STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PREMIERE RASPBERRIES, LLC, Respondent, and UNITED FARM WORKERS OF AMERICA, Charging Party.	)	Case No. 2018-CE-004-SAL (44 ALRB No. 9) (Admin. Order No. 2020-20) (Admin. Order No. 2020-18-P) (Admin. Order No. 2020-13-P) (Admin. Order No. 2020-05-P) ORDER APPROVING FORMAL BILATERAL SETTLEMENT AGREEMENT Admin. Order No. 2020-21 (December 14, 2020)

On November 13, 2020, the Regional Director of the Salinas Region (Region) of the Agricultural Labor Relations Board (ALRB or Board) filed with the Board a proposed formal bilateral settlement agreement (Agreement) along with a statement in support of the Agreement (Statement in Support). The Agreement would resolve matters involving Premiere Raspberries, LLC (Premiere) and the United Farm Workers of America (UFW).[1] The Board previously declined to approve a prior version of the Agreement because the Region had not sufficiently substantiated Premiere's claim that it could pay only a fraction of its total estimated liability because it had ceased

[1] The factual and procedural background of these cases are set forth in the Board's prior decisions and orders. (See *Premiere Raspberries, LLC* (2018) 44 ALRB Nos. 8, 9; *Premiere Raspberries, LLC* (Mar. 6, 2020) ALRB Admin. Order No. 2020-04; *Premiere Raspberries, LLC* (Mar. 6, 2020) ALRB Admin. Order No. 2020-05-P.)

farming operations and was insolvent. The Board also identified legal and procedural defects in the prior agreement correction of which was necessary before the Board could approve the settlement.[2] The Board now finds that the current version of the Agreement and the Region's Statement in Support adequately address the issues identified in the Board's prior order and, as discussed below, the Board approves the Agreement.

The Board encourages voluntary settlement of labor disputes but will only approve proposed settlements that are consistent with and further the policies of the Act. (*Hess Collection Winery* (2009) 35 ALRB No. 3, 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"]; *Premiere Raspberries, LLC* (May 19, 2020) ALRB Admin. Order No. 2020-13-P, pp. 2-3.) In deciding whether a settlement effectuates the purposes and policies 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; *Premiere Raspberries, LLC, supra,* ALRB Admin. Order No. 2020-13-P, p. 3.) 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

[2] For the Board's discussion of the prior settlement agreement and the issues that required correction and substantiation prior to approval, see *Premiere Raspberries, LLC, supra*, ALRB Admin. Order. No. 2020-13-P.

into voluntarily by the parties, without fraud or coercion." (*Ibid*.) One 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." (*Independent Stave Co., Inc., supra*, 287 NLRB 740, 741-742, citing *Robinson Freight Lines* (1957) 117 NLRB 1483, 1485; *Premiere Raspberries, LLC, supra,* ALRB Admin. Order No. 2020-13-P, p. 3.)

The Agreement now before the Board has been revised to make the corrections required by the Board's prior order denying approval of the parties' previous agreement. With respect to the Region's substantiation of Premiere's insolvency, the Region conducted an investigation into this issue and determined that Premiere has closed its business, has no income and no employees, and the $800,000 settlement amount represents virtually all of Premiere's remaining assets. The Region states that its investigation revealed no other entities or individuals who may be liable for payment of makewhole under successorship, alter ego, or personal liability theories.

While the Board has serious reservations about approving an agreement that releases Premiere from liability while paying only a fraction of the estimated total makewhole owed, the Board must consider the fact that, according to the Region's investigation, the settlement amount comprises substantially all of Premiere's remaining assets. According to the Region, further litigation would not increase the amount recovered on behalf of Premiere's employees but instead could be expected to deplete Premiere's remaining assets while delaying any eventual remedy, exacerbating the problem of locating eligible employees. Furthermore, while the Board is not required to

approve a settlement agreement merely because it is supported by all parties, the support of the certified bargaining representative for the Agreement does weigh in favor of its approval. (*Premiere Raspberries, LLC, supra*, ALRB Admin. Order. No. 2020-13-P, p. 3.) In light of the above, and based on the Region's representations following its investigation, the Board finds the purposes of the Act are best served by approving the Agreement.

Despite approving the Agreement, the Board is deeply concerned with the outcome of these matters. Premiere's unlawful conduct deprived its employees of wages to which they were legally entitled. Rather than pay those wages, Premiere engaged in protracted, and ultimately unmeritorious, litigation only to promptly close its business once the litigation concluded, revealing that it could only pay a fraction of those wages. This type of conduct – in which an employer accepts the benefits of its employees' labor while depriving them of their full wages and collective bargaining rights, only to vanish once ordered to reimburse those employees – is intolerable, yet all too common.[3] It is for this reason that, while approving this settlement agreement, the Board strenuously urges the regions and the General Counsel to take all possible steps to anticipate and prevent this type of situation in the future. As this case shows, more must

[3] Effective January 1, 2019, the Legislature amended the ALRA to make clear that an employer must implement immediately the terms of a contract ordered into effect by the Board following mandatory mediation and conciliation (MMC) procedures even where the employer seeks judicial review of the Board's MMC order. (Lab. Code, § 1164.3, subd. (f)(2).) This is a change to prior precedent, which effectively permitted employers to refuse to implement MMC contracts while they sought judicial review of the Board's orders. The Board welcomes this change and anticipates that it will hamper future employers' ability to emulate Premiere's conduct in this case.

be done to ensure that the monetary remedies ordered by the Board are not rendered ineffective when the time comes to implement them.

ORDER

The Board APPROVES the formal bilateral settlement agreement submitted by the Regional Director.

DATED: December 14, 2020

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member