

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
ROMUALDO CARDENAS,)	Case No. 99-RD-2-VI
)	
Petitioner,)	
)	
And)	25 ALRB No. 7
)	(December 23, 1999)
)	
UNITED FARM WORKERS OF AMERICA)	
AFL-CIO,)	
)	
Certified Bargaining)	
Representative,)	
)	
And)	
)	
NASH DE CAMP COMPANY,)	
)	
Employer.)	
)	

DECISION AND ORDER

This case is before the Agricultural Labor Relations Board (ALRB or Board) on the United Farm Workers of America, AFL-CIO's (UFW) Request for Review of Partial Dismissal of Election Objections. On September 9, 1999, a decertification election was held among the employees of Nash De Camp Company (Employer). The ballots were impounded pursuant to Administrative Order No. 99-9 (September 7, 1999). After the

election, the UFW timely filed election objections. On November 22, 1999, the Executive Secretary of the ALRB issued the attached order setting various election objections for hearing and dismissing various others. Of the objections dismissed, the UFW seeks review of two, Objection Nos. 3 and 4.¹

DISCUSSION

Objection No. 3

In Objection No. 3, it is alleged that the Employer initiated and assisted the decertification effort. The objection was set for hearing to the extent that it involves the conduct of employee Samuel Cervantes, who allegedly had free access to employees during paid work time with the approval of supervisors, traveling from crew to crew in a Company truck to solicit signatures for the decertification petition. The objection was dismissed to the extent that it alleged that other employees, including checkers and weighers, solicited signatures during work time. The Executive Secretary's stated rationale for the partial dismissal was that "low level" supervisory

¹ The Employer filed a response to the UFW's request for review, as well as an "Additional Response" asking that the impound of the ballots be lifted. As there is no provision in the Board's regulations for such an additional response, and because the filing in effect is the Employer's third attempt to have the Board reconsider its impoundment order, the filing has not been considered in reaching this Decision.

solicitation of authorizations will generally not warrant a finding of supervisory 'taint' that would be imputable to the employer."

It is not entirely clear if the UFW seeks review of the dismissal itself. Rather, the UFW's argument centers on the assertion that the dismissal of the allegations concerning other employees effectively strikes from consideration many of the circumstances surrounding the activity of Samuel Cervantes. The UFW's concern is unwarranted, as nothing in the Executive Secretary's order would necessarily preclude, subject to relevancy objections, the admission of evidence concerning the activity of others in order to elucidate the circumstances surrounding the alleged conduct set for hearing, i. e. , the conduct of Manuel Cervantes. It is well established that evidence of conduct that is time-barred or is otherwise not subject to adjudication on the merits may be admissible as background concerning matters that properly are being litigated. (See, e. g. , *ALRB v. Ruline Nursery Co.* (1981) 115 Cal.App.3d 1005.)

To the extent that the UFW does seek review of the dismissal of the merits of the allegations concerning solicitation of signatures by those other than Cervantes, the dismissal is affirmed, but for reasons other than those relied upon by the Executive Secretary. The declarations concerning

those other than Cervantes fail to reflect facts indicating that the others were either supervisors or would have been perceived as acting on behalf of the Employer. Rather, the declarations simply indicate that a checker and a weigher were seen soliciting signatures on company time. It is not objectionable for an employer to simply allow employees to circulate a decertification petition on company time. (See, e.g., *TNH Farms, Inc.* (1984) 10 ALRB No. 37.)

Objection No. 4

In Objection No. 4, it is alleged that Supervisor Miguel Marquez injured UFW organizer Salvador Madrigal by trying to force the door closed on him when Madrigal was getting out of his car to take access. This took place in the presence of a crew. Shortly thereafter, with the assistance of sheriff's deputies, Madrigal effectuated a citizen's arrest and Marquez was handcuffed and taken away in a sheriff's vehicle. This, too, was witnessed by the crew. The supporting declarations indicate that word of both the assault and the arrest were widely disseminated amongst the workforce.

The Executive Secretary, while acknowledging the coercive effect of witnessing violence upon a union organizer, concluded that the witnessing by employees of the arrest of Marquez would have had a salutary effect sufficient to negate any potential coercion. Relying on cases where the Board has

set aside elections due to violence against union organizers, the UFW asserts that the arrest of Marquez would not have cured the coercive effect of the earlier assault on Madrigal.

While it seems reasonable to conclude that the observation by employees of the arrest of Marquez would lessen the coercive effect of any violent conduct toward the union organizer, we are not prepared at this time to conclude that, as a matter of law, it would have completely negated the coercive effect. Only after a hearing to determine the exact nature of the assault and the surrounding circumstances, including the relative level of dissemination of knowledge of the assault and arrest, would it be possible to fully evaluate the ameliorative effect of the subsequent arrest. Therefore, the dismissal of Objection No. 4 is reversed and the matter shall be set for hearing.

ORDER

Consistent with the discussion above, the Executive Secretary's dismissal of Objection No. 3 is hereby affirmed and the dismissal of Objection No. 4 is reversed. Accordingly, the Investigative Hearing Examiner (IHE), in addition to the issues previously set for hearing by the Executive Secretary, shall take evidence on the issue of whether Supervisor Miguel Marquez assaulted UFW organizer Salvador Madrigal as alleged and, if so, whether such conduct would have tended to have a coercive affect

upon voters in the election despite the subsequent arrest of Marquez.

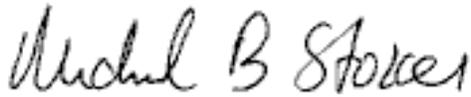
DATED: December 23, 1999



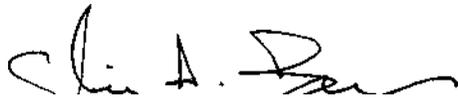
GENEVIEVE A. SHIROMA, Chair



IVONNE RAMOS RICHARDSON, Member



MICHAEL B. STOKER, Member



GLORIA A. BARRIOS, Member



HERBERT O. MASON, Member

1 1. Whether the parties' negotiations for a new collective bargaining
2 agreement had progressed to such a stage 'that it could be deemed adequate to
3 invoke the Labor Code section 1156.3(a)(4) contract bar so as to nullify an
4 otherwise bona fide question concerning representation and warrant
5 invalidation of the petition for decertification. (Objection No. 1)
6

7 2. Whether the election was held in violation of the established rule
8 that the only appropriate unit for a decertification election is the
9 existing unit; i.e., a unit which duplicates the unit as initially certified
10 or, as in this instance, all the agricultural employees of the Employer in
11 the State of California as per the Board's decision in Nash-De Camp Company
12 (September 4, 1981, 7 ALRB No. 26), and whether eligible voters may have been
13 disenfranchised. (See, e.g., Campbell Soup Co. (1955) 111 NLRB 234.
14 (Objection No. 2)

15 3. Whether employees may have been under the perception that the
16 Employer was promoting the decertification effort as a result of the
17 activities of employee Samuel Cervantes insofar as he appeared to have free
18 access to employees, traveling to different crews in a Company truck, in
19 order to solicit employees' signatures on the decertification petition during
20 paid work time and whether such conduct tended to interfere with employee
21 choice. (Objection 3, in part)

22 4. Whether the work of certain crews was halted for upwards of 15
23 minutes, with loss of pay, in order to penalize UFW organizers who
24 took work site access and who then either delayed their departure (on
25 one occasion, two organizers passed out flyers to employees as they
26 were leaving the crew) or remained near the work site after the
27 foreman had announced the end of the

1 access (or break) period and whether such "punishment" inflicted on
2 the employees in retaliation & conduct by the Union tended to
3 interfere with employee choice. (Objection No. 5)

4 5. Whether, on September 8, .1999, a crew foreperson promised
5 employees in the Garza crew that they should expect a wage
6 increase (to \$6.00 an hour the following January), whether, on the
7 same date, supervisor Marquez advised the Jacinto crew that they
8 would be better off negotiating directly with the employer because
9 the Company's wage and benefit plan was superior to that which the
10 Union had accepted in negotiations, and whether the statements
11 promised unproved benefits for a no-union vote. (Objection 6, to
12 the extent discussed above)

13
14 PLEASE TAKE FURTHER NOTICE that, the following objections are
15 dismissed for the reasons discussed below.

16 OBJECTION NO. 3 alleges Employer initiation and assistance of the
17 decertification effort. A portion of Objection No. 3, insofar as it concerns
18 the activities of Samuel Cervantes has been set for hearing, see above. The
19 remainder of the objection is dismissed on the grounds that the declaratory
20 support establishes that employee authorizations for the decertification
21 petition were solicited by personnel in addition to Cervantes or, at best,
22 crew forepersons or crew checkers, during work time and in view of
23 supervisors or forepersons without intervention. Low level supervisory
24 solicitation of authorizations will generally not warrant a finding of
25 supervisory "taint" that would be imputable to the employer. (See, Admiral
26 Petroleum Corp. (1979) 240 NLRB 894; Willett Motor Coach Co., (1977) 227 NLRB
27 882.)

1 OBJECTION No. 4 alleges that the Employer engaged in violence against
2 UFW organizers while they were taking access. Declaratory support
3 establishes that, while a UFW organizer was disembarking from his car
4 in order to take access, Supervisor Miguel Marquez attempted to force the
5 door close on him, allegedly injuring him. Shortly thereafter, with the
6 assistance of Sheriffs deputies, organizer effectuated a citizen's arrest
7 of Marquez who was then handcuffed and driven away in Sheriffs vehicle by
8 the deputies. Further declaratory support reveals that some employees
9 witnessed portions of the event and it is likely that news of such an event
10 would be disseminated among the employees. (See, e.g. Standard Knitting Mil
11 Is. Inc. (1963) 1972 NLRB 1 122.) However, employee knowledge that Marquez had
12 been arrested and detained (i.e., punished for his conduct) should serve the
13 salutary effect of negating the otherwise potential coercion of employees.
14 Thus, news of the arrest would tend to cause employees not to fear similar
15 retaliation for engaging in union activities. The objection is dismissed.

16 OBJECTIONS Nos. 6, hi part, 7 and 8. A portion of Objection
17 No. 6 has been set for hearing, above. The remainder of Objection No. 6,
18 alleging that employee benefits would remain the same if the Union were
19 defeated in the election is dismissed. A promise to maintain existing
20 benefits is not a promise of new benefits which would tend to interfere with
21 employee choice. Objection No. 7 is dismissed in its entirety as it is
22 duplicative of Objection No. 6 which has been addressed above. Although
23 Objection No. 8 repeats those of Objections 6 and 7 which allege a
24 promise to continue existing benefits, it does so here on the basis of a
25 somewhat different premise, to the effect that should the incumbent Union
26 be decertified, the Employer could no longer

1 make contributions to the Union's pension or medical plan trusts. While that
2 may indeed be true, an employer may independently continue to provide the same
3 level of benefits, albeit by means of a different plan, without offending the
4 Act. Again, as noted previously, a promise to maintain present benefits is not
5 a promise of new benefits that would tend to interfere with employee choice.
6 Accordingly, Objection No. 8 is dismissed in its entirety.

7 OBJECTION No. 9 alleges that the Employer impermissibly held
8 mandatory attendance meetings of employees on Company time within 24 hours of
9 the election in order to urge a no-union vote. The objection is dismissed
10 insofar as it is based on the premise that this Board, like the National Labor
11 Relations Board, should follow a per se rule which precludes such gatherings
12 in the 24-hour period preceding an election. (Peerless Plywood Co. (1953)
13 107N~LRB 427.) The objection is dismissed as the ALRB has never adopted a rule
14 which prohibits any party from openly expressing views about the choices in an
15 upcoming election absent a showing of threats of reprisals or promises of
16 benefits in return for how employees vote. As to the nature of the conduct
17 which may have occurred among groups of employees on paid time within 24 hours
18 of the election herein, those matters are addressed within the context of
19 Objections Nos. 6, 7 and 8, above, and are always subject to scrutiny by the
20 Board.
21

22 OBJECTION No. 10 is based on the premise that the Employer affected
23 the outcome of the election by failing to bargain in good faith. Alleged
24 violations of the bargaining obligation fall within the purview of Chapter 6 of
25 the Act, specifically Labor Code section 1153(e), and are not properly before
26 the Board in the context of election objections. Accordingly, the objection is
27 dismissed.

1 PLEASE TAKE FURTHER NOTICE that, pursuant to Title 8,
2 California Code of Regulations, section 20393(a), the Union may file a
3 request for review with the Board within five (5) days of this Order.
4 The five-day period is calculated in accordance with the provisions of
5 Title 8, California Code of Regulations, section 20170.
6

7 DATED: November 22, 1999

8
9 
10 NORMA TURNER
11 Acting Executive Secretary, ALRB
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CASE SUMMARY

NASH DE CAMP CO.
(Romualdo Cardenas; UFW)

Case No. 99-RD-2-VI
25 ALRB No. 7

Background

On September 9, 1999, a decertification election was held among the employees of Nash De Camp Company (Employer). The ballots were impounded pursuant to Administrative Order No. 99-9 (September 7, 1999). After the election, the UFW timely filed election objections. On November 22, 1999, the Executive Secretary of the ALRB issued an order setting various election objections for hearing and dismissing various others. Of the objections dismissed, the UFW sought review of two, Objection Nos. 3 and 4.

Board Decision

In Objection No. 3, it is alleged that the Employer initiated and assisted the decertification effort. The Executive Secretary dismissed the objection to the extent that it alleged that checkers and weighers solicited signatures during work time. The Board affirmed the dismissal on the basis that the supporting declarations fail to reflect facts indicating that these employees were either supervisors or would have been perceived as acting on behalf of the Employer. It is not objectionable for an employer to simply allow employees to circulate a decertification petition on company time. (See, e.g., *TNH Farms, Inc.* (1984) 10 ALRB No. 37.). To the extent that the UFW expressed concern that the dismissal of these allegations strikes from consideration many of the circumstances surrounding the activity of Samuel Cervantes, whose alleged conduct in soliciting signatures was set for hearing, the Board stated that the concern is unwarranted, as the dismissal does not preclude, subject to relevancy objections, the admission of evidence concerning the activity of others in order to elucidate the circumstances surrounding the alleged conduct set for hearing.

In Objection No. 4, it is alleged that Supervisor Miguel Marquez injured UFW organizer Salvador Madrigal by trying to force the door closed on him when Madrigal was getting out of his car to take access. Shortly thereafter, with the assistance of sheriff's deputies, Madrigal effectuated

a citizen's arrest and Marquez was handcuffed and taken away in a sheriff's vehicle. The Executive Secretary, while acknowledging the coercive effect of witnessing violence upon a union organizer, concluded that the witnessing by employees of the arrest of Marquez would have had a salutary effect sufficient to negate any potential coercion. The Board found that though it was reasonable to conclude that the observation by employees of the arrest of Marquez would lessen the coercive effect of any violent conduct toward the union organizer, it was not prepared at this time to conclude that, as a matter of law, it would have completely negated the coercive effect. Rather, only after a hearing to determine the exact nature of the assault and the surrounding circumstances, including the relative level of dissemination of knowledge of the assault and arrest, would it be possible to fully evaluate the ameliorative effect of the subsequent arrest. Therefore, the dismissal of Objection No. 4 was reversed and the matter set for hearing.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *