

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

CONAGRA TURKEY COMPANY,)	
)	
Employer,)	
)	Case No. 92-RD-4-VI
and)	
)	
ANTOINETTE JOANN JARAMILLO)	
)	
Petitioner,)	19 ALRB No. 11
)	
and)	(June 25, 1993)
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Certified Bargaining)	
Representative.)	
)	

DECISION AND ORDER REMANDING TO EXECUTIVE SECRETARY

On March 23, 1993, the Acting Executive Secretary issued an Order Transferring Matter to the Board With Recommendation to Invalidate Election. The above-entitled case had been pending before the Executive Secretary for the screening of election objections filed by ConAgra Turkey Company (Employer).¹ The Acting Executive Secretary's order noted that, at the time of the election, there was an outstanding complaint against the Employer for allegedly disciplining

¹The decertification election was conducted on June 8, 1992. A revised tally of ballots in the election reflected 21 votes for the United Farm Workers of America, AFL-CIO (UFW), 19 votes for "no union," and one remaining challenged ballot. The UFW had also filed election objections, but later withdrew them after the revised tally was announced.

several UFW activists for engaging in protected activity.² The order suggests that the probable effect of the pending complaint upon employee free choice warranted blocking the election, and that the Regional Director erred by allowing the election to go forward. The order urges the Board to now take the opportunity to correct this error and set aside the election.³ As explained below, the Board finds that such an action would be inappropriate and remands this matter to the Executive Secretary to proceed with the screening of the Employer's election objections.

DISCUSSION

While a regional director's decision to block an election is reviewable pursuant to the Board's regulations (Cal. Code Regs., tit. 8, sec. 20300), there is no provision in either the Board's regulations or case law for review of a regional director's decision to go forward with an election. The reason for this is rooted in the express statutory policy in favor of prompt elections. (See Labor Code sec. 1156.3.) Therefore, once a regional director decides to hold an election, that decision is final and nonreviewable. Instead, a party who is, for example, allegedly aggrieved by conduct which a regional

²The matter later went to hearing, wherein an Administrative Law Judge found a violation because the conduct for which the employees were disciplined was in fact protected activity. The Board affirmed that result in Conagra Turkey Co. (1992) 18 ALRB No. 14.

³No response to the Acting Executive Secretary's order was filed by any party to the election, nor by the Regional Director.

director found insufficient to block the election may file election objections alleging that the conduct indeed interfered with employee free choice.

Thus, the mechanism provided for addressing conduct that a regional director either rejected or did not consider in deciding not to block an election is the filing of election objections. The question in that process is not the propriety of the decision not to block, for that issue becomes moot upon the holding of the election, but a separate inquiry into the effect of the conduct upon the integrity of the election. Consequently, under this scheme it simply makes no sense for the Board to now consider whether the election should have been blocked.

In sum, the only appropriate forum for the issues raised by the Acting Executive Secretary's order is the election objections process. However, in this case, the UFW did not file election objections expressly involving the disciplinary actions at issue in the case that later resulted in ConAgra Turkey Co., supra, 18 ALRB No. 14. In addition, the UFW chose to withdraw the objections it did file. In other words, the UFW has waived its right to raise these issues. Moreover, by withdrawing its election objections, the UFW has expressed a preference for accepting the results of the election, in which it prevailed, subject to the Employer's objections.

While it may be appropriate in some circumstances for the Board to raise sua sponte issues of misconduct or other

occurrences which might have affected the results or integrity of an election, we do not believe such circumstances are present here. We believe that sua sponte consideration of such issues would be appropriate only in extraordinary circumstances where failure to give such consideration would create a result which is manifestly contrary to the policies underlying the Agricultural Labor Relations Act. Such circumstances do not appear here, particularly in light of the fact that the party who potentially would have been the victim of the unaddressed conduct not only prevailed in the election (subject to the Employer's objections) but also chose not to pursue objections.

ORDER

For the reasons explained above, the Board finds it inappropriate to address the issues referred to the Board by the Acting Executive Secretary's order of March 23, 1993. It is therefore Ordered that the above-entitled case be remanded to the Executive Secretary to process the Employer's objections pursuant to section 20365 of the Board's regulations.

DATED: June 25, 1993

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

CONAGRA TURKEY COMPANY
(UFW)

19 ALRB No. 11
92-RD-4-VI

Background

On March 23, 1993, the Acting Executive Secretary issued an Order Transferring Matter to the Board With Recommendation to Invalidate Election. The matter had been pending before the Executive Secretary for the screening of election objections filed by Conagra Turkey Co. (Employer). A revised tally of ballots in the underlying decertification election showed 21 votes for the United Farm Workers of America, AFL-CIO (UFW), 19 votes for "no union," and one remaining challenged ballot. The Acting Executive Secretary's order recommended that the Board invalidate the election on the theory that it should have been blocked by an outstanding complaint against the Employer for allegedly disciplining several UFW activists for engaging in protected activity. That complaint later went to hearing and resulted in a Board decision finding the Employer liable for the charged violation (Conagra Turkey Co. (1992) 18 ALRB No. 14).

Board Decision

The Board declined to address the blocking issue, noting that there is no provision for review of a regional director's decision not to block an election and that such a decision is final. Instead, a party who is allegedly aggrieved by conduct which a regional director found insufficient to block the election may file election objections alleging that the conduct indeed interfered with employee free choice. Here, the UFW did not file election objections addressing the conduct in question, and withdrew objections that it has previously filed. Thus, the Board observed, the UFW expressed a preference for accepting the results of the election, in which it prevailed, subject to the Employer's objections. The Board further stated that it may be appropriate to raise sua sponte issues of misconduct or other occurrences which might have affected the results or integrity of an election in extraordinary circumstances where failure to do so would create a result which is manifestly contrary to the policies underlying the Agricultural Labor Relations Act. However, the Board found no such circumstances appearing in this case. Therefore, the Board remanded the case to the Executive Secretary to process the Employer's election objections.

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