

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

YEJI KITAGAWA, KITIGAWA RANCH, INC.,) YEICHI KITIGAWA, GOLDEN ACRES FARMS,) KITIGAWA & SONS, Y-K PACKING,)) <p style="text-align: center;">Respondents,)</p>)	
UNITED FARM WORKERS,)) <p style="text-align: center;">Charging Party.)</p> <hr style="width: 100%;"/>)	Case Nos. 77-CE-4-C 77-CE-17-C 77-CE-18-C
COACHELLA VINEYARDS,)) <p style="text-align: center;">Respondent,)</p>)	3 ALRB No. 44
UNITED FARM WORKERS,)) <p style="text-align: center;">Charging Party.)</p> <hr style="width: 100%;"/>)	DECISION AND ORDERS
CY MOURADICK & SONS,)) <p style="text-align: center;">Respondent,)</p>)	
UNITED FARM WORKERS,)) <p style="text-align: center;">Charging Party.)</p> <hr style="width: 100%;"/>)	

On May 11, 1977, the Board issued its decision in the matter of Henry Moreno, Inc^{1/} In that decision, the Board declined to make findings or issue orders with respect to three other cases referred to in the parties' exceptions on the grounds that those cases were not properly before the Board. 3 ALRB No. 40 at footnote 1. On June 2, 1977, the Board received a letter signed by representatives for the general counsel, all three respondents, and the UFW, charging party in all three cases, in which the parties waive any right to a hearing or further formal proceeding in these cases and request the Board to issue a decision and

^{1/}3 ALRB No. 40

order in each case based upon the facts asserted in the briefs filed in support of exceptions to the administrative law officer's decision in Henry Moreno, and certain other attached documents. The parties' request is hereby granted.

Under 8 Cal. Admin. Code 20910 (c) (1976) , an employer is required to provide a list of his employees, as described in 8 Cal. Admin. Code 20310(a)(2) , to the ALRB within five days of a union's filing of a Notice of Intention to Organize. In none of the above cases was there timely compliance with this regulation. In Cy Mouradick and Coachella Vineyards, the parties dispute the extent to which late and arguably partial compliance cures the initial failure to comply. In Yeji Kitagawa, respondent has not provided a list, but raises a unit determination dispute as an affirmative defense. For the reasons discussed below, we conclude in each case that the respondent has violated Labor Code Section 1153 (a) , and order remedies in accord with our decision in Henry Moreno, supra.

I.

In Coachella Vineyards, a Notice of Intent to Organize was duly filed in the Coachella field office of the ALRB on January 25, 1977. Respondent did not file an employee list in that office by February 1, 1977, and on February 2, 1977, UFW filed a charge alleging failure to comply with § 20910 (c) . The complaint which issued on February 15, 1977, charged respondent with failing and refusing to provide a list. On February 28, 1977, respondent provided a list of employees which on its face states that it is for employees who worked during the periods

2.

from January 21-22, or January 21-25, 1977.

Respondent argues that it was not at peak during its thinning operations in February and therefore that no interference with employee rights resulted from its failure to provide a list. This argument misconstrues the design of the Board's access rule, including its pre-petition list requirement. See 8 Cal. Admin. Code 20900 et seq. Under the rule, a union is restricted to four one-month periods in each year during which it may take access and request an employee list.^{2/} However, the rule does not specify that those periods may be taken only during times of peak employment. In any case, the list submitted on February 28 contained the names of 36 employees who were at work in late January. Respondent and UFW dispute whether these employees were still at those same addresses in late February, but it is unnecessary for us to resolve this dispute. Section 20910(c) requires that a list based on the employer's most recent payroll be submitted within five days precisely in order to minimize the time within which turnover or changes in operations can occur and render the list outdated. Submission of a list an entire month late, based on the previous month's payroll, quite clearly defeats the purpose of this time requirement, and we consider it equivalent to a flat refusal to provide the list. Accordingly, we will issue an order in this case in accord with our decision in Henry Moreno, supra.

II.

The facts in Cy Mouradick are virtually identical to

^{2/} 8 Cal. Admin. Code 20900(e) (1) (A) and 20910 (a) .

those set forth above with respect to Coachella Vineyards. UFW filed its Notice of Intent to Organize on January 26, 1977. On February 28, 1977, after UFW had filed a charge and complaint had issued charging respondent with refusal to provide a list, respondent finally provided a list. Although there is no indication as to which payroll period was used as a basis for the list in this case, the list was clearly provided one month late. For the reasons set forth above in Part I of this decision, we find that respondent has violated Labor Code § 1153(a) and order remedies in accord with our decision in Henry Moreno, supra.

III.

In Yeji Kitagawa et al, the Notice of Intent to Organize filed by UFW on December 27, 1976, names six employers. UFW contends that the operations of all six are intertwined. Respondent claims that they are separate operations and in addition that the operations of Y-K Packing are commercial and non-agricultural. In a letter to the Board agent in the Coachella sub-regional office, dated January 4, 1977, respondent stated that it had prepared lists but refused to supply them unless assured in writing that the Board agent would calculate the 10 percent showing of interest [8 Cal. Admin. Code 20910(a)] according to respondent's theory of the proper unit in Kitagawa. 8 Cal. Admin. Code 20910 and 20310 (a) (2) together provide that if the employer questions the unit named in the Notice, it shall submit a list based on the unit it contends to be correct in addition to the list in the unit requested, and a written description of the unit it contends to be correct. Respondent's

letter contained no list and only bare assertions that each employer is a "separate legal entity" and that Y-K Packing is a commercial operation.

The Board and its agents are responsible for determining proper bargaining units according to the rule set forth in Labor Code § 1156.2. In addition, it is the Board's province to make initial determinations concerning its jurisdiction. If a decision of the Board or its agents as to jurisdiction or unit questions is mistaken, the statute and regulations provide for appeal of such decisions. Respondent here attempts to usurp this proper authority of the Board and its agents in these matters, by refusing to comply with the Board's regulations unless the Board agrees in advance to respondent's own determination of these questions. The Board agent in this case properly refused to agree to any such arrangement, and the fact that he did not accede to respondent's improper request does not provide respondent with a defense to his refusal to submit the information required by § 20310(a) (2) within five days. Accordingly, we find that respondent violated Labor Code § 1153(a), and order remedies in accord with our decision in Henry Moreno, supra.

Dated: June 6, 1977

Gerald A. Brown, Chairman

Robert Hutchinson, Member

Ronald Ruiz, Member

ORDER

Respondents, YEJI KITAGAWA, KITIGAWA RANCH, INC. , YEICHI KITIGAWA, GOLDEN ACRES FARMS, KITIGAWA & SONS, **Y-K** PACKING, their officers, agents, successors, and assigns, shall:

1. Comply with the terms of this order in the unit requested by the UFW in its Notice of Intent to Organize of December 27, 1976. However, this unit description shall not be binding on any party in any future proceedings pursuant to Labor Code § 1156.3.

2. Cease and desist from:

(a) Refusing to provide the ALRB with an employee list as required by § 20910 (c) of the Regulations of the Agricultural Labor Relations Board.

3. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its premises copies of the attached "Notice to Employees". Copies of said notice, on forms provided by the appropriate regional director, after being duly signed by the respondent, shall be posted by it for a period of 90 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material. Such notices shall be in both English and Spanish.

(b) Mail a copy of the notice, in both English and Spanish, to each of the employees in the bargaining unit, at his or her last known address, not later than 30 days after the notice is required to be posted on the respondent's premises.

6.

(c) Read a copy of the notice, in both English and Spanish, to gatherings of its bargaining-unit employees, at a time chosen by the Regional Director for the purpose of giving such notice the widest possible dissemination.

(d) Provide the ALRB forthwith with the employee list due pursuant to the Notice of Intention to Organize filed by the UFW on December 27, 1976, as required by 8 Cal. Admin. Code 20910 (c), if such list has not already been provided.

(e) Provide the UFW with an employee list when the 1977 harvest begins and every two weeks thereafter.

(f) Upon filing of a written notice of intent to take access pursuant to 8 Cal. Admin. Code 20900 (e) (1) (B) the UFW shall have the right of access as provided by 8 Cal. Admin. Code 20900 (e) (3) without restriction as to numbers of organizers. In addition, during this same period, the UFW shall have the right of access during working hours for as many organizers as are permitted under 8 Cal. Admin. Code 20900(e)(4)(A), which organizers may talk to workers and distribute literature provided that such organizational activities do not disrupt work.

(g) Upon filing a written notice of intent to take access pursuant to 8 Cal. Admin. Code 20900 (e) (1) (B), the UFW shall be entitled to one access period during the current calendar year in addition to the four periods provided for in 8 Cal. Admin. Code 20900(e)(1)(A).

(h) Notify the Regional Director, in writing, within ten (10) days from the date of the receipt of this order,

what steps have been taken to comply herewith. Upon request of the Regional Director, the respondent shall notify him or her periodically thereafter, in writing, what further steps have been taken to comply herewith.

N O T I C E T O E M P L O Y E E S

POSTED BY ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD An
Agency of the State of California

The Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to post this notice and we intend to carry out the order of the Board.

The Act gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing; To act together for collective bargaining or other mutual aid or protection; and To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT interfere with your rights of self-organization, to form, join or assist any labor organization by. refusing to provide the ALRB with a current list of employees when, as in this case, the UFW or any union has filed its "Intention to Organize" the employees at this ranch.

WE WILL respect your rights to self-organization, to form, join or assist any labor organization, or to bargain collectively in respect to any term or condition of employment through United Farm Workers of America, AFL-CIO, or any representative of your choice, or to refrain from such activity, and WE WILL NOT interfere with, restrain or coerce our employees in the exercise of these rights.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

YEJI KITAGAWA et al
(Employer)

Dated _____ By _____
(Representative) (Title)

ORDER

Respondent, COACHELLA VINEYARDS, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to provide the ALRB with an employee list as required by § 20910(c) of the Regulations of the Agricultural Labor Relations Board.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its premises copies of the attached "Notice to Employees". Copies of said notice, on forms provided by the appropriate regional director, after being duly signed by the respondent, shall be posted by it for a period of 90 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material. Such notices shall be in both English and Spanish.

(b) Mail a copy of the notice, in both English and Spanish, to each of the employees in the bargaining unit, at his or her last known address, not later than 30 days after the notice is required to be posted on the respondent's premises.

(c) Read a copy of the notice, in both English and Spanish, to gatherings of its bargaining-unit employees, at a time chosen by the Regional Director for the purpose of giving such notice the widest possible dissemination.

(d) Provide the ALRB forthwith with the employee list due pursuant to the Notice of Intention to Organize filed by the UFW on January 25 , 1976 as required by 8 Cal. Admin Code 20910(c) , if such list has not already been provided.

(e) Provide the UFW with an employee list when the 1977 harvest begins and every two weeks thereafter.

(f) Upon filing of a written notice of intent to take access pursuant to 8 Calc Admin, Code 20900(e) (1) (B) the UFW shall have the right of access as provided by 8 Cal. Admin. Code 20900(e) (3) without restriction as to numbers of organizers. In addition, during this same period, the UFW shall have the right of access during working hours -for as many organizers as are permitted under 8 Cal. Admin. Code 20900(e) (4) (A) , which organizers nay talk to workers and distribute literature provided that such organizational activities do not disrupt work.

(g) Upon filing a. written notice of intent to take access pursuant to 8 Cal. Admin, Code 20900(e) (1) (B) , the UFW shall be entitled to one access period during the current calendar year in addition to the four periods provided for in 8 Cal. Admin. Code 20900(e) (1) (A) .

(h) Notify the Regional Director, in writing, within ten (10) days from the date of the receipt of this order, what steps have been taken to comply herewith. Upon request of the Regional Director, the respondent shall notify him or her periodically thereafter., in writing, what further steps have been taken to comply herewith.

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD An
Agency of the State of California

The Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to post this notice and we intend to carry out the order of the Board.

The Act gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing; To act together for collective bargaining or other mutual aid or protection; and To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights,, More specifically,

WE WILL NOT interfere with your rights of self-organization, to form, join or assist any labor organization by refusing to provide the ALRB with a current list of employees when, as in this case, the UFW- or any union has filed its "Intention to Organize" the employees at this ranch.

WE WILL respect your rights to self-organization, to form, join or assist any labor organization, or to bargain collectively in respect to any term or condition of employment through United Farm Workers of America, AFL-CIO, or any representative of your choice, or to refrain from such activity, and WE WILL NOT interfere with, restrain or coerce our employees in the exercise of these rights.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

COACHELLA VINEYARDS

(Employer)

Dated _____ By _____
(Representative) (Title)

ORDER

Respondent, CY MOURADICK & SONS, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to provide the ALRB with an employee list as required by S 20910(c) of the Regulations of the Agricultural Labor Relations Board.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its premises copies of the attached "Notice to Employees". Copies of said notice, on forms provided by the appropriate regional director, after being duly signed by the respondent, shall be posted by it for a period of 90 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material. Such notices shall be in both English and Spanish.

(b) Mail a copy of the notice, in both English and Spanish, to each of the employees in the bargaining unit, at his or her last known address, not later than 30 days after the notice is required to be posted on the respondent's premises.

(c) Read a copy of the notice, in both English and Spanish, to gatherings of its bargaining-unit employees, at a time chosen by the Regional Director for the purpose of giving such notice the widest possible dissemination.

(d) Provide the ALRB forthwith with the employee list due pursuant to the Notice of Intention to Organize filed by the UFW on January 26, 1976 as required by 8 Cal. Admin. Code 20910 (c), if such list has not already been provided.

(e) Provide the UFW with an employee list when the 1977 harvest begins and every two weeks thereafter.

(f) Upon filing of a written notice of intent to take access pursuant to 8 Cal. Admin. Code 20900 (e) (1) (B) the UFW shall have the right of access as provided by 8 Cal. Admin. Code 20900 (e) (3) without restriction as to numbers of organizers. In addition, during this same period, the UFW shall have the right of access during working hours for as many organizers as are permitted under 8 Cal. Admin. Code 20900 (e) (4) (A), which organizers may talk to workers and distribute literature provided that such organizational activities do not disrupt work.

(g) Upon filing a written notice of intent to take access pursuant to 8 Cal. Admin. Code 20900 (e) (1) (B), the UFW shall be entitled to one access period during the current calendar year in addition to the four periods provided for in 8 Cal. Admin. Code 20900 (e) (1) (A).

(h) Notify the Regional Director, in writing, within ten (10) days from the date of the receipt of this order, what steps have been taken to comply herewith. Upon request of the Regional Director, the respondent shall notify him or her periodically thereafter, in writing, what further steps have been taken to comply herewith.

