admission that he threw crates of packed berries into the air.

In evaluating Leal's threats to destroy or "break" the company if necessary to keep out the union (UFW), the Board in its original decision mistakenly relied on cases overruled by *Clear Pine Mouldings*, citing the lack of any "physical acts or gestures that would provide added emphasis or meaning to [the] words." The ALJ, on the other hand, relied in part on post-*Clear Pine Mouldings* cases to support his conclusion that Leal's statements did not lose the protection of the Act. However, central to the ALJ's

⁶ Since Fernandez was not discharged for instructing Flores to take boxes away from Rendon so that she could not continue working, this evidence would be relevant only to issues of the proper remedy in the event Fernandez' discharge were found unlawful. Therefore, it need not be addressed. Similarly, it is unnecessary to address whether Fernandez engaged in additional strike misconduct when he stated to supervisor Stuart Yamamoto that there would be "serious consequences" if the working employees were not removed from the fields.

conclusion was his observation that Leal's statements were ambiguous in that they could have referred to violence or other unlawful means, or to lawful strike activity. While this literally is true, Leal's comments were made on June 30 and on July 1, just before and after the litany of unprotected and violent conduct that took place on July 1 at Silliman Ranch. The July 1 comments took place on camera at Silliman Ranch and, in light of Leal's unapologetic demeanor and suggestion that such confrontations were inevitable, would have left listeners with the unmistakable impression that similar activity would continue if necessary to keep the UFW from organizing the company. In addition, the other identified leader of the group, Jose Guadalupe Fernandez, told Deputy Sheriff Mitchell, after she urged that the group remain peaceful, that they had tried peaceful means and they were not working, so they had no choice (but to use other means).

In this context, we find it difficult to conclude that Leal's remarks referred to protected strike activity. Rather, we find it most reasonable to construe Leal's statements as threatening and encouraging, at least in part, further violent and other unlawful means of forcing Coastal to meet his group's demands.

Where, in light of the surrounding circumstances, a statement reasonably would be construed as threatening violence and other unlawful strike activity, it has been held to constitute serious strike misconduct under the *Clear Pine Mouldings* standard. (*Chesapeake Plywood, Inc.* (1989) 294 NLRB 201; *Georgia Kraft Co.* (1985) 275 NLRB 636; cf. *Briar Crest Nursing Home* (2001) 333 NLRB No. 112.) In addition, as the Court pointed out, actions that promote or encourage misconduct by other strikers may also justify discharge. (*GSM, Inc., supra*, 284 NLRB at p. 175.) Therefore, we find that

Coastal successfully established a good faith belief that Leal engaged in serious strike misconduct and that the General Counsel failed to prove that he did not engage in such conduct. Consequently, his discharge did not violate the Act.⁷

Alvaro Guzman

Guzman was discharged for assaulting employees who attempted to continue working and for destroying crates of berries. In the investigative report prepared by Coastal's attorney that described misconduct by various strikers and recommended discipline, it was stated that Guzman was seen on a videotape of the July 1 events threatening people and throwing packed boxes of berries. The ALJ concluded that the evidence failed to establish that Guzman engaged in either activity and, even if he did destroy berries, he would not have been discharged solely for that conduct. The Board in its original decision agreed, stating that even if Coastal had a good faith belief that Guzman destroyed berries, there was a failure of proof that he actually engaged in such conduct. The Court criticized the Board for this conclusion because it appears to improperly shift the burden of proof of the misconduct from the General Counsel to Coastal. In its brief on remand, Coastal argues that it established a good faith belief that Guzman destroyed berries, attempted to wrest a crate of berries from Ramon Gallegos,

⁷ Even if it were found that Leal's statements did not lose protection of the Act, his admission that he destroyed crates of berries would be grounds for denying him reinstatement and back pay from the date Coastal gained knowledge of the misconduct. (See e.g., *Axelson, Inc.* (1987) 285 NLRB 862 (to justify a discharge an employer may not rely on misconduct that was not the basis for the discharge, but such conduct may be a basis for denying reinstatement and limiting back pay).)

and threatened Isabel Rendon, and that the General Counsel failed to prove that this misconduct did not occur.

With regard to the threats and/or assault on Rendon, the ALJ found that Rendon's testimony failed to indicate that Guzman assaulted her or was one of those who uttered threats that might constitute serious strike misconduct. These findings reflect the conclusion that the General Counsel carried its burden on this issue; therefore, there was no improper shifting of the burden of proof on this issue and we affirm the ALJ's conclusion.

Coastal points out that Sandra Rocha testified that Guzman was one of several individuals that approached Gallegos and tried to take away the box he was using while picking berries. The ALJ generally credited Rocha's testimony but made no finding as to this conduct by Guzman. Rocha's testimony did identify Guzman as one of a group of individuals who approached Gallegos and started to "throw his box," only to stop and back away when told to do so by others. She did not specify which of the individuals started to throw the box. Rocha also testified that the group spoke "bad words" to Gallegos. From this testimony, coupled with the assumption that some of this episode was visible on the videotape, it is fair to conclude that Coastal did establish that it had a good faith belief that Guzman engaged in an attempt to coerce Gallegos to stop working. However, we find that the evidence establishes that this was no more than a minor, aborted attempt to interfere with work and that Guzman's role was not central. Consequently, we find that this incident did not constitute serious strike misconduct by Guzman.

Coastal asserts that in the original decision the ALJ and the Board failed to acknowledge that Guzman was identified at hearing by Ernesto Robles as one of those seen on the videotape destroying packed berries. Our supplemental review of the record indicates that Coastal is correct.

The ALJ stated that while Robles did identify Guzman, the record did not reflect what he was doing at the time, nor did the ALJ recall seeing Guzman throwing berries on the videotape. It is true that the transcript merely reflects Robles agreeing with Coastal's attorney James Sullivan that a man Sullivan points out on the videotape was Guzman, i.e., Robles does not describe on the record what Guzman was doing on the videotape. However, it is clear from the context of the testimony and Sullivan's line of questioning that he was pointing out individuals on the videotape who could be seen throwing packed berries and attempting to have Robles identify the individuals for the record. While Robles failed to identify several others pointed out by Sullivan, Robles did identify Guzman. Therefore, the record does contain evidence showing that Guzman destroyed packed berries. At the least, this evidence is sufficient to establish Coastal's good faith belief that Guzman destroyed berries. As the General Counsel failed to call Guzman to refute this evidence, nor introduced any other countervailing evidence, it must be concluded that the General Counsel did not carry its burden of proof and that Guzman was lawfully discharged for serious strike misconduct.⁸

⁸ In light of this result, Coastal suffered no prejudice from the General Counsel's failure to produce a declaration in which the declarant states that Guzman removing boxes from the fields so that nonstriking employees could not work.

CONCLUSION

In accordance with the discussion above, the Board reaffirms its original conclusion that the discharges of Hilarion Silva, Paulino Vega, and Juan Perez were unlawful. However, upon reevaluating the evidence in accordance with the Court's instructions on remand, the Board finds that Sergio Leal, Alvaro Guzman, Mariano Andrade, and Jose Guadalupe Fernandez were lawfully discharged for engaging in serious strike misconduct. Therefore, the allegations in the complaint relating to these four individuals, as well as the allegations relating to those whose discharges were found lawful in the underlying decision, Yolanda Lobato, Hilda Zuniga, and Jorge Perez, are hereby DISMISSED. Further, the Board affirms the supplemental decision of the ALJ, as Coastal's exceptions are either without merit or rendered moot by the decision herein. Included in the Board's order is the reinstatement of Ernesto Robles, who, as noted above, was the subject of a settlement agreement reached at hearing and whose status is not at issue on remand.

ORDER

By authority of California Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Coastal Berry Company, LLC, its officers, agents, successors, and assigns shall:

1. Cease and desist from:
 - (a) Discharging or refusing to rehire any agricultural employee

for engaging in protected concerted activity.

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code section 1152.

2. Take the following affirmative actions which are deemed necessary to effectuate the purposes of the Agricultural Labor Relations Act:

(a) Offer to Paulino Vega Escutia, Hilarion Silva Jiminez, Juan Perez Maldonado, and Ernesto Robles immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges of employment.

(b) Make whole the above-named employees for all losses in wages, as well as other economic losses, they have suffered as a result of Respondent's unlawful conduct, such losses to be computed in accordance with Board precedent. Such amount shall include interest thereon, computed in accordance with *E.W. Merritt Farms* (1988) 14 ALRB No. 5.

(c) Preserve and, upon request, make available to the 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 back pay and interest due under the terms of this Order. Upon request of the Regional Director, payroll records shall be provided in electronic form if they are customarily maintained in that form.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date this Order becomes final or when directed by the Regional Director, to all agricultural employees employed by Respondent during the period of January 18, 1999 to January 17, 2000 .

(f) Post copies of the attached Notice, in all appropriate languages, for 60 days at conspicuous locations on its premises, the places 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. Pursuant to the authority granted under Labor Code section 1151(a), give agents of the Board access to its premises to confirm the posting of copies of the attached Notice.

(g) Provide a copy of the attached Notice in all appropriate languages to each agricultural employee hired by Respondent during the 12-month period following the date this Order becomes final.

(h) Upon request of the Regional Director, provide the Regional Director with the dates of its next peak season. Should the peak season have already begun at the time the Regional Director requests peak season dates, Respondent will inform the Regional Director of when the present peak season began and when it is anticipated to end, in addition to informing the Regional Director of the anticipated dates of the next peak season.

(i) Arrange for a representative of Respondent or Board agents to distribute and read the attached Notice in all appropriate languages to the assembled employees of Respondent on company time, at times and places to be determined by the Regional Director. Following the reading, Board agents shall be given the opportunity, outside the presence of supervisors and management, to answer any questions 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 non-hourly wage employees to compensate them for time lost at this reading and during the question-and-answer period.

(j) Notify the Regional Director in writing, within 30 days after the date this Order becomes final, of the steps Respondent has taken to comply with the terms of this Order. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing as to what further steps it has taken in compliance with the Order.

Dated: July 22, 2002

GENEVIEVE A. SHIROMA, Chair

GLORIA A. BARRIOS, Member

HERBERT O. MASON, Member

CASE SUMMARY

COASTAL BERRY COMPANY, LLC
(Sergio Leal, et al.)

Case No. 99-CE-1-SAL, et al.
28 ALRB No. 7

Background

In *Coastal Berry Company v. Agricultural Labor Relations Board* (2001) 94 Cal.App.4th 1, the Sixth District Court of Appeal set aside the Board's order in *Coastal Berry Company, LLC* (2000) 26 ALRB No. 3 and remanded the case to the Board for reconsideration in accordance with the principles outlined by the Court. The underlying facts involve a work stoppage on July 1, 1998 at Coastal Berry Company by a group of Coastal employees opposed to the organizing efforts of the United Farm Workers of America, AFL-CIO. After a peaceful demonstration at Coastal's Beach Street compound, the group proceeded to Silliman Ranch and entered the fields in an attempt to persuade those not observing the strike to stop working. The conduct of the group included physical confrontations, destruction of packed berries, and the blocking and assault of a vehicle containing Coastal's president, David Smith. In 26 ALRB No. 3, the Board concluded that the following charging parties were unlawfully discharged and ordered their reinstatement: Paulino Vega, Jose Guadalupe Fernandez, Alvaro Guzman, Hilarion Silva, Sergio Leal, Juan Perez, and Mariano Andrade. The Board also ordered the reinstatement of Ernesto Robles, who was the subject of a settlement agreement arrived at during the hearing but never memorialized. The Board upheld the discharges of Yolanda Lobato, Hilda Zuniga, and Jorge Perez. Only the reinstatement of the first seven individuals listed was at issue on remand.

Subsequent to the Court's remand, Coastal filed a motion for issue preclusion or to reopen the record due to the General Counsel's alleged failure to provide witness declarations containing exculpatory evidence from two election cases involving Coastal (Case Nos. 98-RC-1-SAL and 99-RC-4-SAL). In response to this motion, the Board ordered an in camera inspection of the declarations in the two cases. On May 21, 2002, Administrative Law Judge Douglas Gallop issued his supplemental decision after conducting an in camera inspection of the declarations and concluded that Coastal suffered no prejudice to the presentation of its case from any failure of the General Counsel to abide by its discovery obligations.

Board Decision

The Board reaffirmed its original conclusion that the discharges of Hilarion Silva, Paulino Vega, and Juan Perez were unlawful, finding that these conclusions were unaffected by the analytical errors identified by the Court. However, upon reevaluating the evidence in accordance with the Court's instructions on remand, the Board found that Sergio Leal, Alvaro Guzman, Mariano Andrade, and Jose Guadalupe Fernandez were lawfully discharged for engaging in serious strike misconduct. Further, the Board affirmed the supplemental decision of the ALJ, as

Coastal's exceptions were either without merit or were rendered moot by the Board's decision on remand.

* * *

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

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that alleged that we, Coastal Berry Company, LLC, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by discharging and refusing to rehire employees engaged in a lawful work stoppage and demonstration.

The ALRB has told us to post and publish this Notice. We will do what the ALRB has ordered us to do.

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California the following rights:

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
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 you have these rights, we promise that:

WE WILL NOT discharge or refuse to hire employees who engage in lawful strike activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in your exercise of the rights listed above.

WE WILL offer Paulino Vega Excutia, Hilarion Silva Jiminez, Juan Perez Maldonado, and Ernesto Robles reinstatement to their former positions of

employment, and make them whole for all losses in pay or other economic losses they suffered as the result of our unlawful conduct.

DATED: COASTAL BERRY COMPANY, LLC

By: _____
(Representative) (Title)

If you have any 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 1880 North Main Street, Suite 200, Salinas, California. The telephone number is (831) 443-3161.

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE