

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PETE VANDERHAM DAIRY, INC.,)	
)	
Employer,)	Case No. 01-RC-3-EC (R)
)	
and)	
)	
DAIRY EMPLOYEES UNION)	28 ALRB No. 1
LOCAL 17,)	(January 17, 2002)
)	
Petitioner.)	
_____)	

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTIONS
AND CERTIFICATION OF REPRESENTATIVE

An election was held at Pete Vanderham Dairy, Inc. (Employer) on November 9, 2001. The tally was two votes for Dairy Employees Union Local 17 (Union), no votes for “no union,” and no unresolved challenged ballots. There were three names on the eligibility list. The Employer timely filed election objections, which were dismissed in their entirety by the attached order of the Executive Secretary dated December 21, 2001. The Employer timely filed a request for review of the dismissal of its election objections. Of the four numbered election objections, the Employer seeks review of the dismissal of Objections 2, 3, and 4. For the reasons that follow, the Agricultural Labor Relations Board hereby AFFIRMS the dismissal of the Employer’s election objections.

Objection 2

In Objection 2, the Employer alleged that the Regional Director improperly determined that two sons of the Employer's owner, even though they were long time employees, were not eligible to vote in the election. The Executive Secretary dismissed the objection based on Regulation 20352, subdivision (b)(5), which provides, inter alia, that children of the employer are not eligible to vote.¹ In its request for review, the Employer argues that the regulation does not specifically make ineligible children who are also employees. The Employer also questions the wisdom of such a restriction.

As the Executive Secretary explained in his dismissal order, Regulation 20352, subdivision (b)(5) does indeed exclude from voter eligibility children of the employer who are also employees. Since, as a threshold matter, only agricultural employees are eligible to vote,² the obvious purpose of the exclusions listed in subdivision (b)(5) of Regulation 20352 is to render ineligible those who otherwise would be considered employees eligible to vote. This regulation, which has been duly promulgated, embodies the unremarkable proposition that the children of the employer are so closely and inherently aligned with the interests of management, like managers and supervisors, that they cannot be considered employees for collective bargaining purposes.

Objection 3

In Objection 3, it was alleged that the eligible employee who did not vote in the election was intimidated because he feared that if he voted and the results became public the

¹ The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

² The rights guaranteed under the Agricultural Labor Relations Act apply only to agricultural employees. (See Labor Code sections 1140.2 and 1152.)

employees who supported the Union would retaliate against him. In support of this objection, the Employer's owner, Pete Vanderham, stated that on the day before the election he discovered a bullet hole in a window of his garage that was not there the night before. The Executive Secretary dismissed this objection for failure to provide declaratory support. A late-filed police report relating to the incident was rejected and not considered. In the request for review, the Employer reiterated his belief, based on a conversation with the employee, that the employee refused to vote because he feared getting involved. In addition, the Employer objects to rejection of the police report, on the grounds that it was not available from the sheriff's department prior to the deadline for filing objections to the election.

For the reasons stated in his order, the Executive Secretary was correct in dismissing this objection. However, this objection must fail for additional reasons as well. Where a bargaining unit is very small and the preferences of some voters are well known, it is not unusual that a particular voter's preference may be ascertained from the vote tally. In such circumstances, an employee may prefer not to vote at all rather than to have his or her vote known. However, a claim of intimidation requires more than an expression of fear that an employee's vote will be ascertainable from the public tally of the ballots. Here, there were no facts provided in the original objections petition to indicate any actions by Union supporters or agents that would constitute intimidation or coercion. Even if the police report were considered, it adds nothing to the facts alleged in the original objections petition, i.e., that Mr. Vanderham noticed on the day before the election what appeared to be a bullet hole in a window of his garage. There is no information indicating that the perpetrator was in any way connected to the Union or that the act of vandalism was connected to the election.

Lastly, the objection alleges only that one employee was intimidated from voting. Since one vote could not have been outcome determinative, the objection must fail on that basis as well.

Objection 4

In Objection 4, the Employer questioned whether the two employees who voted, Saul Lucas and Roman Ponce, were members in good standing of the Dairy Employees Union Local 17 before the election or whether they were newly signed members. The Employer also posited the question of whether there is a waiting period before new members may call for an election, as he suspected that the interest in the union was the result of a recent change in policy on making personal loans to employees. The Executive Secretary dismissed this objection for failure to provide facts indicating that the two employees were ineligible to vote or that the petition was not properly filed by the Union. In its request for review, the Employer reiterates his question concerning the eligibility of the two employees and questions why he must accept the results of this election when one employee refused to vote and the two employees who voted for the union have since been discharged.³

The Agricultural Labor Relations Act, at section 1156.3, provides that any agricultural employee who worked during the payroll period preceding the filing of the election petition is eligible to vote. This section further provides that an election petition may be filed by an agricultural employee or group of agricultural employees, or by an individual or labor organization acting in their behalf. There is no requirement that those who support the

³ The Employer included a new document in its request for review, a ruling from EDD denying Saul Lucas' claim for unemployment insurance benefits. This document, like the police report, must be disregarded because it was not filed with the original objections petition. (Regulation 20365, subdivision (b).) In any event, such rulings are neither binding nor admissible in ALRB proceedings. (See Unemployment Insurance Code sec. 1960.)

union or vote for the union in an election be members of the union in any capacity or for any length of time. Nor is the validity of the discharges of the two employees who voted for the union, which is the subject of pending unfair labor practice charges, at issue in this proceeding. Nor would the discharges themselves, even if lawful, affect the validity of the certification of the Union.

ORDER AND CERTIFICATION OF REPRESENTATIVE

The dismissal of the election objections filed by the Employer is hereby AFFIRMED. Accordingly, Dairy Employees Union Local 17 is hereby certified as the exclusive collective bargaining representative of the all of the agricultural employees of Pete Vanderham Dairy, Inc. in the State of California.

Dated: January 17, 2002

GENEVIEVE A. SHIROMA, Chairwoman

IVONNE RAMOS RICHARDSON, Member

GLORIA A. BARRIOS, Member

HERBERT O. MASON, Member

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
PETE VANDERHAM DAIRY, INC.,)	Case No. 01-RC-3-EC (R)
)	
Employer,)	NOTICE OF DISMISSAL OF
)	ELECTION OBJECTIONS; AND
and)	NOTICE OF OPPORTUNITY
)	TO FILE REQUEST FOR REVIEW
DAIRY EMPLOYEES UNION)	
LOCAL 17,)	
)	
<u>Petitioner.</u>)	

PLEASE TAKE NOTICE that, pursuant to section 1156.3(c) of the Agricultural Labor Relations Act (ALRA)¹, the election objections filed by Pete Vanderham Dairy, Inc. (Employer) in the above-captioned matter are hereby DISMISSED for the reasons that follow.

Objection 1, which states that the name of the Employer as listed on the petition for certification was incorrect, is dismissed because the Petitioner substantially complied with the requirements of Section 20305 of the Board's regulations. The election petition stated the name of the Employer as "Pete Vander Ham," while the correct name is "Pete Vanderham Dairy, Inc." Section 20305(a)(8)(b) of the Board's regulations² provides that an election petition shall be liberally construed to avoid dismissal. The Regional Director was able to determine, upon conducting an

¹¹ The ALRA is codified at California Labor Code section 1140, et seq.

² The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

administrative investigation of the petition, the correct name of the Employer, and the name, as corrected, appears on the Notice and Direction of Election dated November 7, 2001.

Objection 2, which alleges that the Regional Director incorrectly determined that two employees were not eligible to vote in the election because they were the sons of the employer, is dismissed for failure to establish a prima facie case which, if true, would warrant the setting aside of the election. The Employer contends that the Board Regulation Section 20352(b)(5) only limits the eligibility of “children” of employers, and not the eligibility of children who happen to be “employees.” The Employer’s reading of the Regulation is incorrect; generally speaking, all agricultural employees of the employer within the appropriate payroll period are eligible to vote. The Regulation, therefore, is specifically written to exclude children of the Employer who are also employees.

Objection 3, which alleges that one employee was intimidated before the election by two other employees, is dismissed for failure to provide sufficient declaratory support to establish a prima facie case which, if true, would warrant the setting aside of the election. Section 20365(c)(2) of the Board's regulations requires that a party objecting to an election on the grounds that it was not conducted properly must attach to the objection petition, declarations setting forth facts, which if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election. Section 20365(c)(2)(B) requires that the facts stated in each attached declaration be within the personal knowledge of the declarant, and that

the details of each occurrence and the way the occurrence could have affected the outcome of the election be outlined with particularity. Section 20365(d) states that the Executive Secretary shall dismiss any objections petition which does not satisfy the requirements outlined in section 20365 subsections (a), (b), and (c). The one declaration submitted by the Employer in support of its objection petition contains no facts that are relevant to the employer's allegation that employees were intimidated by union supporters prior to the election and, therefore, fails to meet the requirements contained in section 20365 above.³

The Employer submitted a police report on November 26, 2001, presumably in support of objection 3, however, documents submitted after the time for filing objections outlined in section 20365(a) of the Board's regulations cannot be considered. Section 20365(b) provides that no extensions of time shall be permitted, nor shall any amendments to objections submitted after the five-day filing period be permitted. Because of the need to have election matters resolved quickly, the Board has interpreted these requirements very strictly. See *Silver Terrace Nurseries, Inc.* 19 ALRB 5 (1993).

Objection 4, which alleges that the employees who "called for the election" were not eligible to file the petition for certification, and that these same employees were not

³ The detailed statement of facts indicates that an eligible worker declined to vote in the election and that the Employer believes that this employee did so because he feared reprisals by the other employees if they found out that he did not support the union. Even if this information is viewed as declaratory support for the objection, it must still be dismissed. The Board's regulations require that a declarant have personal knowledge of the facts stated in the declaration. The Employer's opinion about why the employee declined to participate in the election is not sufficient. There was not a declaration made by the non-voting employee submitted in support of this election objection, nor were any declarations by other percipient witnesses submitted.

eligible to vote in the election, is not supported by declaratory evidence, and must therefore be dismissed.

Section 1156.3 (a) of the ALRA states that the election petition may be filed by an agricultural employee, a group of agricultural employees or any individual or labor organization acting in their behalf. The petition for certification filed on November 2, 2001 was filed and signed by the business agent of the Dairy Employees Union Local 17, a labor organization acting on behalf of the agricultural employees of the Employer. The declaration submitted by Employer contains no facts relevant the allegation that an ineligible party filed the petition for certification.

Section 1157 of the ALRA states that all agricultural employees of the employer whose names appear on the payroll for the period immediately preceding the filing of the election petition shall be eligible to vote. The declaration submitted by the Employer contains no facts relevant to the allegation that the two employees in question were not eligible to vote.

PLEASE TAKE FURTHER NOTICE that, pursuant to Regulation 20393(a), Employer may file with the Board a request for review of the dismissal of its election

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objections within five (5) days of the issuance of this Order. The five-day filing period is calculated in accordance with Regulation 20170. Accordingly, the request for review is due on December 31, 2001.

DATED: December 21, 2001

J. ANTONIO BARBOSA
Executive Secretary, ALRB

CASE SUMMARY

PETE VANDERHAM DAIRY, INC.
(Dairy Employees Union Local 17)

Case No. 01-RC-3-EC (R)
28 ALRB No. 1

Background

An election was held at Pete Vanderham Dairy, Inc. (Employer) on November 9, 2001. The tally was two votes for Dairy Employees Union Local 17 (Union), no votes for “no union,” and no unresolved challenged ballots. By order dated December 21, 2001, the Executive Secretary (ES) dismissed in their entirety election objections filed by the Employer. The ES held that the Employer failed to allege facts, supported by declarations, which would constitute grounds for setting aside the election. The Employer timely filed a request for review of the dismissal of its election objections. Of the four numbered election objections, the Employer sought review of the dismissal of Objections 2, 3, and 4.

Board Decision

The Board affirmed the Executive Secretary’s dismissal of the election objections for the reasons stated in his order, but added additional comments summarized below.

In Objection 2, the Employer alleged that the Regional Director improperly determined that two sons of the Employer’s owner, even though they were long time employees, were not eligible to vote in the election. The Board explained that since, as a threshold matter, only agricultural employees are eligible to vote, the obvious purpose of the exclusion of family members listed in subdivision (b)(5) of Regulation 20352 is to render ineligible those who otherwise would be considered employees eligible to vote. In Objection 3, it was alleged that the eligible employee who did not vote in the election was intimidated because he feared that if he voted and the results became public the employees who supported the Union would retaliate against him. The Board held that a claim of intimidation requires more than an expression of fear that an employee’s vote will be ascertainable from the public tally of the ballots. Here, there were no facts provided in the original objections petition to indicate any actions by Union supporters or agents that would constitute intimidation or coercion. The Board also noted that the vote of the employee in question could not have been outcome determinative. In Objection 4, the Employer questioned whether the two employees who voted were members in good standing of the Union before the election or whether they were newly signed members. The Employer also posited the question of whether there is a waiting period before new members may call for an election. The Board explained that there is no requirement that those who support the union or vote for the union in an election be members of the union in any capacity or for any length of time prior to the filing of an election petition.

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