

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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COKE FARMS, INC.,)	
)	
Employer,)	Case No. 94-RD-1-SAL
)	
and)	
)	
EDUARDO REYES and JOSE)	20 ALRB No. 15
ALBERTO CARRILLO,)	(September 8, 1994)
)	
Petitioners,)	
)	
and)	
)	
GENERAL TEAMSTERS, WARE-)	
HOUSEMEN AND HELPERS UNION,)	
LOCAL 890,)	
)	
Certified Bargaining)	
Representative.)	
)	

DECISION AFFIRMING PARTIAL DISMISSAL OF ELECTION OBJECTIONS

On July 5, 1994, an election was held among the agricultural employees of Coke Farms, Inc. (Employer) to determine if they wanted to retain the General Teamsters, Warehousemen and Helpers Union, Local 890 (Teamsters) as their exclusive bargaining representative. The tally of ballots showed 25 votes for "No union," 2 votes for the Teamsters, and 1 unresolved challenged ballot. The Teamsters filed several objections to the election. On August 12, 1994, the Executive Secretary of the Agricultural Labor Relations Board (ALRB or Board) issued an order setting some of the objections for hearing and dismissing the remaining objections. The Teamsters then

filed with, the Board a request for review of the dismissal of the objections.¹

DISCUSSION

The dismissed objections are based on various allegations of bad faith bargaining by the Employer just prior to the election. The Executive Secretary dismissed the objections on the basis that the Teamsters failed to provide evidence that the parties' bargaining history was an issue in the election campaign or was otherwise made known to employees. Absent such evidence, the Executive Secretary reasoned, there is no indication that the Employer's bargaining conduct would have tended to affect the manner in which employees ultimately cast their ballots.

In its objections, the Teamsters alleged that the Employer violated its duty to bargain in good faith by (1) refusing to bargain since May 29, 1994, (2) refusing to provide information in a timely manner since that same date, (3) conditioning bargaining, on or about June 7, 1994, on the Teamsters' acceptance of the Employer's April 27, 1993 offer, and

August 26, the Employer filed a document entitled "Motion to Strike Objections." In this filing, the Employer claims that the Teamsters' request for review should be stricken due to its improper attempt to amend its objections and requests that the Board overrule the Executive Secretary's decision to set the other objections for hearing. The former claim is addressed below and does not require that the request for review be stricken. The latter claim is not addressed because the Board's regulations do not provide for review of the Executive Secretary's decision to set objections for hearing. Even if the Board's regulations could be read to allow such a request for review, the deadline for filing would have been August 19, 1994.

(4) cancelling, on June 28, 1994, a scheduled negotiations meeting and withdrawing its last offer due to the filing of the decertification petition. These allegations were supported by copies of correspondence between the two parties, as well as by declarations of Teamsters representatives detailing communications between the parties and difficulties with information received from the Employer. There were no declarations attesting to the effect of the Employer's alleged conduct on the election.²

Nevertheless, the Teamsters argue, in essence, that the progress of bargaining is always an issue in such campaigns and that bad faith bargaining just prior to a decertification election inherently affects employee free choice by causing frustration and undermining the union in the eyes of unit members.

A review of the correspondence submitted with the objections reveals an arguable prima facie case of a breach of the duty to bargain in good faith only with regard to the failure to provide relevant information and the cancellation of the June

²In its request for review, the Teamsters appended a declaration from one of its representatives and a copy of a letter written by Dale Coke to a local newspaper, for the purpose of showing that the lack of progress in bargaining was a central issue in the election campaign. These materials cannot be considered by the Board, as the Board's regulations require that such supporting materials be submitted along with the objections. (Cal. Code Regs, Tit. 8, sec. 20365.) Even if the Board were to allow the submission of additional declarations in extraordinary circumstances, in this case, the Teamsters have offered no explanation why such declarations could not have been submitted at the time the objections were filed.

30 meeting and withdrawal of the Employer's last offer.³ The earlier delays in bargaining appear to be based on the Employer's view that the parties were at impasse and that the Teamsters had not yet demonstrated that the impasse had been broken. No evidence was provided that would show that this belief by the Employer was unreasonable. Consequently, other than the delay in providing information, the only supported allegation of bad faith involved conduct on June 28, which was a day after the filing of the decertification petition and just a week before the election.

While the Board recognizes that some forms of bad faith bargaining taking place after the filing of the petition but before the election might be of a nature that their deleterious effect upon free choice and/or upon the validity of the petition would be inherent and immediate, the conduct alleged here is not of that nature. Whereas a long period of bad faith bargaining, with the resulting disenchantment over lack of progress toward a contract could be expected to sour the employees' view of the union, it is difficult to see how the type of bargaining conduct alleged to have occurred here just prior to the election could

³National Labor Relations Board (NLRB) precedent holds that (the filing of a decertification petition alone does not provide a 'sufficient basis for a refusal to continue to recognize and bargain unless the employer has reasonable grounds for doubting the incumbent union's majority status. (*Dresser Industries* (1982) 264 NLRB 1088.) Since, under the Agricultural Labor Relations Act, an employer is not permitted to withdraw recognition based on a good faith doubt as to majority support, the NLRB's qualification on the general rule would not be applicable. (*F & P Growers Association v. ALRB* (1985) 168 Cal.App.3d 667 [214 Cal.Rptr. 355].)

have affected the election without a showing that the employees were made aware of the conduct and that it was used in some way to undermine support for the Teamsters.

In sum, the objections and supporting materials fail to establish circumstances from which it might be concluded that the Employer's alleged bad faith bargaining conduct, occurring shortly before the election, was of a nature that it would have had an immediate impact upon employees or upon the credibility or perceived effectiveness of the Teamsters. Consequently, the Executive Secretary correctly dismissed the objections for lack of declaratory support showing that the alleged bad faith bargaining conduct had an impact upon the election.

ORDER

For the reasons explained above, the Executive Secretary's partial dismissal of the Teamsters' election objections, issued August 12, 1994, is hereby AFFIRMED.

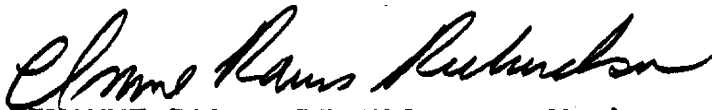
DATED: September 8, 1994



BRUCE J. JANIGIAN, Chairman



IVONNE RAMOS RICHARDSON, Member



LINDA A. FRICK, Member

Background

On July 5, 1994, an election was held among the agricultural employees of Coke Farms, Inc. (Employer) to determine if they wanted to retain the General Teamsters, Warehousemen and Helpers Union, Local 890 (Teamsters) as their exclusive bargaining representative. The tally of ballots showed 25 votes for "No union," 2 votes for the Teamsters, and 1 unresolved challenged ballot. The Teamsters filed several objections to the election. On August 12, 1994, the Executive Secretary of the Agricultural Labor Relations Board (ALRB or Board) issued an order setting some of the objections for hearing and dismissing the remaining objections. The Teamsters then filed with the Board a request for review of the dismissal of the objections. The dismissed objections are based on various allegations of bad faith bargaining by the Employer just prior to the election. The Executive Secretary dismissed the objections on the basis that the Teamsters failed to provide evidence that the parties' bargaining history was an issue in the election campaign or was otherwise made known to employees.

Board Decision

The Board first determined that the evidence submitted in support of the objections revealed an arguable prima facie case only with regard to the allegations that the Employer failed to provide relevant information, cancelled a negotiations session and, withdrew its last offer upon the filing of the decertification petition. While recognizing that some forms of bad faith bargaining conduct just prior to an election might be of a nature that their deleterious effect upon free choice and/or upon the validity of the petition would be inherent, the Board concluded that the conduct alleged in this case was not of that nature. Specifically, the Board found that, absent a showing that the employees were aware of the conduct at issue and that it was used in some way to undermine support for the Teamsters, the alleged bad faith conduct, which was internal to negotiations between the parties, would not have affected free choice in the election. Consequently, the Board affirmed the Executive Secretary's partial dismissal of the Teamsters' election objections.

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