

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KAWANO, INC.,	)	Case Nos.	76-CE-51-R (4 ALRB No.
	)		104)
	)		(9 ALRB No. 62)
)		
	)		77-CE-28-X
	)		77-CE-28-A-X
	)		77 CE-42-X
Respondent,	)		(7 ALRB No. 16)
	)		(10 ALRB No. 17)
)		
and)		
	)	ORDER GRANTING MOTION TO	
UNITED FARM WORKERS	)	MAKE CASES ELIGIBLE FOR	
OF AMERICA,	)	PAYOUT FROM THE	
	)	AGRICULTURAL EMPLOYEE	
	)	RELIEF FUND; ORDER	
	)	GRANTING MOTION TO CLOSE	
	)	CASES	
Charging Party.)		
	)	Admin. Order No. 2012-3	
)		

On February 14, 2012, the Visalia Acting Regional Director (RD) filed a Motion to Make Cases¹ Eligible for Payout from Agricultural Employee Relief Fund (AERF) and Motion to Close Cases in the above-entitled matters pursuant to Board

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¹ The RD’s motion seeks to make eligible for the AERF and to close two separate matters. For the purposes of its order, the Board hereby consolidates Case No. 76-CE-51-R with the previously consolidated cases: 77-CE-28-X, 77-CE-28-A-X and 77-CE-42-X.

regulation 20299.² No responses to the motion were filed.³ As required by Regulation 20299, subdivision (b), the RD has set forth the Regional Office's efforts to collect amounts owed from the Respondent, Kawano, Inc., as well as the basis for the RD's belief that collection of the full amount owing is not possible.

The RD's motion outlines the El Centro and Visalia Regions' efforts to achieve compliance with the Board's orders in Case Nos. 4 ALRB No. 4, 7 ALRB No. 16, 9ALRB No. 62 and 10 ALRB No. 17. The United Farm Workers Union (UFW) was certified as the exclusive collective bargaining representative at Kawano, Inc. (Kawano or Employer) on March 16, 1977. Shortly thereafter, an unfair labor practice (ULP) charge alleging failure to rehire was filed (76-CE-51-R). In Board Decision and Order *Kawano, Inc.* (1978) 4 ALRB No. 104, the Board held that Kawano had violated the Act and ordered back pay for affected workers. On October 28, 1983, the Board issued supplemental decision and order (1983) 9 ALRB No. 62, awarding back pay in the amount of \$579, 452.94. ULP Charges 77-CE-28-X; 77-CE-28-A-X; and 77-CE-42-X were consolidated and resulted in Board Decision and Order *Kawano, Inc.* (1981) 7 ALRB No. 16, in which the Board affirmed the ALJ's conclusion that Kawano had failed to bargain in good faith, and ordered a makewhole remedy. On April 5, 1984, the

² The Board's regulations are codified at Title 8, California Code of Regulations, Section 20100, et seq. Pursuant to section 20299, subdivision (d), a motion to make a case eligible for payout from the AERF is deemed to include a simultaneous motion to close the case pursuant to *John V. Borchard, et al.* (2001) 27 ALRB No. 1.

³ Parties had a 10-day period from the date of service of the motion to file responses pursuant to Board regulation section 20299(b). The deadline for filing a response to the motion was February 27, 2012.

Board issued a supplemental decision and order (1984) 10 ALRB No. 17, awarding makewhole in the amount of \$ 1,067,319.83.

In November 1982, Kawano filed a Chapter 11 Petition for Reorganization with the U.S. Bankruptcy Court, Southern District of California. In October 1984, Kawano petitioned the Bankruptcy Court for conversion from Chapter 11 protection to Chapter 7 and was granted that request. The Court issued an order discharging the Bankruptcy Trustee and closing the case on February 13, 1990.

The current motion contains a thorough discussion of the Region's attempts to participate in the Chapter 11 and 7 Bankruptcy proceedings (the ALRB received no money as it was an unsecured creditor). The motion details the Region's efforts during the late 1980's and early 1990's to pursue derivative liability from possible successors or alter egos. The motion also outlines in great detail the more recent and exhaustive investigation by Regional Staff that found no existing successors or alter egos of Kawano.

Upon review of the RD's motion and declaration in support of the motion, we find that the RD is correct in his assertion that collection of the full amount owing is not possible and, thus, these cases meet the standard for eligibility for payout from the AERF.

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PLEASE TAKE NOTICE that the Motion to Make Cases Eligible for Payout from the Agricultural Employee Relief Fund and the Motion to Close Cases are hereby GRANTED. Interest shall be calculated up to the date of this Order.

By Direction of the Board.

Dated: March 6, 2012

J. ANTONIO BARBOSA
Executive Secretary, ALRB