

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ALLSTAR SEED COMPANY,)	
)	
Respondent,)	Case No. 02-CE-52-EC
)	
and)	
)	
ROBERTO CARLOS IBARRA,)	29 ALRB No. 2
)	(March 19, 2003)
)	
Charging Party.)	
_____)	

DECISION AND ORDER

On January 17, 2003, Administrative Law Judge (ALJ) Nancy C. Smith issued the attached Ruling on General Counsel's Motion to Make Allegations in Complaint True and for Default Judgment Against Respondent Allstar Seed Company. As the record reflected that no answer to the complaint, nor any response to the General Counsel's motion, had been filed by Allstar Seed Company (Respondent), the ALJ granted the motion and ordered the relief sought in the complaint. It was alleged in the complaint that Roberto Carlos Ibarra had been discharged for engaging in activity protected by the Agricultural Labor Relations Act (ALRA or Act).¹ Accordingly, the ALJ ordered reinstatement and back pay, along with a cease and desist order and standard notice remedies. On February 7, 2003, Respondent timely filed exceptions to the ALJ's ruling. The General Counsel did not file a response to the

¹ The ALRA is codified at Labor Code section 1140, et seq.

exceptions. The Agricultural Labor Relations Board (ALRB or Board) has reviewed the ALJ's ruling in light of the exceptions filed by Respondent and affirms that ruling for the reasons set forth below.

DISCUSSION

Respondent requests that its failure to file an answer to the complaint be excused, based on the following recitation of events. All of the documents referred to by Respondent are attached as exhibits to the exceptions.

The Charging Party filed his charge with the ALRB on October 15, 2002. He apparently filed a charge with the National Labor Relations Board (NLRB) at about the same time, as Respondent received a notice of the filing of the NLRB charge that was dated October 21, 2002. By letter dated November 27, 2002, Respondent received notice that the NLRB had granted the Charging Party's request to withdraw the charge. The ALRB complaint was served on Respondent on December 16, 2002. Respondent did not respond to the complaint.² Respondent, who is not represented by counsel, states that it thought that the NLRB took precedence over the ALRB. Respondent states that as a consequence it thought that the NLRB dismissal (withdrawal) meant that the entire matter was dropped. Presumably based on this misunderstanding, Respondent took no action nor made any inquiry upon receiving the ALRB complaint.

The General Counsel's motion for a default judgment was served on January 3, 2003. Respondent has submitted as an exhibit a letter dated January 7, 2003 that was

² Attached to the complaint was a "fact sheet" which explained a respondent's right to answer the complaint and have an evidentiary hearing, and included a summary of the proper procedures for filing an answer. Attached to the fact sheet were pertinent excerpts from the Board's regulations.

intended as a response to the motion. The letter was addressed to the attorney in the regional office that filed the motion, and there is no indication that it was sent to anyone else.³ In that letter, Respondent stated that it had mistakenly assumed that the ALRB complaint related to the same action dismissed by the NLRB and apologized for the mix up. The letter also indicated that Respondent's defense to the allegations would be that the Charging Party was discharged for suspicion of theft. The letter did not come to the attention of the ALJ, who issued her ruling based on the assumption that Respondent had not responded to the complaint or the motion for a default judgment. Respondent states that when it received the ALJ's ruling on the motion, it sent representatives in person to the regional office to address the matter. Respondent further states that its representatives were informed by the regional office that the January 7 letter had not been received, and that its recourse was to file exceptions to the ruling with the Board. Respondent then filed the exceptions now before the Board.

The standard for relief from default in California is codified in Code of Civil Procedure section 473. The pertinent portion of that provision is found in subdivision (b):

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

³ Section 20240 of the Board's regulations (Title 8, Cal. Code Regs., sec. 20100, et seq.) provides that responses to such motions are to be filed with the Executive Secretary, who may forward the matter to the assigned ALJ.

Various interpretive principles have been developed by the courts over the years to aid in applying this standard. The overriding principle is illustrated by the following passage from *Weitz v. Yankosky* (1966) 63 Cal.2d 849:

It is the policy of the law to favor, wherever possible, a hearing on the merits, and appellate courts are much more disposed to affirm an order where the result is to compel a trial upon the merits than they are when the judgment by default is allowed to stand and it appears that a substantial defense could be made. Stated another way, the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. (Citations omitted.)

As the crux of Respondent's explanation for failing to file an answer to the complaint is a misunderstanding as to the legal effect of the withdrawal of the NLRB charge, cases addressing mistakes of law are particularly pertinent to this case. In that regard, the courts have set forth a framework for analyzing these types of situations.

While a mistake in law is a ground for relief under section 473, the "issue of which mistake in law constitutes excusable neglect presents a question of fact. The determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law. Ignorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief." (*Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313.) "Ignorance of the law, at least where coupled with negligence in failing to look it up, will not justify a trial court in granting relief and such facts will certainly sustain a finding denying relief. There is a somewhat tenuous line between a mistake of law and ignorance of law. The difference is probably only one of degree. In such cases all factors involved must be considered to determine whether relief

should be granted or denied. While there is a strong public policy in favor of permitting a trial of a case on its merits, the determination as to whether a particular mistake of law warrants the granting of relief reposes largely in the discretion of the trial court." (*Torbitt v. State of California* (1984) 161 Cal.App.3d 860.) In *A & S Air Conditioning v. John J. Moore Co.* (1960) 184 Cal.App.2d 617, 620, the court stated: "However, a mistake as to law does not require relief from default as a matter of law. The issue of which mistakes of law constitute excusable neglect presents a fact question; the determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law. Excusable neglect is that neglect which might have been the act of a reasonably prudent person under the same circumstances."

Here, as reflected in both its January 7 letter and its exceptions to the ALJ's granting of a default judgment, Respondent asserts that it mistakenly believed that the NLRB had jurisdiction of the matter and that the withdrawal of the NLRB charge resolved the matter entirely. The January 7 letter also reflects some confusion over whether the ALRB complaint represented an action separate from the NLRB matter. The issue before the Board, consistent with the authorities cited above, is whether Respondent's misconception of the law was reasonable and, if so, whether Respondent should be excused from its failure to make efforts to ascertain the correct law.

There is little doubt that the interplay between federal and state jurisdiction is a complex and vexing area of the law that poses challenges even for experienced attorneys. Therefore, it is neither surprising nor unreasonable for Respondent to have been confused by the dual filings before the NLRB and ALRB. Respondent in fact was correct that the NLRB

filing took precedence, in that the ALRB proceeding could not go forward pending resolution of the matter before the NLRB and any assertion of jurisdiction by the NLRB would have preempted any assertion of jurisdiction by the ALRB. It was only because the NLRB action was withdrawn without any determination of jurisdiction that the General Counsel could then make its own judgment whether the ALRB clearly had jurisdiction and proceed with the action.⁴ Respondent's error was in failing to appreciate that a withdrawal of the NLRB charge, which did not constitute any determination of jurisdiction, did not prevent the assertion of jurisdiction by the ALRB.

While we consider Respondent's mistake of law to have been reasonable, there remains the question of whether it constituted excusable neglect to fail to ascertain the correct law upon being served with the ALRB complaint. Had the ALRB complaint been received prior to notice of the resolution of the matter before the NLRB, it would have been more reasonable to assume that the complaint was without legal effect. However, the ALRB complaint was served on Respondent nearly three weeks after the date of the notice of withdrawal of the NLRB charge. Therefore, the question is whether Respondent had a duty to make some inquiry into the legal significance of the complaint.

We find it difficult to understand how a reasonable person under these circumstances, even one operating under a reasonable mistake of law that the NLRB's action took precedence over any action by the ALRB, would not have questioned that assumption upon receipt of the complaint nearly three weeks after the notice of withdrawal from the

⁴ Even in light of the withdrawal of the NLRB charge, had it been determined that the NLRB nonetheless arguably had jurisdiction, principles of federal preemption would have prevented the assertion of jurisdiction by the ALRB. (See *San Diego Building Trades Council v. Garmon* (1959) 359 U.S. 236.)

NLRB. In other words, we believe the receipt of the complaint after receipt of the NLRB disposition should have triggered a reassessment of Respondent's view of the law and an effort to determine if it was correct. Instead, the record indicates that Respondent simply ignored the complaint without making any effort to communicate with the regional office to ascertain if it was a mistake or instead something that required some responsive action. We do not believe that this represents the conduct of a reasonably prudent person even in light of a reasonable mistake of law and, thus, does not constitute excusable neglect.

While we recognize that the courts have erred on the side of granting relief from default, it is also true that the courts have made it clear that there are standards that must be met in order to grant such relief. While we do not take lightly a decision to deny relief from default, to do otherwise in this case does run the risk of having no standards. Therefore, we affirm the ALJ's ruling and adopt her recommended Order, as modified.

ORDER

By the authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Allstar Seed Company, its agents and officers, successors and assigns do the following:

1. Cease and desist from:
 - a. Unlawfully discharging or otherwise interfering with, restraining or coercing any agricultural employee because he/she has engaged in activity protected by section 1152 of the Act;

b. In any like or related manner interfering with, restraining, or coercing agricultural employees in the exercise of their rights as guaranteed by section 1152 of the Act;

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

a. Offer Roberto Carlos Ibarra immediate reinstatement to his former or substantially equivalent employment without prejudice to his seniority or other rights and privileges of employment;

b. Make Roberto Carlos Ibarra whole for all wages and economic losses he has suffered since on or about September 14, 2002, as a result of his discharge. Loss of pay or other economic losses are to be determined in accordance with established Board precedent. Such amounts shall include interest to be determined in the manner set forth in *E.W. Merritt Farms* (1988) 14 ALRB No. 5;

c. Preserve and, upon request, make available to the Board or its agents for examination and copying, all records relevant and necessary to a determination by the Regional Director of the back pay amounts due under the terms of this Order. Upon request of the Regional Director, the records shall be provided in electronic form if they are customarily maintained in that form;

d. Sign the attached Notice to Employees and, after its translation by a Board agent(s) into all appropriate languages, as determined by the Regional Director, reproduce sufficient copies in each language for all purposes set forth in this Order;

e. Upon request, 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;

f. Mail copies of the 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 at any time during the period from September 14, 2002 until September 14, 2003;

g. Post copies of the Notice, in all appropriate languages, in conspicuous places on Respondent's property for a 60-day period, the period and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which may be 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 the Notice;

h. Arrange for a representative of Respondent or a Board agent(s) to distribute and read the Notice in all appropriate languages to all of respondent's agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent(s) shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the 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 in order to compensate them for time lost at the reading and during the question-and-answer period;

i. Provide a copy of the attached Notice to each agricultural employee hired to work for Respondent during the one-year period following the date this Order becomes final and;

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 its terms.

Upon the request of the Regional Director, notify him periodically thereafter in writing of further steps taken until full compliance with the Order is achieved.

Dated: March 19, 2003

GENEVIEVE A. SHIROMA, Chairwoman

GLORIA A. BARRIOS, Member

CATHRYN I. RIVERA, Member

CASE SUMMARY

ALLSTAR SEED COMPANY
(Roberto Carlos Ibarra)

29 ALRB No. 2
Case No. 02-CE-52-EC

Background

On January 17, 2003, Administrative Law Judge (ALJ) Nancy C. Smith issued a ruling granting the General Counsel's motion for a default judgment against Allstar Seed Company (Respondent), as the record before the ALJ reflected that no answer to the complaint, nor any response to the General Counsel's motion had been filed by Respondent. It was alleged in the complaint that Roberto Carlos Ibarra had been discharged for engaging in activity protected by the Agricultural Labor Relations Act. On February 7, 2003, Respondent timely filed exceptions to the ALJ's ruling. Respondent requests that its failure to file an answer to the complaint be excused, based on its confusion as to the effect of the withdrawal of a parallel charge that had been filed with the National Labor Relations Board (NLRB).

Board Decision

Acknowledging that the courts have erred on the side of granting relief from default, the Board noted that it is also true that the courts have made it clear that there are standards that must be met in order to grant such relief. Where, as here, the basis for relief is a mistake of law, the Board cited the established standard that the determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law, and that excusable neglect is that neglect which might have been the act of a reasonably prudent person under the same circumstances. Here, the Board concluded that Respondent's error of law was reasonable considering the often vexing nature of the interplay between federal and state jurisdiction. However, since Respondent was served with the ALRB complaint nearly three weeks after notice of the withdrawal of the NLRB charge, the Board concluded that Respondent should have questioned its assumption that the disposition of the NLRB matter also resolved the matter before the ALRB, and therefore Respondent had a duty to make some inquiry into the legal significance of the complaint rather than ignore it. The Board concluded that Respondent's failure to make any inquiry into the significance of the complaint does not represent the conduct of a reasonably prudent person even in light of a reasonable mistake of law and, thus, does not constitute excusable neglect. Therefore, the Board affirmed the granting of a default judgment and adopted the ALJ's recommended remedies.

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

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we had violated the law. Because we did not contest such charges by filing a timely answer to the complaint, the ALRB deemed the allegations to be true and found that we violated the Agricultural Labor Relations Act (ALRA) by discharging an employee for complaining about the terms and conditions of his employment.

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

We also want to inform you that the ALRA 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 you wages and working conditions through a union chosen by a majority of the employees and certified by the ALRB;
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 it is true that you have these rights, we promise that:

WE WILL NOT discharge employees who participate in protected concerted activities.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees from exercising their rights under the ALRA.

WE WILL offer to Roberto Carlos Ibarra reinstatement to his former or substantially equivalent position of employment and make him whole for all losses in pay or other economic losses he has suffered as a result of our unlawful conduct.

DATED: _____

By: _____
(Representative) (Title)

If you have questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 319 Waterman Avenue, El Centro, California. The telephone number is (760) 353-2130.

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

DO NOT REMOVE OR MUTILATE

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
ALLSTAR SEED COMPANY,)	CASE NO. 02-CE-52-EC
)	
Respondent,)	RULING ON GENERAL
)	COUNSEL’S MOTION TO
and)	COMPLAINT TRUE AND
)	FOR DEFAULT JUDGMENT
ROBERTO CARLOS IBARRA)	AGAINST RESPONDENT
)	
<u> Charging Party.</u>)	

On January 6, 2003, General Counsel filed a Motion to Make Allegations in Complaint True and for Default Judgment against Respondent Allstar Seed Company. Despite service of this motion upon Respondent, no opposition by Allstar Seed Company has been filed.

No opposition having been received to the Motion to Make Allegations True and for Default Judgment against Respondent Allstar Seed Company, I hereby find, in accordance with the pleadings:

1. On December 16, 2002, the El Centro Regional Director issued a Complaint against respondent Allstar Seed Company and on that same date, a copy was served by certified mail on Respondent, along with a fact sheet advising Respondent of the need to file an answer.
2. A receipt (PS Form 3811) with article number 7002 0510 0003 1171 4862 (hereinafter Receipt No. “4862”) was received by the El Centro Regional

Office by United States mail showing a signature of receipt and delivery of December 18, 2002. Receipt No. "4862" matched the article number on the certified mail receipt kept by the El Centro Regional Office when the Complaint referred to in Paragraph 1, above was sent by certified mail to Respondent Allstar Seed Company.

3. No answer to the Complaint on behalf of Respondent has been filed as of this date.

I, therefore, find:

1. A true and correct copy of the original charge in the above captioned case was served on Respondent Allstar Seed Company on October 11, 2002, and was filed on October 15, 2002.
2. Respondent Allstar Seed Company has, at all material times, been an agricultural employer engaged in agriculture in Imperial County within the meaning of Section 1140.4(a) and (c) of the Agricultural Labor Relations Act.
3. At all material times, Roberto Carlos Ibarra was an agricultural employee within the meaning of Labor Code Section 1140.4(b) of the Agricultural Labor Relations Act.
4. At all material times, Alex Abatti, Jr. and Bonifacio Razo were supervisors for Respondent within the meaning of Labor Code Section 1140.4(j) and/or they were agents for Respondent, acting on Respondent's behalf.

5. Sometime in June 2002, Roberto Carlos Ibarra and Jaime Guzman, agricultural employees of Respondent, asked foreman Bonifacio Razo for a wage increase of 25 cents per hour. One week later, Ibarra and Guzman asked foreman Razo about their wage increase, and he told them that nothing had been resolved.

On or about August 30, 2002, Imperial County sheriffs found seed in the back of the truck of Roberto Flores, who was employed by Respondent, and they arrested Flores after he finished work that day. Deputy sheriffs questioned Roberto Carol Ibarra and some other co-workers, but they were not considered suspects. On or about September 14, 2002, Alex Abatti, Jr. told Ibarra that he was discharged from employment because he was involved in the seed theft. Ibarra told Abatti that if Abatti thought he was involved in the theft to call the sheriff. Abatti refused to call the sheriff. Abatti told Ibarra that he had proof that he, Ibarra, was involved in the theft, but that he did not want to report it to the sheriff. On or about September 14, 2002, Ibarra was discharged from employment.

6. Respondent discharged Roberto Carlos Ibarra on or about September 14, 2002, because he engaged in protected concerted activities.
7. By discharging Roberto Carlos Ibarra because he engaged in protected concerted activities, Respondent interfered with, restrained,

coerced, and discriminated against agricultural employees in violation of section 1153 (a) of the ALRA.

ORDER

By the authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Allstar Company, its agents and officers, successors and assigns is hereby ordered to do the following:

1. Cease and desist from:

a. Unlawfully discharging or otherwise interfering with, restraining or coercing any agricultural employee because he/she has engaged in activity protected by section 1152 of the Act;

b. In any like or related manner interfering with, restraining, coercing, or discriminating against agricultural employees in the exercise of their rights as guaranteed by section 1152 of the Act.

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

a. Offer Roberto Carlos Ibarra immediate reinstatement to his former or substantially equivalent employment;

b. Make Roberto Carlos Ibarra whole for all wages and economic losses he has suffered since on or about September 14, 2002, as a result of his discharge. Loss of pay or other economic losses are to be determined in accordance with established Board precedent. This amount shall also include interest to be determined in the manner set forth in *E.W. Merritt Farms* (1988) 14 ALRB No. 5.

c. Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, make available to the Board or its agents for examination and copying, all records relevant to a determination of the back pay amounts due under the terms of the remedial order, as determined by the Regional Director, including an electronic copy of such records if stored in electronic form;

d. Sign a Notice to Employees embodying the remedies ordered. After its translation by a Board agent(s) into all appropriate languages, as determined by the Regional Director, Respondent shall reproduce sufficient copies of the Notice in each language for all purposes set forth in the remedial order;

e. Upon request, 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;

f. Mail copies of the Notice, in all appropriate languages, within 30 days after the Board's order becomes final, to all agricultural employees employed by Respondent any time from September 14, 2002 until September 14, 2003;

g. Post copies of the Notice, in all appropriate languages, in conspicuous places on Respondent's property for a 60-day period, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which may be altered, defaced, covered or removed;

h. Arrange for Board agent(s) to distribute and read the Notice in all

appropriate languages to all of respondent's agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director.

Following the reading, the Board agent(s) shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the notice and/or their rights under the Act. All employees are to be compensated for time spent at the reading and at the question-and-answer period. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period;

i. Provide a copy of the signed Notice to each agricultural employee hired to work for Respondent for one year following the issuance of a final order in this matter; and,

j. Notify the Regional Director in writing, within 30 days after the date of the issuance of a final order in this matter, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter in writing, at the Regional Director's request, until full compliance is achieved.

Dated: January 17, 2003

NANCY C. SMITH
Administrative Law Judge, ALRB

NOTICE TO AGRICULTURAL EMPLOYEES

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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 you wages and working conditions through a union chosen by a majority of the employees and certified by the ALRB;
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 it is true that you have these rights, we promise that:

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WE WILL offer to Roberto Carlos Ibarra reinstatement to his former position of employment and make him whole for all losses in pay or other economic losses he has suffered as a result of our unlawful conduct.

DATED: _____

By: _____
(Representative) (Title)

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

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