

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY, INC., )	Case Nos.	93-CE-37-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 DENYING MOTION FOR  
STAY OF ALL PROCEEDINGS  
AND ENFORCEMENT

Admin. Order No. 2014-07

## **Background**

On September 11, 2013, the General Counsel submitted a formal bilateral settlement agreement in the above-captioned matter for the approval of the Agricultural Labor Relations Board (Board) pursuant to Board regulations sections 20298(d)(2) and 20298(f)(1)(A). On September 24, 2013, the Board issued an Order Conditionally Approving Formal Bilateral Settlement Agreement (Administrative Order No. 2013-35).<sup>1</sup>

On October 11, 2013, the General Counsel and the United Farm Workers of America (UFW) filed what purported to be a joint motion for reconsideration of the Board's September 24, 2013 order. The General Counsel represented that Respondents, Ace Tomato Company, Inc., et al. (Respondents) were in agreement with the substance of the arguments in the motion but, for unknown reasons, Respondents did not join in the motion.

On October 18, 2013, the Board denied the General Counsel and UFW's Joint Motion for Reconsideration (Administrative Order No. 2013-43). In its Order the Board reiterated and further clarified the reasoning for the Board's previous conditional approval of the formal bilateral settlement agreement and the legal

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<sup>1</sup> In Administrative Order No. 2013-35, the Board explained why the parties needed to revise a number of the provisions of the settlement agreement before the Board could approve it. Notably, the Board found that a provision that included a \$300,000 "settlement amount for charities" was not in accordance with purpose and policies of the ALRA because it allocated settlement monies to third parties rather than to the agricultural employees harmed by the commission of unfair labor practices.

limitations on the Board in imposing remedies outside of those provided for by the Agricultural Labor Relations Act (ALRA or Act).

The Board emphasized that its intention was that the parties reach a settlement on those matters within the Board's sole jurisdiction, namely the compliance matter in Case No. 93-CE-37-VI and the Ace Mandatory Mediation and Conciliation (MMC) matter, Case No. 2012-MMC-001, with or without the General Counsel's assistance, and with or without a global settlement including the resolution of any unlitigated unfair labor practice charges or other matters outside of the Board's sole jurisdiction. The Board also took the opportunity to clarify the General Counsel's role in acting on behalf of the Board in achieving compliance with Case No. 93-CE-37-VI, and stated that "[t]he General Counsel is free to settle any unlitigated unfair labor practice charges without the Board's approval in her role as the General Counsel. Settlement of those matters, however, should not create an impediment to her role as an agent for Board compliance in achieving the Board's objective, which is settlement of the compliance matter in 93-CE-37-VIS and disbursement of makewhole funds to the aggrieved agricultural employees as soon as possible."

The Board allowed the parties fifteen (15) calendar days from its October 18, 2013 Order to submit a settlement agreement that conformed to the Board's previous Order Conditionally Approving Formal Bilateral Settlement Agreement (Administrative Order No. 2013-35). The Board stated that if no such agreement was forthcoming, the Board would schedule a settlement conference with the parties toward the goal of achieving settlement of all matters within the Board's

sole jurisdiction (case nos. 93-CE-37-VI and 2012-MMC-001 ) without the agency of the General Counsel.

When no such Formal Bilateral Settlement Agreement conforming to Administrative Order No. 2013-35 was forthcoming, the Board issued a Notice of Settlement Conference on December 3, 2013. A settlement conference facilitated by Administrative Law Judge (ALJ) Thomas Sobel was held on January 24, 2014

### **Current Motion Before the Board**

Before the settlement conference could take place, the General Counsel issued a Third Revised Makewhole Specification in Case No. 93-CE-37-VIS on November 19, 2013. This prompted Respondents to file on December 4, 2013, a Motion for Stay of All Proceedings and Enforcement During Pendency of Board-Ordered Settlement Negotiations. It is that motion which is currently before the Board. On December 9, 2013, the Executive Secretary of the Board issued an Order granting Respondents an extension of time to file and serve their Answer to the Third Revised Makewhole Specification to a date ten (10) days following the Board's ruling on the Motion for Stay of All Proceedings and Enforcement During Pendency of Board-Ordered Settlement Negotiations. On December 11, 2013, the General Counsel submitted an Opposition to the Respondents' Motion for Stay of All Proceedings and Enforcement During Pendency of Board-Ordered Settlement Negotiations.<sup>2</sup>

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<sup>2</sup> The Board was without a quorum between December 31, 2013 and March 18, 2013, and therefore, could not act on Respondents' motion.

On April 1, 2014, ALJ Sobel sent the parties a letter requesting the parties advise the Executive Secretary on whether further settlement discussions would be useful or whether the cases should be put back on the calendar for hearing. The UFW and Respondents submitted letters in response respectively dated April 21, 2014, and April 22, 2014, to the Executive Secretary. The UFW requested that a further settlement conference be scheduled conditioned on the General Counsel and/or her representatives being present at the conference. The UFW requested in the alternative, if the Board was not willing to schedule a settlement conference at which the General Counsel and/or her representatives would be present, the cases be set for hearing.

The Respondents requested the Board require the parties to proceed in a manner consistent with Administrative Order 2013-43 and order further settlement discussions pertaining to Case Nos. 93-CE-37-VI and 2012-MMC-001 “without the agency of the General Counsel.” Additionally Respondents asked that the Board clarify ALJ Sobel’s role as a settlement judge to facilitate settlement discussions rather than as an advocate for the Board, because it is Respondents’ belief that if ALJ Sobel’s role were more like that of a mediator, the likelihood of voluntary settlement would be greater.

## **DISCUSSION**

At this juncture, the only matter on which the Board has jurisdiction to rule is the makewhole case (Case No. 93-CE-37-VI). With respect to this matter, the Board’s overriding goal is to secure a remedy for affected agricultural workers at the earliest possible time whether this is accomplished through voluntary settlement or

through litigation of the makewhole specification. While the Board will continue to encourage the reaching of a settlement agreement that provides a remedy to the aggrieved agricultural workers and that is consistent with the policies and purposes of the ALRA, it will not permit the case to be held in abeyance as settlement negotiations continue and the affected employees await their remedy. Therefore, the Board orders that Case No. 93-CE-37-VI be placed back on calendar. In addition, ALJ Sobel will continue to be available to conduct settlement negotiations in the role of Settlement Judge.<sup>3</sup> The hearing on the November 19, 2013 Third Revised Makewhole Specification is assigned to Administrative Law Judge Douglas Gallop. The Respondents' answer to the Third Revised Makewhole Specification is due ten (10) days following this order.

The Board finds that in ruling on Respondents' motion it must again clarify the General Counsel's role in acting on behalf of the Board in achieving compliance with Case No. 93-CE-37-VI. As indicated above, the General Counsel submitted an Opposition to the Respondents' Motion for Stay of All Proceedings and Enforcement During Pendency of Board-Ordered Settlement Negotiations on December 11, 2013. The General Counsel stated on page seven of her opposition that "the Board now takes on full responsibility for obtaining compliance with its 1994 Order in [Case No. 93-CE-37-VIS]." She further stated in footnote three on page seven that "[i]t is the Board, not the General Counsel, who will now pursue settlement with

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<sup>3</sup> See, for example, section 102.35(b) of the National Labor Relations Board Rules and Regulations which contemplates that a judge other than the trial judge may be assigned to conduct settlement negotiations.

the parties, litigate the matter at a compliance hearing if settlement discussions are unsuccessful, and assume responsibility for locating the almost three thousand aggrieved Ace workers eligible for a makewhole award.”

While we agree that the General Counsel’s participation is not required in either the litigation or settlement of this compliance matter, or in compliance matters generally, the General Counsel is incorrect in stating that the Board will now litigate the matter at a compliance hearing. In the present case, the Board took the extraordinary step of attempting to achieve settlement of all matters within the Board’s jurisdiction directly because the General Counsel was unable to procure a settlement agreement that conformed with Administrative Order No. 2013-35, and, in particular, its instruction that unfair labor practices may not be remedied through the payment of funds to third parties, rather than aggrieved agricultural workers. The Board was also concerned that the General Counsel’s sole authority to settle the unlitigated unfair labor practice matters involving Respondents, was in conflict with pursuing settlement of Case No. 93-CE-37-VI undermining the possibility of settlement. In accordance with Board regulation sections 20290, 20291 and 20292, the authority to issue compliance specifications and litigate disputed compliance matters, which is encompassed within the authority of the Board itself over compliance matters, is delegated to the regional directors. Thus, the responsibility for the litigation of this compliance matter will remain with the Regional Director. Both with respect to the litigation of the compliance matter and with respect to the negotiation of a settlement

of the compliance matter, the participation of the General Counsel is not contemplated in the Board's regulations and is not necessary.

**ORDER**

PLEASE TAKE NOTICE that Administrative Law Judge Thomas Sobel is designated as Settlement Judge towards continuing to seek a formal settlement between the parties. The Respondents' Motion for Stay of All Proceedings and Enforcement During Pendency of Board-Ordered Settlement Negotiations is DENIED. The makewhole specification hearing is to be placed on calendar for July 2014, and Administrative Law Judge Douglas Gallop is assigned to conduct the makewhole specification hearing.

PLEASE TAKE FURTHER NOTICE that Respondents shall file their Answer to the Third Revised Makewhole Specification within ten (10) days following the issuance of Board's instant Order.

Dated: May 13, 2014

William B. Gould, IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member