

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SABOR FARMS,	)	Case No.	2013-CE-047-SAL
	)		(42 ALRB No. 2)
	)		
Respondent,	)		
	)		
And	)		
	)	ORDER CONDITIONALLY	
OSCAR CARBALLO,	)	GRANTING APPROVAL OF	
	)	FORMAL BILATERAL	
	)	SETTLEMENT AGREEMENT	
Charging Party.	)		
	)	Admin. Order No.	2018-04
	)		
	)	(May 18, 2018)	
	)		
	)		

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On April 28, 2016, the Agricultural Labor Relations Board (“ALRB” or “Board”) issued a decision and order in the above-captioned case. (*Sabor Farms* (2016) 42 ALRB No. 2.) In its decision, the Board found that respondent Sabor Farms (“Sabor”) unlawfully terminated charging party Oscar Carballo and another employee, Itzel Blanquel, when they concertedly protested what they viewed as an unfair deviation from Sabor’s policy for rotating workers around a harvesting machine. The Board ordered Sabor to cease and desist from the unlawful conduct and to take affirmative action to remedy the violations, including making Mr. Carballo and Ms. Blanquel whole for lost wages and other economic losses.

On May 30, 2017, after Sabor's petition for review of the Board's order was denied by the Sixth District Court of Appeal, the Board's Acting Executive Secretary released the matter to the ALRB's Salinas Regional Office (the "Region") for compliance. In August 2017, the Region requested authorization to seek judicial enforcement of the Board's order, alleging that Sabor was failing to provide requested information and was failing to respond to the Region's communications. The Region later withdrew this request in November 2017, stating that Sabor had made significant progress towards compliance.

On January 29, 2018, the Region filed a Backpay Specification and Notice of Hearing (the "Specification"). In the Specification, the Region stated that both Mr. Carballo and Ms. Blanquel lost wages between September 26, 2013, and November 9, 2013, and that Mr. Carballo additionally lost income he had been earning providing carpool services to coworkers. The Region also stated that Mr. Carballo and Ms. Blanquel were owed interest and compensation for adverse tax consequences. Mr. Carballo and Ms. Blanquel's total economic losses were calculated to be \$3,864.00 and \$6,172.00, respectively, for a grand total of \$10,036.00.

A compliance hearing was scheduled for April 10, 2018. At a March 5, 2018 pre-hearing conference, Sabor stated that it would present a "counter-offer" to the specification, and the parties requested a settlement judge. That same day, the General Counsel filed a request to take the hearing off calendar because the parties had reached a proposed formal bilateral settlement agreement. On April 19, 2018, the Region filed the agreement and the Regional Director's supporting statement with the Board.

The agreement states that it will fully resolve and settle charge no. 2013-CE-047-SAL. It states that Sabor has fully complied with the terms and conditions of the Board's order with the exception of the reimbursement of Mr. Carballo and Ms. Blanquel's economic losses. The agreement provides that, upon the Board's approval of the agreement, Sabor is to pay \$3,081.00 to Mr. Carballo and \$4,819.00 to Ms. Blanquel, and states that these amounts "are in full settlement" of the backpay owed. The agreement is signed by the Regional Director, the president of Sabor, and Mr. Carballo as charging party.

The Regional Director's statement in support of the agreement states that the factors used by the Board to evaluate settlement agreements as stated in *Independent Stave Co., Inc.* (1987) 287 NLRB 740 weigh in favor of approving the agreement. The factors cited by the Regional Director are: 1) the settlement agreement mitigates the risks of litigation and conserves the ALRB resources that would be expended in litigating the matter; 2) the settlement avoids further delay in effectuating the Board's remedy; 3) the agreement was voluntarily entered into by all parties; and 4) the agreement provides a substantial amount of the backpay owed. With respect to this final factor, the Regional Director states that the agreement recovers 87% of "all monies sanctioned by current Board precedent." However, the Regional Director also states that the Region withdrew the claim that Mr. Carballo was owed reimbursement for lost carpool income, characterizing this as a "novel" argument that the Region withdrew in exchange for Sabor's willingness to settle.

## Discussion

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.)

We agree with the Regional Director that several of the *Independent Stave* factors weigh in favor of approving the settlement agreement. The agreement mitigates the risks that are inherent in litigation. The agreement also would preserve ALRB resources that would be expended in litigating issues of economic damages in the administrative case as well as, potentially, in appellate litigation. The agreement promises to secure a substantial

monetary remedy without the substantial delays frequently involved in litigation. Based upon these factors, we shall grant conditional approval to the agreement and will grant final approval upon receiving a supplemental statement and/or addendum or amendment to the agreement from the Regional Director addressing the following issues.

The Regional Director's statement in support of the agreement states that the agreement provides for an aggregate recovery rate of 87%. In order to reach this percentage figure, the \$1,056.00 in lost carpool income claimed on behalf of Mr. Carballo in the Specification would need to be excluded.<sup>1</sup> This deduction, consistent with the Regional Director's agreement to withdraw the claim for lost carpool income, results in total economic damages for Mr. Carballo of \$2,808.00. However, the agreement specifies that Mr. Carballo is to receive \$3,081.00, which amounts to 109.72% of his total economic damages, excluding his lost carpool income. Ms. Blanquel, in contrast, is to receive only 78% of her economic losses as calculated in the Specification.

The Board understands that settlements substantially reduce the amount of time that aggrieved employees must wait for a remedy, albeit normally in exchange for some discount on the amounts owed to employees. However, in order to carry out its function of ensuring that proposed settlements further the policies and purposes of the Act, the Board must have as complete an explanation as the Region reasonably can provide concerning the factors that support approval of a settlement agreement. The particular factors that should be

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<sup>1</sup> The total backpay claimed in the Specification, \$10,036.00, less the \$1,056.00 claimed for lost carpool income is \$8,980.00. The total settlement amount of \$7,900.00 is 87.97% of \$8,980.00. If the carpool income were not excluded, the aggregate recovery rate would be 78.72%.

addressed depend on the circumstances of each case. In this case, the explanation/addendum should include, but need not be limited to, the structuring of the agreement as it relates to the settlement amount allocated to Mr. Carballo versus the amount of total damages claimed on his behalf and the differential between the recovery rates contemplated for Mr. Carballo and Ms. Blanquel in light of the fact that they facially appear to be similarly situated. In this latter regard, the Board is interested in whether Ms. Blanquel's position concerning the agreement has been sought, and, if so, whether she approved the agreement.

The Regional Director shall file a supplemental statement in support of the settlement agreement and/or addendum or amendment to the agreement consistent with the foregoing on or before June 1, 2018. The matter of the request for approval of the formal bilateral settlement agreement remains pending before the Board.

DATED: May 18, 2018

GENEVIEVE A. SHIROMA, Chairwoman

CATHRYN RIVERA-HERNANDEZ, Member

ISADORE HALL III, Member