

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

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| WILLIAM MENDOZA, |) | |
| |) | |
| Respondent, |) | No. 75-CE-57-R |
| |) | |
| and |) | |
| |) | |
| UNITED FARM WORKERS OF AMERICA, |) | 3 ALRB No. 58 |
| AFL-CIO, |) | |
| |) | |
| Charging Party. |) | |
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This decision has been delegated to a three-member panel of the Board. Labor Code Section 1146.

On February 22, 1977, administrative law officer Frank M. Garcia issued his decision in this case. The respondent filed timely exceptions to the law officer's recommended remedy. As no exceptions were filed to the law officer's findings of fact and conclusions of law, his decision is final.^{1/} We modify, however, the recommended remedies as follows:

(1) The respondent has excepted to the law officer's recommended award of litigation costs to the charging party and the general counsel. We find that the respondent's exception has merit. The law officer did not set forth the basis for the award. We have held that such an award is proper when respondent's litigation posture may be characterized as

^{1/}We decline, however, to adopt the statement of reasons in support of the decision, which accordingly shall be without precedent for future cases. 8 Cal. Admin. Code Section 20286(a).

"frivolous". V. B. Zaninovich & Sons, 3 ALRB No. 57 (1977). Nothing in the present case indicates that respondent's defense of the unfair labor practice charges here was "frivolous". We therefore modify the ALO's recommended remedy to eliminate the assessment of litigation costs and fees against the respondent.

(2) Additionally, we order that the Notice to Workers be distributed, mailed, read, and posted in the manner set forth below.

Accordingly, pursuant to Labor Code Section 1160.3, IT IS HEREBY ORDERED that the respondent William Mendoza, its officers, agents, successors and assigns shall:

1. Cease and desist from: interfering with, restraining or coercing its employees in the exercise of their rights guaranteed by Sections 1152 and 1153(a) of the Act by making an unlawful promise of benefits to its employees.

2. Take the following affirmative action:

- (a) Distribute the following NOTICE TO WORKERS (to be printed in English, Spanish and any other languages found to be appropriate by the regional director) to all present employees and to all new employees and employees rehired within six months following initial compliance with this Decision and Order and mail a copy of said Notice to all of the employees listed on its master payroll between October 1 and October 29, 1975, and post such Notice immediately in prominent places at respondent's premises in an area frequented by employees where notices to employees are customarily posted, such locations to be determined by the regional director, for not less than a

six-month period.

(b) Have the attached NOTICE read in English and Spanish, and any other language which the regional director may find to be appropriate, at the commencement of the 1977 peak harvest season to all those then employed, by a Board agent or a company representative. The reading shall take place during the employees' lunch hour, or such other nonwork time as the regional director may designate, on a date or dates and at such place or places on the respondent's premises as determined by the regional director. Following this reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have regarding the Notice and their rights under the Agricultural Labor Relations Act.

(c) Notify the regional director of the San Diego regional office within 20 days from receipt of a copy of this Decision and Order of steps the respondent has taken to comply herewith, and to continue reporting periodically thereafter until full compliance is achieved.

IT IS FURTHER ORDERED that allegations contained in the complaint, as amended, not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

Dated: July 21, 1977

RICHARD JOHNSEN, JR., Member

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

1
2 BEFORE THE
3 AGRICULTURAL LABOR RELATIONS BOARD
4 OF THE STATE OF CALIFORNIA

5 WILLIAM MENDOZA)
6 Respondent,)

7 and)

8)
9 UNITED FARM WORKERS OP AMERICA,)
10 AFL-CIO,)
11 Charging Party.)

CASE NO. 75-CE-57-R

12 FINDINGS OF FACT;

13
14 CONCLUSIONS OF LAW AND PROPOSED DECISION

15 I

16 JURISDICTION AND PROCEDURAL HISTORY

17 The Respondent, William Mendoza, was formally charged on
18 November 11, 1975 of an unfair labor practice by the United Farm
19 Workers of America, AFL-CIO, San Ysidro local. The charge alleges that
20 the Respondent "laid off" six employees on October 29, 1975 because the
21 said employees were supporters of the United Farm Workers Union.

22 An election had been had on October 9, 1975 to determine if
23 the workers wanted a union contract on Respondent's farm.

24 Specifically the employer is charged with unfair labor
25 practices in violation of Sections 1153 (a) and 1153 (c) of the Labor
26 Code.

1 2. That Respondent , dba William Mendoza is engaged in agriculture in San
2 Diego County and is an agricultural employer within the meaning of Section
3 1140.4 (b) of the ALRA.

4 3. That Respondent is a superior within the meaning of the Act.

5 4. That Socorro Gonzales, Alberto Gomez, Jesus Rodriguez and Dolore.
6 Sanchez were agricultural employees within the meaning of Section 1140.4
7 (b) of the ALRA.

8 5. That United Farm Workers AFL-CIO is a labor organization within the
9 meaning of Section 1140.4 (f) of the ALRA.

10 Facts adduced from testimony taken during the hearing:

11 1. That Respondent plants, grows and harvests produce including, but not
12 limited to, tomatoes, cucumbers, celery and cabbage.

13 2. That Respondent has a crew of workers who generally work throughout the
14 year subject to "lay-offs" during slack times of one,
15 two or three weeks.

16 3. That respondent has a subjective method of determining who gets laid-off
17 according to who he feels is the least needful; ie., he may lay off a wife
18 but not a husband or he may lay-off a person knowing his brothers work and
19 bring in income.

20 4. That during Septmeber and early October of 1975, the UFW engaged in
21 union activity on Respondent's premises. ••

22 5. That on October 9, 1975, a representative election was held which was
23 won by the U.F.W.

24 6. That on the day before the representative election, the Respondent, Mr.
25 Mendoza, made a statement to some or all of his employees
26 that he would pay the union scale or "what other ranchers" had to
27 pay.

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1 There was also some testimony that in the event the union came in,
2 he would grow less, although this latter was refuted by Mr. Mendoza.

3 7. The "laid-off" workers were asked to return when the celery was
4 ready to harvest. They were re-hired December 11-15, 1975-

5 8. All lay-offs in the past were for 1 or 2 weeks,- a rare 3 weeks, but no
6 testimony that any lay-off had extended over a six week period except the
7 subject one.

8 9. On October 30, 1975, one of the discharged workers, Dolores Sanchez,
9 testified to a phone conversation with Respondent wherein he stated the lay-
10 off was due to the Union.

11 10. That after the lay-offs of October 28, 1975, the remainder of the crew
12 worked approximately 4 days a week, until celery harvest time in December
13 and that no others were hired; that at celery cutting time (the next crop),
14 the discharged employees were re-hired and continued to work for Respondent
15 and up to the hearing date.

16 III

17 ISSUES OF LAW

18 1. Whether the statement made by Respondent concerning Union minimum pay,
19 the day before 'the election constituted an unfair labor practice.

20 2. Whether the temporary lay-off of approximately six weeks of 5
21 employees named in the complaint was an unfair labor practice.

22 IV

23 CONCLUSIONS OF LAW

24 1. Labor Code Section 1152 gives to agricultural employees the complete
25 right to form or join a union of their own choosing and to engage in
26 activities for mutual aid and protection.

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3 In regard to the lay-off of Socorro Gonzales, Dolores Sanchez,
4 Alberto Gomez and Jesus Rodriguez the evidence is not clear-cut. The
5 Respondent had "laid-off" employees and almost all of these, at some time or
6 other, have had thier periods of unemploymnt, although never for six weeks.
7 In view of the fact the remainder of the crew worked "short weeks" (4 day
8 weeks) and the additional factor he re-hired them for celery (albiet after
9 the charges had been filed and served) that there is not sufficient
10 "preponderance of the evidence: to find Respondent committed a second unfair
11 labor-practice.
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13 RECOMMENDATION

14 It is recommended that an Order issue from the Agricultural Labor
15 Relations Board requiring the following:

16 1. That Respondent post a notice in Spanish and English in a
17 conspicuous place on the premises that he will not interfere in any form or
18 manner with union activities and all employees are free to engage in lawful
19 union activities.

20 2. That Respondent pay to the United Farm Workers, AFL-CIO, San
21 Ysidro Local the sum of Two-Hundred and Fifty Dollars (\$250.00) as and for
22 fees, costs and expenses incurred by the UFW in this case.

23 3. That Respondent pay to the Agricultural Labor Relations
24 Board to compensate for costs of suit including witness fees, recorder's
25 fees, transcripts, salaries, travel expenses, room rental, personnel
26 perdiem, but not to exceed the sum of One-Thousand Dollars (\$1,000.00).
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4. Respondent may have six (6) months from the date of acceptance of this recommendation by the Board to pay the sums in paragraphs 2 & 3 •

5. Exhibits are attached hereto.

Dated February 22, 1977


FRANK M. GARCIA
Administrative Law Judge

EXHIBITS

1
2 General Counsel.

3 Formal Pleadings

- 4 1A Complaint & Notice
5 1B Notice of Hearing
6 1C Answer
7 1D Charge

8 It was stipulated between the parties the Respondent's time
9 books, payroll records and pack-out slips were business records within
10 the meaning of the Evidence Code.

11 Respondent.

- 12 1. Itemization of field boxes of cucumbers.
13 2. A graph of cucumber production.
14 3. Absentisum record of 3 employees.
15 4. Pay record August 15 - November 20, 1975
16 5. Pay record December 11, 1975 - September 1976.

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