

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KAWAHARA NURSERIES, INC.	)	Case Nos.	2011-CE-004-SAL
	)		2011-CE-005-SAL
	)		2011-CE-006-SAL
Respondent,	)		(40 ALRB No. 11)
and,)		
	)	ORDER APPROVING FORMAL	
ADIN VELASQUEZ,	)	BILATERAL SETTLEMENT	
SIMON BLANCO, and	)	AGREEMENT	
RUBEN COLIN JIMENEZ,)		
)		
Charging Parties.	)	Admin. Order No. 2018-03	
)		
	)	(April 02, 2018)	
)		
)		

On March 23, 2018, the Regional Director for the Salinas Region of the Agricultural Labor Relations Board (“ALRB” or “Board”) filed with the Board a Request for Approval of [Proposed] Formal Bilateral Settlement Agreement, in the above-captioned matter, including the proposed agreement itself and the Regional Director’s statement in support of the agreement. (Cal. Code Regs., tit. 8, § 20298, subd. (f).) The Regional Director states that Respondent Kawahara Nurseries, Inc. (“Respondent”) has complied with all the non-monetary aspects of the remedy ordered by the Board in its October 30, 2014 decision. (*Kawahara Nurseries, Inc.* (2014) 40 ALRB No. 11.) However, compliance with the monetary aspects of the Board’s order requiring Respondent to make whole employees that it unlawfully laid off and/or refused to rehire remains outstanding. The Regional Director states that the settlement amount set forth in

the proposed agreement represents 81% of the total amount owed by Respondent, including principal, interest, and excess tax liability. The Regional Director further states that approval of the agreement will eliminate the potential risks and delays of litigation, and will conserve the Board resources that would be required for an anticipated lengthy compliance hearing and potential appellate litigation. Finally, the Regional Director states that all parties, including the individual charging parties, have approved the proposed agreement and that it will substantially remedy the unfair labor practices found in this case.

The Board encourages voluntary settlement of labor disputes, but will only approve proposed settlements where they are consistent with, and further, the policies and purposes of the Agricultural Labor Relations Act (the “ALRA” or “Act”). (*Hess Collection Winery* (2009) 35 ALRB No. 3 at p. 9 [“the Board’s jurisdiction over settlement agreements requires it to enforce public interests, not private rights, and to reject settlement agreements that are repugnant to the Act”].) In deciding whether a settlement effectuates the policies and purposes of the Act, the Board considers “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 Board’s resources.” (*Independent Stave Co., Inc.* (1987) 287 NLRB 740, 741.) The Board additionally considers “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.” (*Ibid.*) An additional factor

stressed by the Board is that a settlement agreement should be given effect “only where the unfair labor practices are ‘substantially remedied’ by the agreement.” (*Id.* at pp. 741-742, citing *Robinson Freight Lines* (1957) 117 NLRB 1483, 1485.)

The Regional Director’s statement in support of the proposed settlement agreement addresses the agreement’s compliance with the *Independent Stave* criteria, including the factors focusing on the risks and delays of protracted litigation, conservation of Board resources, and the voluntary agreement of the parties. While the settlement amount is less than the full amount calculated by the Region, the 81% recovery along with what the Regional Director represents to be full compliance with non-monetary remedies substantially remedies the unfair labor practices found by the Board.

PLEASE TAKE NOTICE that the Board hereby APPROVES the formal bilateral settlement agreement submitted by the Regional Director in this matter.

DATED: April 2, 2018

GENEVIEVE A. SHIROMA, Chairwoman

CATHRYN RIVERA-HERNANDEZ, Member

ISADORE HALL III, Member