

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KAWAHARA NURSERIES,)	Case Nos.	2011-CE-004-SAL
INC.,)		2011-CE-005-SAL
)		2011-CE-006-SAL
Respondent,)		
)		(40 ALRB No. 11.)
and)		
)		
ADIN VELASQUEZ, SIMON)	ORDER DENYING GENERAL	
BLANCO, and RUBEN COLIN)	COUNSEL'S MOTION FOR	
JIMENEZ,)	RECONSIDERATION	
)		
)	Admin. Order No. 2014-40	
<u>Charging Parties.</u>)		

On October 30, 2014, the Agricultural Labor Relations Board (the “ALRB” or “Board”) issued a decision and order in the above-captioned unfair labor practice cases. (*Kawahara Nurseries, Inc.* (2014) 40 ALRB No. 11.) In its decision, the Board found that the Respondent, Kawahara Nurseries, Inc. (the “Employer”), unlawfully laid off and/or refused to rehire certain individuals (the “discriminatees”) based upon the discriminatees’ union activities and/or for giving testimony in an ALRB proceeding. The Board ordered the Employer to, among other things, offer the discriminatees employment and make them whole for lost wages.

On November 10, 2014, the General Counsel of the Agricultural Labor Relations Board (the “General Counsel”) filed a Motion for Reconsideration of the Board’s decision (the “Motion”) pursuant to Board Regulation section 20286(c). The General Counsel asserts that the Board found that charging party Ruben Colin Jimenez

("Mr. Jimenez") had been unlawfully laid off but failed to include him in the section of the order directing make-whole relief for laid off employees. The General Counsel's Motion is DENIED for the following reasons.

The General Counsel's assertion that the Board found that Mr. Jimenez was unlawfully laid off is incorrect. The Administrative Law Judge ("ALJ") determined that Mr. Jimenez' layoff claim was untimely because he was laid off more than six months before he filed a charge in this case. [ALJ Dec. p. 27.] The General Counsel did not except to this conclusion and the Board affirmed it. (See footnote 11 of the Board's decision at page 10.) Accordingly, Mr. Jimenez was properly omitted from the Board's make-whole award for individuals who had been unlawfully laid off (section 2(b) of the order).

The ALJ did find, and the Board agreed, that Mr. Jimenez was unlawfully denied rehire. Accordingly, he was included in the Board's make-whole award for individuals who had been unlawfully denied rehire (section 2(c) of the order). He was also included in the section of the Board's order directing the Employer to offer employment to the discriminatees (section 2(a) of the order).¹

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¹ Section 2(a) of the Board's order requires the Employer to offer employment to those employees who were unlawfully laid off, as well as those who were unlawfully denied rehire. Four of the six discriminatees were unlawfully laid off *and* were unlawfully denied rehire. One of the discriminatees (Jorge Hernandez Martinez) was unlawfully laid off but was not unlawfully denied rehire, while Mr. Jimenez had an untimely layoff claim but was unlawfully denied rehire.

For the foregoing reasons, the General Counsel's Motion for
Reconsideration is DENIED.

DATED: November 17, 2014

WILLIAM B. GOULD IV, Chairman

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member