

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

<b>In the Matter of:</b>	)	
	)	Case No. 93-CE-37-VI
ACE TOMATO COMPANY, INC.,	)	(20 ALRB No. 7)
A California Corporation,	)	
	)	Admin. Order No. 2010-06
<b>Respondent,</b>	)	
	)	ORDER DENYING
and	)	RECONSIDERATION
	)	AND REOPENING;
UNITED FARM WORKERS OF	)	ORDER GRANTING
AMERICA,	)	RECONSIDERATION
	)	SUA SPONTE
<b>Charging Party.</b>	)	
_____	)	

On February 12, 2010, Charging Party United Farm Workers of America (UFW) filed a Motion for Reconsideration and Reopening in response to the Board's Administrative Order 2010-04 Granting Motion to Close Case in the above-entitled matter. The UFW argues that new evidence, namely UFW contracts in effect during the makewhole periods at issue and the "Murray Memorandum," would enable the Board to adjudicate a makewhole specification in this case and in *San Joaquin Tomato Growers*, Admin. Order 2010-03. In fact, the purportedly new evidence was known to the Board when it considered the Motion to Close. Therefore, we deny the UFW's motion because it fails to demonstrate extraordinary circumstances such as newly discovered evidence or a change in existing law that would warrant reconsideration. (Cal. Code Regs, tit. 8, 20286(c).) We grant reconsideration and reopening sua sponte on the grounds that we unfairly presumed that a makewhole specification could not be

adjudicated, given the passage of time and the lack of records, without first requiring a factual showing of prejudice to Ace Tomato Growers (Ace) and San Joaquin Tomato Growers (SJTG) resulting from the delay in seeking compliance. Although our presumption may seem to have been a fair presumption given the passage of time and the delay on the part of the Region and the Board in seeking compliance, it amounted to, in essence, a finding of laches.

Laches is a defense that usually must be proven by the party asserting it, as it is usually based on findings of fact. (*Piscioneri v. City of Ontario* (2002) 95 Cal.App.4<sup>th</sup> 1037, 1048.) We grant reconsideration and reopening for a hearing on factual findings on laches, unclean hands, and any equitable defenses to enforcement and compliance with the Board's orders in this matter.

#### ORDER

The Motion for Reconsideration and Reopening filed on February 12, 2010 is DENIED. We reopen this matter sua sponte for factual findings on laches, unclean hands, and any equitable defenses to enforcement and compliance with the Board's orders in this matter.

By Direction of the Board.

Dated: March 4, 2010

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J. ANTONIO BARBOSA  
Executive Secretary, ALRB