

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ANDREAS FARMS, LLC)	
)	
Respondent,)	Case Nos. 96-CE-141-SAL
)	96-CE-237-SAL
and)	
)	31 ALRB No. 2
UNITED FARM WORKERS OF)	(March 30, 2005)
AMERICA, AFL-CIO,)	
)	
Charging Party.)	
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DECISION AND ORDER

On February 24, 2005, the Regional Director of the Salinas Regional Office filed an Addendum to Regional Director's December 30, 2002 Motion Seeking a Finding that the Case is Eligible for Payout from the Fund and Motion to Close (2005 Motion or current Motion) and indicated that this new filing was intended to supplement the 2002 Motion.

Background:

On November 30, 2001, the Regional Director filed the initial Motion to Close in the above matter (2001 Motion). During this time the Board was in the process of adopting regulations to implement the Agricultural Employee Relief Fund (Senate Bill 1198 or AERF), which went into effect on January 1, 2002. The Board decided that

because the regulations still needed to go through the formal rulemaking process, the motion should be denied as premature, and could be re-filed after regulations implementing the Agricultural Employee Relief Fund had been formally adopted. The Board issued Admin. Order No. 2002-1 on January 11, 2002 denying the 2001 Motion to Close on procedural grounds.

On December 30, 2002, the Regional Director filed a Motion Seeking a Finding by the Board that the Case was Eligible for Pay Out Under the Agricultural Employee Relief Fund, or in the Alternative, Motion to Close (2002 motion). The 2002 motion also contained a formal back pay specification.¹ The Regional Director attached the original 2001 motion to close to the 2002 motion, but did not provide any additional information setting out the basis for his conclusion that the collection of the amounts owing was not possible.

The Board found that the 2002 Motion to Close contained an insufficient and conclusory discussion of the steps taken to achieve full compliance, and therefore denied the 2002 Motion without prejudice on January 30, 2003 (Admin. Order No. 2003-1).

¹ The formal back pay specification indicated that total back pay owed, exclusive of interest, was \$6531.90. The 2002 motion and back pay specification were duly served on Respondent's representative. There was no answer filed to either the 2002 motion or the back pay specification. A review of the record reveals that there was no formal order finding the allegations in the back pay specification to be true in this matter. Therefore, the Board now finds that the allegations contained in the back pay specification dated December 30, 2002 should be deemed to be true pursuant to Board regulation 20292 (c).

Standards for Granting Motion Seeking Finding Case is Eligible for Payout Under the AERF:

The requirements for a motion seeking a determination of eligibility for payout under the fund are described in Board regulation section 20299 (b), which indicates that such a motion "shall be accompanied by a statement describing the collection efforts made to date and the basis for the regional director's belief that collection of the full amount owing is not possible." The regulation further provides that it shall be deemed to include a simultaneous motion to close pursuant to *John V. Borchard, et. al.* (2001) 27 ALRB No. 1. The Board interprets the cited language of section 20299 (b) as consistent with the standards set forth in *John V. Borchard, supra*, and therefore relies on the fuller explication set forth in that case.

The Borchard decision established the procedures and standards for motions to close cases where full compliance has not been achieved. In Borchard, the Board found a motion to close will be supported when it contains a "detailed description of what has been done to achieve full compliance with the Board's order in the case... a chronological summary of key steps taken to achieve compliance, factors preventing full compliance, and the reasons why there is no reasonable likelihood that further efforts will be successful." The decision provided some specific examples of what the detailed description should include, such as efforts to settle, the result of bankruptcy proceedings, the possibility of derivative liability or the possibility of individual liability of corporate officers.

Current Motion Before the Board:

The current motion includes the requisite detailed description of the basis for the Regional Director's belief that collection of the amount of money owed is not possible, and contains a thorough discussion of both the Region's collection efforts following bankruptcy proceedings, and the Region's efforts to determine whether derivative liability existed in this matter.

The Board finds that the requirements set forth in Board regulation section 20299 (b) have now been met, and finds that this case is eligible for pay out under the Agricultural Employee Relief Fund. Because section 20299 (d) of the regulations indicates that a motion seeking a determination of eligibility for payout under the fund shall be deemed to include a simultaneous motion to close, the Board also orders that this case be closed.

ORDER

PLEASE TAKE NOTICE that the Agricultural Labor Relations Board (ALRB or Board) hereby GRANTS the Motion Seeking a Finding that the Case is Eligible for Payout from the Fund and Motion to Close filed by the Regional Director of the Salinas office on February 24, 2005.

Interest on back pay amounts owed to the two discriminatees involved in this matter, Jeronimo Gonzales and Gregorio Marin, shall be calculated up to the date of this Order. Therefore, the amount of back pay owed plus interest accrued through

March 30, 2005 shall constitute the total claim of the parties for the purposes of calculating distribution amounts as described in section 20299 (b)(3).

Dated: March 30, 2005

GENEVIEVE SHIROMA, Chair

CATHRYN RIVERA HERNANDEZ, Member

DANIEL ZINGALE, Member

CASE SUMMARY

**ANDREAS FARMS
(UFW)**

**31 ALRB No. 2
Case No. 96-CE-141-SAL, et. al.**

Background

On November 30, 2001, the Regional Director of the Salinas office filed the initial Motion to Close in the above matter. The Board issued Admin. Order No. 2002-1 on January 11, 2002 denying the Motion to Close on procedural grounds, namely that the motion should be re-filed after regulations implementing the Agricultural Employee Relief Fund had been formally adopted.

On December 30, 2002, the Regional Director filed a Motion Seeking a Finding by the Board that the Case was Eligible for Pay Out Under the Agricultural Employee Relief Fund, or in the Alternative, Motion to Close. The Board found that the 2002 Motion to Close contained an insufficient and conclusory discussion of the steps taken to achieve full compliance, and therefore denied the 2002 Motion without prejudice on January 30, 2003 (Admin. Order No. 2003-1).

Decision and Order

On February 24, 2005, the Regional Director filed an Addendum to Regional Director's December 30, 2002 Motion Seeking a Finding that the Case is Eligible for Payout from the Fund and Motion to Close and indicated that the Addendum was intended to supplement the 2002 Motion.

Section 20299 (b) of the Board's regulations indicates that a motion seeking a finding that a case is eligible for payout under the fund "shall be accompanied by a statement describing the collection efforts made to date and the basis for the regional director's belief that collection of the full amount owing is not possible." The Board interpreted section 20299 (b) as requiring an accompanying statement consistent with the standards set forth in *John V. Borchard, et. al.* (2001) 27 ALRB No. 1.

The Board found that the requirements for a motion seeking a determination of eligibility for payout under the fund described in Board regulation section 20299 (b) were met in the 2005 Addendum which outlines in detail the basis for the Regional Director's belief that collection of the amount of money owed is not possible.

The Board therefore granted the Motion and ordered that interest on the back pay amounts due be calculated up to the date of the Board's Decision and Order in this matter.

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

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