STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS CORPORATION AND GIUMARRA FARMS INC.,	Case No. 05-RC-7-VI
Employer,	31 ALRB No. 6 (November 30, 2005)
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	
Petitioner.	

DECISION AND ORDER

On August 25, 2005,[1] the United Farm Workers of America, AFL-CIO (UFW) filed a petition seeking to represent a bargaining unit of all the agricultural employees of Giumarra Vineyards Corporation and Giumarra Farms Inc. (Giumarra or Employer). An election was conducted on September 1, 2005, with the initial tally of ballots showing 1121 votes for the UFW, 1246 votes for No Union, and 171 Unresolved Challenged Ballots. After the resolution of 48 of the challenged ballots, an amended and final tally of ballots issued on November 14, 2005, showing 1141 votes for the UFW, 1266 votes for No Union, and 123 unresolved challenged ballots.

The UFW timely filed objections to the election, the evaluation of which awaited the completion of the challenged ballot process. On November 17, 2005, the

[1] All dates refer to calendar year 2005, unless otherwise indicated.

Executive Secretary (ES) issued an order setting the bulk of the objections for hearing. However, the ES dismissed portions of Objection Nos. 3 and 8. The UFW timely filed exceptions to the partial dismissal of Objection No. 3. It is that partial dismissal that is addressed in this Decision.

The portion of Objection No. 3 that was dismissed revolved around two pieces of employer campaign literature telling employees that they would have to pay 2 percent of their wages (in union dues) if the union won the election. The first one, which was distributed in late August, but sometime prior to August 26, was a leaflet that urged employees to not sign authorization cards, so that they may remain "free," rather than be "dominated by a union" and "pay 2% of your wages or more." The second one was a small slip of paper included with paychecks distributed on August 26 that stated that under a union contract 2 percent of wages would go to union dues and urged employees to vote "no union." The UFW claims that these statements misleadingly tied a union victory to a reduction in pay.

The ES dismissed this allegation, citing three NLRB cases for the proposition that similar statements were permissible campaign propaganda that would not be understood as referring to a unilateral reduction in net pay, but rather would be understood as the eventual result of a collective bargaining agreement.[2] In its request for review, the UFW asserts that the three cases are distinguishable. While acknowledging that in *Educational and Recreational Services* and *Moody Nursing Home* the NLRB found that the content of the statements

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[2] *Kalin Construction Company* (1996) 321 NLRB 649; *Educational and Recreational Services* (1981) 253 NLRB 996; *Moody Nursing Home, Inc.* (1980) 251 NLRB No. 22.

accurately reflected the monetary obligations of unionization, the UFW argues that, in contrast, the campaign literature in the present case misleadingly tied unionization to a reduction in pay. The UFW asserts that *Kalin Construction* is inapposite because in that case the objection was sustained.

While the cases cited by the ES involved inserts in paychecks occurring within 24 hours of the election, and thus focused on principles governing 11th hour campaigning, in *Educational and Recreational Services* and *Moody Nursing Home* the NLRB did find that various statements warning employees about having to pay union dues were not misleading. Therefore, these case would be relevant were the Board to find it necessary to evaluate the content of the campaign literature at issue here. However, we do not find it necessary because, as discussed below, the latest of the two pieces of campaign literature at issue here was distributed six days before the election.

The NLRB has gone back and forth many times over the years in its willingness to examine and regulate the truth of campaign propaganda. Presently, the rule is that reflected in *Midland National Life Insurance Co.* (1982) 263 NLRB 127. In that case, the NLRB announced that it would no longer probe into the truth or falsity of the parties' campaign statements, absent the use of forged documents or altered NLRB documents. Previously, the NLRB had utilized the rule reflected in *Hollywood Ceramics* (1962) 140 NLRB 221. Under that approach, elections would be set aside based on misrepresentations if they involved a substantial departure from the truth, they occurred at a time that prevented other parties from making an effective reply, and where the misrepresentation could reasonably be expected to have a significant impact on the election. As this test is stated in

the conjunctive, all three elements must be present to warrant setting aside an election based on misrepresentations.

This Board has never found it necessary to decide whether it deems *Midland National Life Insurance Co.* to be applicable precedent that it must follow pursuant to ALRA section 1148.[3] In *Oceanview Produce Co.* (1998) 24 ALRB No. 6, the Board passed on the issue, finding in that case that even under the *Hollywood Ceramics* rule the objection could be dismissed because the union had the opportunity to make an effective reply.[4] Here, the same is true. Even if it were found that the literature was misleading, particularly in light of the unique vulnerability of the agricultural workforce, the UFW had ample time to refute or explain away the misrepresentations regarding dues deductions.

Under the *Hollywood Ceramics* approach, it is the responsibility of the opposing party to the election, if given sufficient time, to counter any campaign statements that it finds misleading. Here, the paycheck insert was distributed six days prior to the election and the leaflet was distributed sometime before that, during the gathering of authorization cards. Consequently, even if, as the UFW asserts, the employees would have been misled by the references to paying 2 percent of their wages if the UFW won the election,

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[3] Section 1148 of the Agricultural Labor Relations Act (Lab. Code § 1140, et seq.) states that the Board shall follow applicable precedents of the National Labor Relations Act, as amended.

[4] In previous decisions the Board had modified its application of the *Hollywood Ceramics* to require that the misrepresentations affect the integrity of the election, thus meshing with this Board's consistent application of an outcome determinative test to the evaluation of election misconduct. (See *Sakata Ranches* (1979) 5 ALRB No. 56.)

the UFW had ample time to attempt to explain the dues deduction process in terms it found more accurate. Indeed, we note that two of the declarations in support of Objection No. 3, submitted by UFW organizers, in fact described their efforts to counter the literature at issue by explaining the obligation to pay union dues pursuant to a negotiated provision in a collective bargaining agreement.

ORDER

For the reasons explained above, the Executive Secretary's partial dismissal of Objection No. 3 is hereby AFFIRMED.

DATED: November 30, 2005

GENEVIEVE A. SHIROMA, Chairwoman

CATHRYN RIVERA-HERNANDEZ, Member

IRENE RAYMUNDO, Member

CASE SUMMARY

GIUMARRA VINEYARDS CORP.
(United Farm Workers of America,
AFL-CIO)

Case No. 05-RC-7-VI
31 ALRB No. 6

Background

An election was conducted in the above-referenced case on September 1, 2005. After the resolution of 48 challenged ballots, an amended and final tally of ballots issued on November 14, 2005, showing 1141 votes for the UFW, 1266 votes for No Union, and 123 unresolved challenged ballots. The UFW timely filed objections to the election, the evaluation of which awaited the completion of the challenged ballot process. On November 17, 2005, the Executive Secretary (ES) issued an order setting the bulk of the objections for hearing. However, the ES dismissed portions of Objection Nos. 3 and 8. The UFW timely filed exceptions to the partial dismissal of Objection No. 3.

The portion of Objection No. 3 that was dismissed revolved around two pieces of employer campaign literature warning employees that they would have to pay 2 percent of their wages (in union dues) if the union won the election. The first one was a leaflet that urged employees to not sign authorization cards, so that they may remain "free," rather than be "dominated by a union" and "pay 2% of your wages or more." The second one was a small slip of paper included with paychecks that stated that under a union contract 2 percent of wages would go to union dues and urged employees to vote "no union." The UFW claimed that these statements misleadingly tied a union victory to a reduction in pay. The ES dismissed this allegation, citing three National Labor Relations Board (NLRB) cases where similar statements were found to be permissible campaign propaganda that would not be understood as referring to a unilateral reduction in net pay, but rather would be understood as the eventual result of a collective bargaining agreement.

Board Decision and Order

The Board affirmed the partial dismissal of Objection No. 3. Applying principles concerning campaign misrepresentations, the Board found it unnecessary to evaluate the content of the campaign literature because the UFW had ample time to refute or explain away any misrepresentations. In so holding, the Board applied the broader standard articulated in *Hollywood Ceramics* (1962) 140 NLRB 221, finding it unnecessary to decide if the narrower standard of *Midland National Life Insurance Co.* (1982) 263 NLRB 127 is applicable precedent that must be followed pursuant to section 1148 of the Agricultural Labor Relations Board.

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