

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SANTA CLARA FARMS, INC.,)	
)	
Respondent,)	Case No. 79-CE-7-OX
)	
and)	
)	
UNITED FARM WORKERS OF)	5 ALRB No. 67
AMERICA, AFL-CIO,)	
)	
Charging Party.)	
_____)	

DECISION AND ORDER

On July 18, 1979, Administrative Law Officer (ALO) Robert LeProhn issued his Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed a Response to Respondent's exceptions, and the Charging Party filed an Opposition to Respondent's Exceptions.

Pursuant to the provisions of Section 1146 of the Labor Code, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs of the parties and has decided to affirm the rulings, findings, and conclusions of the ALO, and to adopt his recommended Order, as modified herein.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Santa Clara Farms, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire any employee or otherwise discriminating against any employee in regard to hire, rehire, or tenure of employment or any other term or condition of employment because of any employee's membership in or activities on behalf of United Farm Workers of America, AFL-CIO, or any other labor organization.

(b) In any other manner interfering with, restraining or coercing employees in the exercise of their Section 1152 rights.

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

(a) Make whole Eulalio Patino for any loss of earnings and other economic losses, plus interest thereon at a rate of 7 percent per annum, he has suffered as a result of Respondent's delay in rehiring him after the termination of the strike of August 1978.

(b) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due under this Order.

(c) Sign the attached Notice to Employees and post copies of it at conspicuous places on its property for a period of 60 days, the times and places of posting to be determined by the Regional Director. Copies of the Notice, after translation by the Regional Director into appropriate languages, shall be furnished by Respondent in sufficient numbers for the purposes described herein.

Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(d) Hand out copies of the attached Notice, in appropriate languages, to all current employees.

(e) Mail copies of the attached Notice in all appropriate languages, within 31 days after the date of issuance of this Order, to all employees who were recalled to work subsequent to the August 1978 strike.

(f) Arrange for a representative of Respondent or a Board agent to read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent 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 nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(g) Notify the Regional Director in writing, within 31 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically

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thereafter in writing what further steps have been taken in compliance with this Order.

Dated: November 27, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a hearing at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told us to send out and post this Notice.

We will do what the Board has ordered and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;
2. To form, join or help unions;
3. To bargain as a group and choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect one another; and
5. To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT fail or refuse to hire or rehire any person, or otherwise discriminate against any employee in regard to his or her employment, because of his or her membership in or activities on behalf of the UFW or any other labor organization, or because of any other concerted activity by employees for their mutual aid or protection.

WE WILL pay Eulalio Patino any money he may have lost because we did not rehire him in 1978 after the end of the strike.

Dated: SANTA CLARA FARMS, INC.

By: _____
Representative Title

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Santa Clara Farms, Inc. (UFW)

5 ALRB No. 67

Case No. 79-CE-7-0X

ALO DECISION

The ALO concluded that Respondent violated Section 1153(c) and (a) of the Act by its delay in recalling Eulalio Patino because of his support for the UFW, and recommended that Respondent be ordered to make Patino whole for loss of pay, plus interest, suffered as a result of Respondent's approximately four-month delay in rehiring Patino after the August 1978 strike. The ALO also recommended that Respondent be ordered to notify its current employees and all the employees of the Ramirez crew who were recalled subsequent to the August 1978 strike, that it violated the Act and has been ordered to make Patino whole.

BOARD DECISION

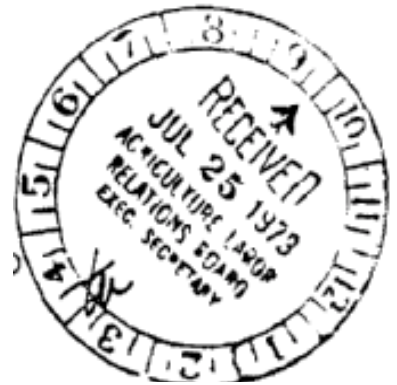
The Board affirmed the ALO's rulings, findings, and conclusions, and adopted his recommended order, modified to require, inter alia, that remedial Notices be mailed to all employees who were recalled subsequent to the August 1978 strike, rather than mailing such Notices only to the recalled workers in the Ramirez crew.

* * *

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

* * *

STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD



SANTA CLARA FARMS)
)
 Respondent)
)
 and)
)
 UNITED FARM WORKERS OF AMERICA, AFL-CIO)
)
 Charging Party)
 _____)

Case No. 79-CE-7-OX

APPEARANCES BY:

Robert W. Farnsworth, Esquire, of
Oxnard, California, on behalf of
the General Counsel

Carol Schoenbrunn of Oxnard,
California, on behalf of the
Charging Party

Robert P. Roy, Esquire, of
Oxnard, California, on behalf of
Respondent

DECISION

STATEMENT OF THE CASE

Robert LeProhn, Administrative Law Officer: This case was heard before me in Oxnard, California, on May 15, 1979. The day charge was filed February 16, 1979, and duly served upon Respondent the same day. Complaint issued April 20, 1979, alleging violations of Sections 1153(c) and (a) of the Act in that Respondent failed and refused to rehire Eulalio Patino because of his activities on behalf of the United Farm Workers of America (hereinafter the UFW). The complaint was duly served upon Respondent, who filed and served a timely answer.

At the outset of the hearing the UFW moved to intervene the proceedings on the ground that it was the Charging Party. The motion was granted without opposition.

At the close of the presentation of evidence by the General Counsel and the Charging Party, Respondent elected to put on no evidence and moved to dismiss the complaint on the ground that General Counsel failed to present sufficient evidence to prove the violations alleged. The parties argued the motion orally; the matter was taken under submission and the parties were invited to submit points and authorities in support of their respective positions. General Counsel and Respondent did so.

Upon the entire record, including my observation of Mr. Patino, the sole witness, and after consideration of the briefs and the cases cited therein, I make the following:

FINDINGS OF FACT

1. Jurisdiction

Respondent, Santa Clara Farms, admits it is and, at all times material, was an agricultural employer within the meaning of Labor Code §1140.4(c). Respondent also admitted the UFW at all times material was a labor organization within the meaning of Labor Code §1140.4(b).

2. The Alleged Unfair Labor Practice

Respondent is alleged to have violated Sections 1153(c) and (a) by failing to offer reinstatement to Eulalio Patino, an economic striker, from on or about October 27, 1978, until February 27, 1979.

3. Summary Of The Evidence

Patino was first employed by Respondent on January 1, 1973, and he worked for Respondent each year thereafter as an agricultural employee. Each year he takes off from work for approximately two months.^{1/}

Jacinto Ramirez, admitted to be a supervisor within the meaning of Labor Code §1140.4(j), has been Patino's foreman since 1975. During 1978 when Patino worked in Ramirez¹ crew, he customarily rode home from work with Ramirez.

Patino was a member of the UFW Ranch Committee, and he was also a member of the UFW Bargaining Committee engaged in negotiations with Respondent.

^{1/}The record is silent with respect to whether Patino's practice is to take the same two months off. It is also silent with respect to whether he had taken his time off prior to October, 1978.

In August, 1978, Respondent's employees went on strike. Female workers struck, and the Ramirez crew was brought to the area to replace them. When the crew arrived at the situs of the strike, Patino got off the van and said he was not working. He told the people in the crew that those who wanted to work should work, and those who did not want to, should not. All but three of the members of the crew declined to work.^{2/} Ramirez and another admitted supervisor were present at the time. The strike ended in the latter part of August. It is unclear whether negotiations continued during the course of the strike, but it is clear that the parties resumed meeting subsequent to the end of the strike. Patino attended these sessions.

During the bargaining which occurred after the strike, Respondent was told the strikers were going back to work. At one session at which Patino was present, Fred Ferro, Jr., Respondent's Personnel Manager, stated that the workers were going to be called back in order of seniority.^{3/}

Patino had the third highest seniority among the members of his crew. He was the only member of his crew who was not called back to work before the end of 1978. It is unclear from the record when the recall began and how long it was before all the Ramirez crew except Patino had returned to work.

On December 3 Patino spoke to Ramirez about returning to work. Ramirez said there was little work. The charge herein was filed on February 16, 1979. Patino resumed work on February 27, having been told by a fellow worker and by Ramirez to return to work.

Patino has lived at his current address since 1975. In June, 1978, Patino had occasion to give his address to Respondent's Personnel Manager Ferro because he had incurred an injury and wanted to go to the doctor. The address given was the address at which he lived at all times subsequent to the strike. Sometime after giving his address to Ferro, he received at his home a communication from the broker for the insurance carrier. Patino stated he was under no disability during October, 1978.

^{2/}This appears to be the sense of what Patino said to the workers. It is not the literal translation, which was as follows: "And I told the people, the ones who wanted to work, should work or shouldn't work. Three worked the three that wanted to work."

^{3/}This finding rests upon uncontradicted testimony, offered without objection, that Respondent was told during the course of negotiation meetings that "we were going back to work." No reliance has been placed upon Patino's testimony to the effect that a UFW representative stated that all the strikers wanted to return to work. The testimony was offered for the truth of the matter asserted and was struck as hearsay on motion by Respondent.

He drew unemployment insurance benefits during the period between the end of the strike and his return to work.

ANALYSIS AND CONCLUSIONS

The General Counsel argues his case on the theory that Patino was an economic striker having the same rights as an economic striker under the National Labor Relations Act, i.e., upon making an unconditional offer to return to work, the right to recall absent the hiring of a permanent replacement, and that he was not accorded those rights when Respondent failed to reinstate him along with the other economic strikers.

Respondent also appears to consider Patino analogous to a National Labor Relations Act economic striker when it argues he was not entitled to recall because neither the UFW, on his behalf, nor he had made an unconditional offer to return to work. Additionally, Respondent along this line defends on the ground that it was unable to locate Patino.

Respondent also argues that no violation of §1153(c) has been established because the General Counsel has failed to establish Employer animus toward the UFW and has failed to prove the failure to recall was a discriminatory act.

In *Kyutoku Nursery, Inc.*, 3 ALRB No. 30 (1977), the Board, without discussion, appears to treat an economic striker as having the same status under the ALRA as under the NLRA, that is a continuing status as an employee of the struck employer. No mention is made in the decision of the intent of the Legislature in omitting from the definition of "employee" in §1140.4(b) the following language found in the statutory definition of "employee" in the National Labor Relations Act, Section 2(3):

The term "employee" . . . shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.

Since the Board in *Kyutoku* adopted the conclusions of the Administrative Law Officer to the extent consistent with their decision, and since the Administrative Law Officer concluded the Legislature, despite omission of the striker language from §1140.4(b), intended that economic strikers be treated as employees, pointing to §1157,⁴ it would appear appropriate to decide the instant case within the framework of National Labor

⁴/Section 1157 provides in part: "An economic striker shall be eligible to vote under such regulations as the board shall find are consistent with the purposes and provisions of this cart in any election. . . ."

Relations Board decisions relating to the rights of economic strikers. However, in the context of the present case, the status of economic strikers as employees is a question which need not be reached. The task of balancing the interest of employees in concerted activity and the legitimate and substantial business interests of the employer may be completed without doing so.^{5/}

The following, are the core facts: Patino was a UFW activist. He was the person who effected the picket line observance and subsequent work stoppage of the Ramirez crew. Respondent was aware the strikers wanted to return to work and stated it would recall them in order of seniority, Patino was not so recalled; there is no evidence that any other member of the Ramirez crew was not so recalled.

Even if one were to disregard the occurrence of the strike and view the facts as if Respondent had failed to recall, after a layoff, a high seniority union activist who had engaged in concerted activity during the period of the layoff, while calling back every other member of the crew, the Employer's conduct herein could only be regarded as inherently destructive of employee rights under §1152 of the Act. *N.L.R.B. v. Great Dane Trailers*, 338 U.S. 26, 34 (1967). As the court noted in *Fleetwood Trailer Co.*, *supra*, at Page 378:

If, after conclusion of the strike, the employer refuses to reinstate striking employees, the effect is to discourage employees from exercising their rights to organize and to strike guaranteed by ... the Act.

To a fellow worker in Ramirez' crew who looked around when he was called back to work and noted the absence of Patino, the message was clear. Be a UFW activist, be the UFW leader among the crew members and the boss will get rid of you. Respondent's failure to recall Patino can only have the effect of inhibiting the exercise of §1152 rights by members of Ramirez¹ crew- and is as destructive of those rights as was the refusal to make vacation payments in *Great Dane*.^{6/}

Respondent argues that the General Counsel has failed to prove a violation of the statute because he has failed to prove any anti-Union motivation for the failure to recall Patino. However, proof of anti-Union motivation is unnecessary when the employer's conduct "could have adversely affected employee rights to some extent" and when Respondent fails to establish that his

^{5/}*N.L.R.B. v. Fleetwood Trailer Co.*, 389 U.S. 375, 379 (1967); *Kyutoku Nursery, Inc.*, 3 ALRB No. 30 (1977), Slip Opinion p. 5.

^{6/}See *N.L.R.B. v. Fleetwood Trailer Co.*, *supra*, p. 380.

action was "motivated by legitimate business objectives. "7/

Respondent, having elected not to put on testimony, left the record without evidence of a legitimate business motivation for its conduct. In cross-examining Patino, Respondent sought to explain its failure to recall him by establishing that it was unaware of how to reach him. However, the evidence fails to establish such a defense. Ramirez clearly knew where Patino lived; Ferro was given his address in June, 1978. Moreover, there is nothing in the record to indicate the Respondent made any effort to locate Patino to offer him work. Finally, it is noteworthy that Ramirez was able to locate Patino once an unfair labor practice charge had been filed.

Respondent also argues that Patino did not seek to return to work after the strike. This argument flies in the face of credited testimony to the contrary that the Respondent was made aware during the course of negotiations that all strikers wanted to return to work. Such a statement by the employees' certified bargaining representative suffices. An offer from the individual worker is unnecessary. *Trinity Valley Iron & Steel Co. v. N.L.R.B.*, 410 F.2d 1161 (5th Cir. 1969).

The General Counsel made a prima facie showing that Respondent violated Sections 1153(a) and (c) of the Act. This showing was not rebutted by Respondent; therefore, it follows Respondent violated the Act as charged.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Sections 1153(c) and 1153(a) of the Act, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully failed to recall Eualalio Patino pursuant to its announced plan for the recall of striking employees, I shall recommend that Respondent be ordered to make Patino whole for loss of pay suffered as the result of the failure to recall him to work, after the August, 1978, strike, in accordance with his seniority together with interest thereon at the rate of 7% per annum to be calculated in accordance with the formula used by the National Labor Relations Board in *F. W. Woolworth Co.*, 90 NLRB 289.

In order to more fully remedy Respondent's unlawful conduct, I shall recommend that Respondent make known to all its current employees and to all those employees in Ramirez¹ crew who were recalled to work subsequent to the strike of August, 1978, that it has been found in violation of the Agricultural Labor Relations Act, that it has been ordered to make Patino whole for wage losses resulting from its unlawful act, and that it has been

7/N.L.R.B. v. Great Dane Trailers, supra, at p. 34.

ordered to cease violating the Act and not to engage in future violations.

To this end I shall recommend:

(1) That Respondent be ordered to sign the attached notice and post copies of it at times and places to be determined by the Regional Director. The notices shall remain posted for a period of 60 days. Copies of the notice after translation by the Regional Director into appropriate languages shall be furnished Respondent in sufficient numbers for the purposes described herein.

(2) That Respondent be ordered to distribute a copy of the notice to each of its current employees.

(3) That Respondent be ordered to mail copies of the attached notice, in all appropriate languages, within 31 days of receipt of the Board's order, to all employees of the Ramirez crew who were recalled to work subsequent to the strike of August, 1978.

Upon the basis of the entire record, the findings of fact, the conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue

ORDER

the following recommended:

Respondent, its officers, agents, supervisors and representatives shall:

(1) Cease and desist from:

(a) Refusing to rehire any employee or otherwise discriminate against any employee in regard to rehire or tenure of employment or any term or condition of employment to discourage employee's membership in, or activities on behalf of United Farm Workers of America, or any other labor organization.^{8/}

(b) In any other way interfering with, restraining or coercing employees in the exercise of their Section 1152 rights.

(2) Take the following affirmative actions which will effectuate the purposes of the Act:

(a) Make Eulalio Patino whole for any loss (along

^{8/}Although there is but a limited violation of the Act found herein, a broad remedial order is appropriate since the unfair labor practice found "strike[s] at, the very heart of employee rights guaranteed by the Act." *Omico Plastics, Inc.*, 184 NLRB 767 (1970), cited with approval in *Roy Nunn Farms*, 4 ALRB No. 34 (1978).

with interest thereon at a rate of 7% per annum) he has suffered as a result of Respondent's failure to rehire him after the termination of the strike of August, 1978.

(b) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due under this Order.

(c) Sign the attached notice and post copies of it at times and places to be determined by the Regional Director. The notices shall remain posted for a period of 60 days. Copies of the notice, after translation by the Regional Director into appropriate languages, shall be furnished by Respondent in sufficient numbers for the purposes described herein. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(d) Hand out the attached notice to all current employees.

(e) Mail copies of the attached notice in all appropriate languages, within 31 days after receipt of this Order, to all employees in the Ramirez crew who were recalled to work subsequent to the August, 1978, strike.

(f) Arrange for a representative of Respondent or a Board agent to read the attached notice in appropriate languages to the assembled employees of Respondent on Company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent 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 the question-and-answer period.

(g) Notify the Regional Director in writing, within 31 days from the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: July 18, 1979

AGRICULTURAL LABOR RELATIONS BOARD

By



Robert LeProhn
Administrative Law Officer

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its case, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told us to send out and post this Notice.

We will do what the Board has ordered and also tell you that:

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WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT refuse to rehire any person, or otherwise discriminate against any employee in regard to his or her employment, to discourage union membership, union activity or any other concerted activity by employees for their mutual aid or protection.

WE WILL pay Eulalio Patino any money he may have lost because we did not rehire him in 1978.

Dated:

SANTA CLARA FARMS

By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS BOARD, AN AGENCY OF THE STATE OF CALIFORNIA. DO NOT REMOVE OR MUTILATE.