

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY, INC.,)	Case Nos.	93-CE-037-VI
A California Corporation, DELTA)		(20 ALRB No. 7)
PRE-PACK CO., A California)		
Company, BERENDA RANCH LLC,)		2012-CE-007-VIS
A Limited Liability Company,)		2012-CE-028-VIS
CHRISTOPHER G. LAGORIO)		2012-CE-029-VIS
TRUSTS, CREEKSIDE)		
VINEYARDS, INC., A California)		2012-CE-024-VIS
Corporation, DEAN JANSSEN,)		
An Individual, KATHLEEN)		(39-2012-00285778-CU-
LAGORIO JANSSEN, An Individual,)		PT-STK; C072330)
KATHLEEN LAGORIO JANSSEN)		
TRUST, K.L.J. LLC, Limited)		2012-MMC-001
Liability Company, K.L. JANSSEN)		(38 ALRB No. 6; 38
LIVING TRUST, JANSSEN & SONS)		ALRB No. 8; F065589;
LLC, Limited Liability Company,)		39-2012-00286876-CU-
LAGORIO FARMING CO., INC.,)		OE-STK; C072300)
A California Corporation, LAGORIO)		
FARMS, LLC, A Limited Liability)		39-2012-00287876-
Company, LAGORIO LEASING CO.,)		CU-PT-STK
A California Company, LAGORIO)		
PROPERTIES LP, A Limited)		39-2013-00293857-CU-
Partnership, ROLLING HILLS)		PT-STK
VINEYARD LP, A Limited)		
Partnership,)		
)		
Respondents,)		
)		
and)		
)		
UNITED FARM WORKERS OF)		
AMERICA,)		
)		
)		
Charging Party.)		
_____)		

ORDER CONDITIONALLY
APPROVING FORMAL
BILATERAL SETTLEMENT
AGREEMENT

Admin. Order No. 2013-35

On September 11, 2013, the General Counsel submitted a formal bilateral settlement agreement in the above-captioned matter for Agricultural Labor Relations Board (Board) approval pursuant to Board regulations sections 20298(d)(2) and 20298(f)(1)(A). The formal settlement agreement was accompanied by the General Counsel's statement in support of the agreement as required by regulation section 20298(f)(1)(A).¹ The Board has reviewed the formal bilateral settlement agreement and the statement in support of the agreement. The Board hereby APPROVES the formal bilateral settlement agreement conditioned on the parties' revision of the agreement as described below.

1. The formal settlement agreement purports to adjust two previous final Board Decisions and Orders: *Ace Tomato Co. Inc.* (1994) 20 ALRB No. 7, and *Ace*

¹ The Board received a letter dated September 17, 2013 from Robert K. Carrol, attorney for Ace Tomato Company, Inc. expressing extreme dismay at a September 12, 2012 letter sent to the Board by the United Farm Workers of America (UFW) and the General Counsel's issuance of a "news" release about the formal settlement agreement prior to the approval of the settlement by the Board. Mr. Carrol initially urged the Board to consider rejecting the settlement agreement in its entirety in light of the alleged inaccuracies in the UFW's letter and the General Counsel's unilateral and inappropriate news release. However, in a supplemental letter dated September 19, 2013, Mr. Carrol clarified that his client wished the Board to approve the settlement agreement, but consider requiring that the General Counsel and the UFW issue a public apology and retraction of the information contained in the press release. The Board has conducted its review of the settlement agreement without regard to the statements contained in the UFW's letter or the General Counsel's "news" release. The Board notes that the premature timing of the General Counsel's news release appears to conflict with paragraph 3(k) on page 6 of the settlement agreement which states that the parties will release a copy of a "mutually agreed upon press release." However, at this time none of the involved parties have requested to withdraw from the settlement agreement.

Tomato Co. Inc. (2012) 38 ALRB No. 6. The Board has a duty to ensure that the formal settlement agreement carries out the purposes of the Agricultural Labor Relations Act (ALRA or Act) with respect to the agricultural employees affected by the Board's orders. While the workers who will be eligible for payment from the \$750,000 "Settlement Amount for the Benefit of Employees," are identified on page 7, items 2) and 3) of the statement in support of the settlement, this information is not contained in the formal settlement agreement itself, and therefore has no effect.

It is necessary that the parties revise paragraph 3(d) of the settlement agreement to describe with specificity the agricultural employees eligible to receive payment from the two components of the "Settlement Amount for the Benefit of Employees." The following language is suggested:

a. "Workers eligible to receive payment from the aforementioned '1993-1994 Component' of \$662,756.04 are all agricultural employees (including farm labor contractor employees) employed by Ace Tomato Company, Inc. between June 14, 1993 to July 27, 1994;" and

b. "Workers eligible to receive payment from the aforementioned '2012 Component' of \$87,243 are all agricultural employees employed by Ace Tomato Company, Inc. during the 2012 calendar year (including farm labor contractor employees)."

2. Similarly, on page 7 of the statement in support of the settlement, item 1) states that workers will be eligible for payment from the "Settlement Amount for the Benefit of Employees" for two years following the full payment of the \$750,000

(or three years from the effective date of the settlement agreement), but this eligibility period is not contained in the settlement agreement itself. Although paragraph 3(d) of the settlement agreement refers to section 1161(c)(1) of the Act,² it is the Board's intent that any farm worker affected by the settlement agreement will be able to determine the time frame in which monies will be distributed without referring to a separate document.

Therefore, it is necessary that the parties revise paragraph 3(d) of the settlement agreement to describe with specificity the time period during which affected workers will be eligible for payment, and to include any other relevant information about how and when monies will be distributed.

3. Paragraph 7 resolves "the Cases, along with any other matters, claims, actions or unfair labor practices related to the Cases which are known to exist by the General Counsel or the UFW, whether filed or unfiled." Section 20298(a) of the Board's regulations provides that settlement agreements settle only the allegations contained in the cases that appear in the captions of the agreements and do not settle any other cases or allegations, regardless of whether such matters are known to or readily discoverable by the General Counsel at the time the agreement is reached.

² Section 1161(c)(1) of the Act states that "Notwithstanding Section 1519 of the Code of Civil Procedure, if the board has made a diligent effort to locate an employee on whose behalf the board has collected monetary relief pursuant to this part, and is unable to locate the employee or the lawful representative of the employee for a period of two years after the date the board collected the monetary relief, the board shall deposit those moneys in the [Agricultural Employee Relief Fund]."

Paragraph 7 should be revised consistent with Section 20298 (a) of the Board's regulations.

4. Paragraph 8 of the formal settlement agreement currently reads, "The parties stipulate that the Board's Decision and Order 38 ALRB No. 8, dated August 10, 2012, will be vacated within thirty (30) days of the effective date." The parties themselves cannot stipulate that the Board will vacate its Decision. Only the Board or a Court can act to vacate a Board Decision. Moreover, the Board itself is not a party to the formal settlement agreement. The parties are limited to requesting that the Board vacate its Decision and Order in *Ace Tomato Company, Inc.* (2012) 38 ALRB No. 8. However, in light of the settlement agreement which resolves numerous disputes between the parties, the Board intends to issue a separate Order vacating its Decision within thirty (30) days of the agreement's execution.

5. The Board declines to delegate its authority under section 1163.3(f) of the Act to the General Counsel as requested in paragraph 9 of the settlement agreement. The Mandatory Mediation and Conciliation procedures set forth in sections 1164-1164.13 of the Act as currently written do not include a role for the General Counsel. Therefore, it is necessary for the parties to delete paragraph 9 of the settlement agreement.

6. Paragraphs 3(a) and 3(e) of the formal settlement agreement refer to a \$300,000 "Settlement Amount for Charities." On page 8 of the General Counsel's statement in support of the settlement agreement, the General Counsel states that "the \$300,000 payment ... is ... a good faith effort by the General Counsel and the parties to

contribute to the well-being of farm workers and their families in light of the pending unfair labor practice charges that have yet to go to hearing.” Presumably the General Counsel is referring to Case Nos. 2012-024-VIS, 2012-CE-007-VIS, 2012-CE-028-VIS and 2012-CE-029-VIS.

The Board notes that the complaints that correspond to Case Nos. 2012-024-VIS, 2012-CE-007-VIS, 2012-CE-028-VIS and 2012-CE-029-VIS could be adjusted via an informal settlement agreement pursuant to Board regulation section 20298(d) (1). Informal settlement agreements are not required to be reviewed and approved by the Board. However, because the settlement terms resolving these matters are currently part of the formal settlement agreement, the Board must review the terms of the settlement that purport to adjust these complaints to determine whether they are in accordance with the policies of the Act.

The \$300,000 “Settlement Amount for Charities” cannot be said to substantially remedy the unfair labor practices alleged in the Amended Consolidated Complaint because no part of the \$300,000 is for the benefit of the agricultural employees actually affected by the alleged failure to give notice and bargain. While the Board supports the essential work of addressing the needs of farmworker children, under the circumstances presented here, the terms of the formal settlement agreement

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fail to effectuate the policies of the Act and are contrary to National Labor Relations Board (NLRB) precedent.³

The Board's jurisdiction over settlement agreements requires it to enforce public interests, not private rights. (*The Hess Collection Winery* (2009) 35 ALRB No. 3 at p. 9 citing *Independent Stave Co, Inc.* (1987) 287 NLRB 740 741; See also *NLRB v. Hiney Printing Co.* (6th Cir. 1984) 733 F.2d 1170 [“[T]he Board is charged with serving the public interest to enforce labor relations rights which are public, not private rights.”].)

In deciding whether it will effectuate the purposes and policies of the Act to give effect to a settlement, the NLRB has considered such factors as the risks involved in protracted litigation which may be lost in whole or in part, the early restoration of industrial harmony by making concessions, and the conservation of the NLRB's resources. In addition, the NLRB has considered whether the parties to the dispute and the employees affected by the dispute have agreed to the settlement, whether the settlement was the product of a grievance-arbitration mechanism, and whether the agreement was entered into voluntarily by the parties, without fraud or coercion. (*Independent Stave Co, Inc., supra*, 287 NLRB 740, emphasis added.)

³ The policies of the Act set forth in section 1140.2 are “to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. For this purpose this part is adopted to provide for collective-bargaining rights for agricultural employees.”

One additional factor has been stressed by the NLRB. In *Robinson Freight Lines* (1957) 117 NLRB 1483, 1485, the NLRB stated that it would give effect to a settlement agreement only where the unfair labor practices are "substantially remedied" by the agreement.

In the Amended Consolidated Complaint issued by the General Counsel on February 6, 2013, involving Case Nos. 2012-CE-007-VIS, 2012-CE-028-VIS and 2012-CE-029-VIS, the General Counsel alleges that Respondent failed to notify the United Farm Workers (UFW) about the sale of all or part of its business, and failed to give the UFW an opportunity to bargain over the effects of the sale on the rights of the bargaining unit employees.

The February 6, 2013 Amended Consolidated Complaint seeks several remedies including that the bargaining unit employees be made whole for the Respondent's alleged failure to bargain pursuant to *Highland Ranch. v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 848 and *Transmarine Navigation Corp.* (1968) 170 NLRB 389. The remedies described in these cases include requiring the parties bargain as to the effect of the closure on the bargaining unit and a limited backpay order.

For these reasons, the Board declines to approve the terms of the formal settlement agreement that include the \$300,000 "Settlement Amount for Charities." The Board will only approve a formal settlement where the remedies proposed are consonant with the purpose of the ALRA. To the extent that it is included in a formal settlement, as opposed to a private party settlement, any portion of the proposed

\$300,000 settlement amount must be calculated to substantially remedy the alleged unfair labor practices in Case Nos. 2012-024-VIS, 2012-CE-007-VIS, 2102-CE-028-VIS and 2012-CE-029-VIS.

7. Paragraph 3(a) provides for payments to be received either at the ALRB Headquarters or by wire transfer in accordance to instructions set forth in Exhibit 1. There were no wire transfer instructions in Exhibit 1. It is necessary that the Parties include the wire transfer instructions or remove the provision allowing for payment by wire transfer.

8. Paragraph 3(q) of the Agreement states that upon payment of the full Settlement Amount, the General Counsel through the Regional Director will recommend to the Board, and the Board shall order that Case Number 93-CE-037-VI (20 ALRB No. 7) be closed with full compliance. The Regional Director may only request that the Board close a case that is under the Board's jurisdiction and can then take action conditioned upon the Board closing the case. Ordinarily a case is not formally closed until the Board's order has been fully effectuated, including farm workers receiving what is owed to them. However, in deference to the settlement agreement efforts, the Board will release the Respondent from liability for Case Number 93-CE-037-VI (20 ALRB No. 7) upon receipt of the Respondent's final installment payment of the "Settlement Amount for the Benefit of Employees." The Board will formally close the case once the period for locating eligible workers has elapsed. On page ten of the General Counsel's statement in support of the formal settlement, item 4, Outreach and AERF Distribution, states "Consistent with the statute,

all remaining funds will be deposited into the AERF for the benefit of other agricultural workers two years after receipt of the settlement amount for the benefit of workers.” This language needs to be included in Paragraph 3 (q) of the formal settlement agreement.

9. Paragraph 4 of the Agreement states the parties agreement “forever to settle and release to the fullest extent permitted by law any and all possible claims, causes of action, disputes, and differences, known or unknown, suspected or unsuspected, arising out of or related to the Cases that exist as of the date of [the] Agreement.” (Bracketed material added). To the extent that this paragraph intends to settle and release unknown claims, it conflicts with Section 20298, subdivision (a) of the Board’s regulations, which states:

(a) Matters settled: Settlement agreements of all types settle only the allegations contained in the cases, designated by number, which appear in the captions of the agreements and do not constitute settlement of any other cases or allegations, regardless of whether such matters are known to, or readily discoverable by, the General Counsel at the time the agreement is reached.

Although the Agreement attempts to settle unknown claims “to the fullest extent permitted by law,” the Agreement should acknowledge that settlement and release of unknown claims is not possible under Section 20298(a) of the Board’s regulations.

Upon receipt of a settlement agreement consistent with the conditions in

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this order, the Board will issue a final order granting unconditional approval of the settlement.

By Direction of the Board.

Dated: September 24, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB