

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

SUNNYSIDE NURSERIES, INC.,	)	
	)	Case No. 91-RD-3-SAL
Employer ,	)	
	)	
and	)	
	)	
REYNALDO RANGEL,	)	
	)	
Petitioner,	)	
	)	
and	)	17 ALRB No. 9
	)	
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
Certified Bargaining	)	
Representative.	)	

---

DECISION

On August 1, 1991, a petition was filed by Reynaldo Rangel seeking the decertification of the United Farm Workers of America, AFL-CIO (UFW) as the exclusive representative of the agricultural employees of Sunnyside Nurseries, Inc. (Employer). Pursuant to Cattle Valley Farms (1982) 8 ALRB No. 24, the Salinas Regional Director of the Agricultural Labor Relations Board (Board) conducted an investigation into the effect of any outstanding unfair labor practice complaints on the ability of the employees to exercise free choice in an election. The Regional Director concluded that the complaint in consolidated Case Nos. 90-CE-7-SAL, 90-CE-17-SAL, and 90-CE-19-SAL, which alleges unlawful denial of access in January and February of 1990, prevented the holding of an election reflecting the free and

uncoerced choice of employees and, therefore, issued a decision blocking the election. The Regional Director also relied on some thirty-three charges against the Employer that have not been fully investigated at this time.

On August 5, 1991, the Employer filed a Request for Review of the Regional Director's blocking decision. On August 7, 1991, the Board issued Administrative Order 91-35, granting the Request for Review and directing the Employer to provide any relevant materials concerning the provision of access and the status of negotiations during the period of January 1, 1990 to August 1, 1991. The Regional Director and the UFW were given the opportunity to file a response. The Employer submitted additional documentation on August 8, 1991 and the UFW filed a response on August 16, 1991. On August 12, 1991, the Regional Director filed a document entitled "Regional Director's Report on the Decision to Block the Election."

#### DISCUSSION

The Board's policy on blocking elections was set forth in Cattle Valley, supra. Recognizing that the prevalence of seasonal work and the Agricultural Labor Relations Act's requirement of prompt elections <sup>1/</sup> made the blocking charge policy of the National Labor Relations Board inappropriate in the agricultural setting, the Board instead adopted a blocking complaint policy. Specifically, the Board provided that:

---

<sup>1/</sup>Section 1156.3 of the ALRA prescribes that elections be held within seven days of the filing of the representation petition.

Henceforth, when a petition for certification or decertification is filed, the Regional Director shall immediately investigate and determine whether any unfair labor practices alleged in an outstanding complaint against the employer(s) and/or union(s) involved in the representation proceeding will make it impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner. If the Regional Director determines that blocking the election is warranted, he or she shall promptly notify the parties of his or her decision to block the election and the basis therefor. When charges are filed so close to the time or date of the election that such a determination cannot be made prior to the election, the Regional Director will have discretion to postpone the election for a few days if peak employment is expected to continue, or to hold the election and impound the ballots until the investigation of the charges has been completed. Where unfair labor practice charges have been pending for a protracted period of time prior to the filing of the petition for certification or decertification, and there is a complaint outstanding, the Regional Director will determine whether the pendency of the unfair labor practice case would reasonably tend to affect employee free choice and, if so, whether blocking the election would be warranted.

(Cattle Valley, supra, at pp. 14-15.)

In exercising the discretion given him under Cattle Valley, the Regional Director concluded that the outstanding complaint involving the denial of access in January and February of 1990, along with the preliminary investigation of the numerous charges filed against the Employer, have created an atmosphere that renders free choice impossible. In a similar vein, the UFW argues that the complaint, along with other allegations contained in recently filed charges, requires that the election be blocked.

In reviewing a Regional Director's decision to block an election, the Board will exercise its independent judgment. (Cattle Valley, supra, at p. 15.) In our view, the record before us fails to provide a sufficient basis for blocking the election.

First, we find that it has not been adequately explained how the denial of access one and a half years ago would affect free choice so dramatically that the election should be blocked. Nor do we find such an effect apparent. Second, under the blocking policy established in Cattle Valley, the content of charges may be grounds for delaying the election for a few days or impounding ballots, but it is not normally a basis for blocking an election.

The Employer, as requested, has provided further information covering the period of January 1, 1990 to August 1, 1991. That information shows two things. First, there is correspondence between the parties in March and April of this year that reflects that no negotiations have taken place since August 22, 1990 (the Employer implemented its last, best and final offer in October of 1989). Second, there are copies of sign-in sheets which reflect that union representatives were given access at noontime during the period of January 4, 1990 to August 6, 1991, with the exception of the several occasions at issue in the complaint.

The information provided by the Employer gives some indication that the denial of access alleged in the complaint has not been of a continuing nature that would presently have a significant effect upon free choice. The Board has also taken official notice of the content of the outstanding charges and notes that the only one which alleges a denial of access claims that the denial was on one discrete day, August 9, 1991, which was

after the filing of the decertification petition.<sup>2/</sup> Thus, none of the charges contain allegations which claim that the conduct alleged in the complaint has been of a continuing nature. While the UPW apparently claims that it has not been receiving all of the access it is legally entitled to, that is not presently the subject of a complaint, nor is there any explanation of the extent to which free choice would be affected thereby.

#### CONCLUSION AND ORDER

In accordance with the discussion above, we conclude that the record before us does not provide a sufficient showing that the alleged denials of access one and a half years ago presently create an atmosphere which would preclude the exercise of free choice. However, the Regional Director retains his discretion to impound the ballots based upon the numerous charges that have not gone to complaint. The parties are, of course, also free to file objections to the election after it has taken place.

Therefore, the Board hereby VACATES the Regional Director's decision to block the election and ORDERS the Regional Director to proceed with the election as expeditiously as possible

---

<sup>2/</sup>Charges which are filed so close to the election that there is insufficient time to determine if a complaint should issue may be grounds for delaying the election for a few days or impounding the ballots, but they are not grounds for blocking an election. (Cattle Valley, supra, at pp. 14-15.)

based on the petition filed on August 1, 1991<sup>3/</sup>. A motion for reconsideration of the Decision herein shall not stay the operation of this Order.

DATED: August 29, 1991

BRUCE J. JANIGIAN, Chairman<sup>4/</sup>

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

JAMES NIELSEN, Member

---

<sup>3/</sup> Just prior to issuance of this decision, a Second Amended Complaint was issued in this matter by the Regional Director. The complaint as amended now includes several allegations involving discriminatory disciplinary action and unilateral changes in working conditions in January and September of 1990. We do not consider these additional allegations at this time because they were not the subject of the Regional Director's blocking decision nor the request for review that is presently before us. Moreover, it is properly the Regional Director, based upon the investigation required by Cattle Valley, who in the first instance determines if the conduct alleged in a complaint warrants the blocking of the election.

<sup>4/</sup> The signatures of Board Members in all Board decisions appear with the signature of the Chairman first (if participating), followed by the signatures of the participating Board Members in order of their seniority.

CASE SUMMARY

Sunnyside Nurseries, Inc.  
(UFW)

17 ALRB No. 9  
Case No. 91-RD-3-SAL

Background

The Salinas Regional Director issued a decision blocking a decertification election, based upon an outstanding complaint in which it was alleged that the employer denied access to the union in January and February of 1990. The blocking decision also appears to have been based on numerous charges filed against the employer that have not yet gone to complaint. In an earlier order, Administrative Order 91-35, the Board granted the employer's request for review of the blocking decision and directed the employer to provide further information concerning access and the status of negotiations during the period of January 1, 1990 to August 1, 1991.

Decision

The Board vacated the decision to block the election because there was no explanation provided as to how the denial of access on several occasions one and a half years before would make free choice impossible at this time. Nor was such an effect on free choice apparent. The Board also noted that the none of the numerous charges outstanding allege that the conduct alleged in the Complaint was of a continuing nature. The Board noted, however, that in accordance with Cattle Valley the Regional Director may consider the charges in exercising his discretion to impound the ballots.

\* \* \*

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

\* \* \*