

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS	)	
CORPORATION AND GIUMARRA	)	
FARMS INC.,	)	Case No. 06-NA-48-VI
	)	
Employer,	)	32 ALRB No. 4
	)	(September 22, 2006)
and	)	
	)	
UNITED FARM WORKERS OF	)	
AMERICA,	)	
	)	
<u>Petitioner.</u>	)	

DECISION AND ORDER

On September 13, 2006, the United Farm Workers of America (UFW) filed with the Visalia Regional Director (RD) a Notice of Intent to Take Access (NA)<sup>1</sup> at Giumarra Vineyards Corporation and Giumarra Farms, Inc. (Employer). On September 19, 2006, the RD issued a letter dismissing the NA. Also on September 19, 2006, the UFW filed with the Board a request for review of the RD's dismissal of the NA pursuant to section 1142(b) of the

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<sup>1</sup> The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq. Under Regulation 20900, the filing of an NA allows a filing labor organization the right to a 30-day period of access, subject to specified limitations, to the property of named employer for the purpose of communicating with agricultural employees.

Agricultural Labor Relations Act (ALRA).<sup>2</sup> On September 21, 2006, the Employer filed a response to the request for review.<sup>3</sup>

The issue in this case is whether the NA can be filed when there is an election case involving the same parties that presently remains unresolved. In that case, No. 05-RC-7-VI, the final tally of ballots shows 1141 votes for the UFW, 1266 votes for “No Union,” and 123 unresolved challenged ballots. The election was held on September 1, 2005. Election objections filed by the UFW were the subject of an evidentiary hearing and the issuance of a proposed decision by an Investigative Hearing Examiner (IHE). In his decision, as modified on August 17, 2006, the IHE found election misconduct by the Employer that was sufficient to warrant setting aside the election. As of the time of this Decision, the deadline for filing exceptions to the IHE’s decision has yet to expire. Thus, that case remains pending.

### DISCUSSION

It may appear counterintuitive to allow a new election to take place when the validity of a previous election involving the same parties and bargaining unit has yet to be resolved and, as discussed below, in some circumstances there is no question that an unresolved election case would bar a new petition. However, a careful examination of the provisions of the ALRA indicates that this is not true in all circumstances.

The ALRA contains three statutory bars to an election. The contract bar (see ALRA § 1156.7(b)) has no relevance here, as there is no existing collective bargaining

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<sup>2</sup> The ALRA is codified at Labor Code section 1140, et seq.

<sup>3</sup> Western Growers and the California Farm Bureau Federation filed letter briefs in support of the Regional Director’s decision to deny access.

agreement covering the bargaining unit. The certification bar (see ALRA § 1156.6) bars an election for one year after a union has been certified as the exclusive bargaining representative (or where the certification bar has been extended pursuant to subdivision (b) of section 1155.2). The election bar (see ALRA § 1156.5) bars an election for one year after a valid election.

In Case No. 05-RC-7-VI, the final tally of ballots shows an ostensible victory for the “No Union” choice on the ballot. Consequently, if the Board were to uphold the IHE’s proposed decision finding misconduct affecting the results of the election, the Board would set aside the election. If the Board overturned the decision, the Board would certify the “No Union” result. In neither instance could the UFW be certified as the exclusive bargaining representative. Therefore, there is no possibility of the certification bar operating to bar a new election.

The election bar runs from the date of the election, not from the date of a Board decision upholding the validity of the election. (*Tri-Extower Corp.* (1977) 230 NLRB 1006, enf. (9<sup>th</sup> Cir. 1979) 595 F.2d 1; *Bendix Corp.* (1969) 179 NLRB 140.) As more than a year has elapsed since the election, the election bar has expired, regardless of the outcome in Case No. 05-RC-7-VI. For this reason, there is no significance to the fact that the validity of the election has yet to be determined.

In sum, we find no provision in the ALRA that bars a new election in the present circumstances. Nor does the Board’s access regulation contain any provision barring access in these circumstances. The regulation dovetails with the bars to an election discussed above, allowing access 30 days prior to the expiration of any bar to an election (see

Regulation 20900, subd. (e)(1)(C).). There is no provision in the regulation that may be construed as barring access solely because there was a previous election case that remains unresolved. Similarly, we have found no authority in case law for barring a new petition in these circumstances. To the contrary, as noted above, case law indicates that the election bar runs from the date of the election, not from the date an election is determined to be valid. In light of the absence of legal justification, we are constrained from upholding the dismissal.

The Board's Election Manual does contain a passage, at section 2-4310, that suggests that election petitions and notices of intent to take access should be dismissed whenever the validity of a prior election has yet to be resolved. However, the manual cannot be cited as authority, as it contains only non-binding guidelines designed to aid the regional staff by attempting to summarize the principles established by statute, regulations, and case law. It is not an official statement of the law. As inaccurate or outdated provisions are discovered, they are revised. In this instance, section 2-4310 is an incomplete, if not incorrect, summary of the law. It accurately reflects the situation where a union certification remains a possibility or where the one-year election bar has yet to expire. The provision, entitled "Election Bar and Certification Bar," clearly was intended to address the effect of the various bars to an election. However, it fails to account for the situation presented here, i.e., where no bar could operate regardless of how the pending case is decided by the Board, a situation that has not previously been addressed by the Board.

ORDER

In accordance with the discussion above, the dismissal of the Notice of Intent to Take Access is hereby overturned.

DATED: September 22, 2006

IRENE RAYMUNDO, Chair

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member

## CASE SUMMARY

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

Case No. 06-NA-48-VI  
32 ALRB No. 4

### Background

On September 13, 2006 the United Farm Workers of America (UFW) filed with the Visalia Regional Director (RD) a Notice of Intent to Take Access (NA) at Giumarra Vineyards Corporation (Employer). On September 19, 2006, the RD issued a letter dismissing the NA in light of an election case involving the same parties that presently remains unresolved. The UFW filed with the Board a request for review of the RD's dismissal of the NA. The earlier election was held on September 1, 2005. The tally of ballots showed 1141 votes for the UFW, 1266 votes for "No Union," and 123 unresolved challenged ballots. Election objections filed by the UFW were the subject of an evidentiary hearing and the issuance of a proposed decision by an Investigative Hearing Examiner (IHE). In his decision, the IHE found election misconduct by the Employer that was sufficient to warrant setting aside the election. The proposed decision is pending Board review.

### Board Decision and Order

The Board found that there was no legal impediment to a new election and, thus, no legal justification for dismissing the NA. Because the pending election case could not result in the certification of the UFW, but only in the setting aside of the election or the certification of the "No Union" result, the certification bar could not be triggered by the Board's decision. Nor could the one-year election bar be triggered, as it runs from the date of the election, not from the date the Board determines the validity of the election, and in this case the one year period already has expired. Nor does the Board's access regulation bar an NA in these circumstances, as the regulation allows access 30 days prior to the expiration of any bar to the election and makes no exception based solely on an unresolved prior election case. Nor is there case law barring an NA in these circumstances. Finding no legal authority to support barring the NA, the Board overturned the dismissal.

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