

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

S & J RANCH, INC.,)	
)	
Employer,)	Case No. 92-RD-7-VI
)	
and)	
)	
SHANNON V. DE FEHR,)	
)	
Petitioner,)	18 ALRB No. 10
)	(October 27, 1992)
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Certified Bargaining)	
Representative.)	
)	

DECISION ON BLOCKING OF ELECTION

In S & J Ranch, Inc. (1992) 18 ALRB No. 2 (hereafter 18 ALRB No. 2), the Agricultural Labor Relations Board (ALRB or Board) found that agents of S & J Ranch, Inc. (S & J or Employer) had unlawfully circulated and supported the signing of a petition to decertify the United Farm Workers of America, AFL-CIO (UFW) as the exclusive bargaining representative of S & J's agricultural employees. In its Order, the Board directed the Employer, *inter alia*, to cease and desist from initiating, sponsoring, supporting, approving, encouraging and circulating a decertification petition among employees. The Board also ordered the Employer to sign, post, mail and arrange for the reading of an attached Notice to Agricultural Employees informing the employees of the specific unfair labor practices committed by the Employer and of their rights guaranteed under the Agricultural

Labor Relations Act (ALRA or Act). The Board's Decision and Order issued on May 1, 1992¹ and became final 30 days thereafter.

On October 1, Shannon V. DeFehr filed a petition with the Board seeking decertification of the UFW as the exclusive representative of S & J's employees. On or about October 2, the Notice to Employees in 18 ALRB No. 2 was mailed to employees. On or about October 6, the Notice was posted at the Employer's place of business and distributed and read to employees.

Since the unfair labor practices found in 18 ALRB No. 2 had not been fully remedied at the time the second decertification petition was filed, the Board's Visalia Regional Director (Regional Director) conducted an investigation pursuant to Cattle Valley Farms (1982) 8 ALRB No. 24 (Cattle Valley).

In Cattle Valley the Board announced its general policy regarding the applicability of the National Labor Relations Board's (NLRB) "blocking-charge" practice to the conduct of elections under the ALRA. The NLRB's blocking policy involves delaying the proceedings in any representation case where there are concurrent unfair labor practice charges or complaints affecting some or all of the same employees. The rationale for the policy is that the probable impact of the alleged unfair labor practices would be to deprive the employees of a free and uncoerced choice in a representation election and to permit the charged party to profit from its unfair labor practices. The

¹ All dates refer to 1992 unless otherwise stated.

ALRB found in Cattle Valley that the rationale for the NLRB's blocking practice also applies in the agricultural setting, and it adopted the practice with certain modifications.

Under the ALRB's blocking policy, when a petition for certification or decertification is filed at a time when there is an outstanding unfair labor practice complaint against the employer or the union which has not been fully remedied, the regional director shall immediately conduct an investigation to determine whether there is a valid question concerning representation. If the regional director determines that the probable impact of the unremedied unfair labor practices alleged in the complaint would be to deprive the employees of a free and uncoerced choice in the election, the regional director shall block the election and promptly notify the parties of the decision to block and the basis therefor.

In his response to the Employer's objection to his decision to block the decertification election herein, the Regional Director acknowledged that at the time the decertification petition was filed, the only provisions of the remedial order in 18 ALRB No. 2 which had not been complied with were the mailing, posting and reading of the Notice to Employees. In his opinion, the fact that the Employer had been unlawfully involved in the prior decertification effort still permeated the work force to the extent that the probable impact would be to deprive the employees of a free and uncoerced choice in an election until the Notice could be communicated to the employees.

He reasoned that knowledge of Employer involvement in the prior decertification effort could signal to employees that an employer could control a decertification request and that there could be adverse employment effects if an employee opposed such decertification. The Regional Director concluded that to proceed simultaneously with a reading advising employees of the Employer's previous unlawful involvement in the decertification effort and with a decertification election pursuant to the current petition could create such confusion and uncertainty in the minds of employees as to interfere with their free choice. In opposition to the Regional Director's decision to block the decertification election, S & J has argued that in light of its demonstration of good faith in negotiating with the UFW and the existence of a current collective bargaining agreement,² the taint of any unfair labor practices found in 18 ALRB No. 2 has been dissipated and would not have any effect on employee free choice in a current decertification election. S & J further argues that the remedial order in 18 ALRB No. 2 will have been fully complied with at the time of the election, so that there will be no unremedied unfair labor practices creating an atmosphere interfering with free choice. Moreover, the Employer states, there is no evidence in the record that any employee was coerced or misled into signing the second

² On May 1, 1992, the parties signed a one-year contract. The contract was ratified by a majority of S & J's employees on May 22, 1992.

decertification petition or did not understand his or her right to exercise free choice.

We conclude that the Regional Director acted properly in blocking the election in this case. The violation found in 18 ALRB No. 2 of Employer instigation and solicitation of support for the decertification petition constitutes a substantial interference in the employees' right to organize. The effects of the Employer's unfair labor practices would not have dissipated at the time the new petition was circulated, signed and filed. Only after the employees were informed about what actions an employer may and may not lawfully take regarding a decertification effort could the employees truly understand their own rights in the matter. Thus, until such time as the Notice to Employees could be communicated to employees through mailing, posting and reading (including the opportunity for employees to ask questions of a Board agent concerning their rights under the ALRA), we do not believe an atmosphere permitting free and uncoerced choice in the election could be assumed.

In upholding the Regional Director's decision to block the election herein, we note that the Employer's attorney advised the Regional Director that peak employment at S & J Ranch would continue at least until the end of October 1992. Therefore, there was sufficient time after the reading of the Notice to

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Employees for the filing of a new decertification petition and the holding of an election during the current peak period.

DATED: October 27, 1992

BRUCE J. JANIGIAN, Chairman³

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

³ 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

S & J RANCH, INC.
(UFW)

18 ALRB No. 10
Case No. 92-RD-7-VI

Regional Director's Decision

In S & J Ranch, Inc. (1992) 18 ALRB No. 2, the Board found that agents of the Employer had unlawfully circulated and supported a petition to decertify the Union. The Board issued a remedial order which, inter alia, directed the Employer to sign, post, mail and arrange for the reading of a Notice to Employees informing them of the specific unfair labor practices committed by the Employer and of their rights under the ALRA.

On October 1, 1992, another petition was filed seeking decertification of the Union. After an investigation, the Regional Director determined that the fact that the Employer had been unlawfully involved in the prior decertification effort still permeated the work force to the extent that the probable impact would be to deprive the employees of a free and uncoerced choice in an election until the Notice could be communicated to the employees. Therefore, pursuant to Cattle Valley Farms (1982) 8 ALRB No. 24, the Regional Director blocked the election. The Employer appealed the Regional Director's blocking decision to the Board.

Board Decision

The Board concluded that an atmosphere permitting free choice in the election would not have existed until after the employees had been thoroughly informed of the Employer's unfair labor practices and their own rights through the mailing, posting and reading of the Notice to Employees in 18 ALRB No. 2. Thus, the Board held that the Regional Director had acted properly in blocking the election. In upholding the Regional Director's decision, the Board noted that after full compliance with the Board's Order in 18 ALRB No. 2, there would be sufficient time during the Employer's peak employment period for the filing of a new decertification petition and the holding of an election during the current peak period.