

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS)	
CORPORATION and GIUMARRA)	
FARMS INC.,)	Case No. 05-RC-7-VI
)	
Employer,)	32 ALRB No. 5
)	(31 ALRB No. 6)
and)	(31 ALRB No. 5)
)	
UNITED FARM WORKERS OF)	(November 8, 2006)
AMERICA,)	
)	
<u>Petitioner.</u>)	

DECISION AND ORDER

On August 25, 2005,¹ the United Farm Workers of America, (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, which were the subject of an investigative hearing. On August 17, 2006 the Investigative Hearing Examiner (IHE) issued a

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

modified decision, in which he found that the Employer engaged in misconduct sufficient to affect an outcome determinative number of voters. He thus recommended that the election be set aside. On September 26, 2006, the Employer filed exceptions to the IHE's decision. The UFW filed a reply to the exceptions on October 6, 2006.

In the interim, the Board issued its decision in *Giumarra Farms, Inc.* (2006) 32 ALRB No. 4, in which the Board held that a new election petition was not barred by the pending objections because the only relevant bar to an election, the one-year election bar, had expired. At the outset of its exceptions, the Employer argues that, in light of the decision that there is no bar to a new election, the objections must now be dismissed as moot, citing *Karahadian & Sons, Inc.* (1979) 5 ALRB No. 66. The UFW's position is that the case is not moot. The mootness contention will be the focus of the discussion below.

DISCUSSION

A case becomes moot when a ruling can have no practical effect or cannot provide the parties with effective relief. (*Long v. Hultberg* (1972) 27 Cal.App.3d 606, 608-609 (case seeking to enjoin recall election was dismissed as moot because the election had been held).) An appeal is properly dismissed where subsequent events have rendered the matter moot. (See *Consolidated Vultee Aircraft Corp. v. United Automobile, Aircraft & Agricultural Implement Workers* (1946) 27 Cal.2d 859, 863.) However, mootness does not strip the court of jurisdiction. (*Plymouth v. Superior Ct.* (1970) 8 Cal.App.3d 454, 460.) Courts will decide cases otherwise moot where they present important legal issues of continuing public interest. (See, e.g., *DeRonde v. Regents of the University of California*

(1981) 28 Cal.3d 875, 879-880 (race conscious admissions policy); *Johnson v. Hamilton* (1976) 15 Cal.3d 461, 465 (durational residence requirements for candidates for local office.)

Conversely, courts will not exercise their discretion to decide moot issues where the issues are essentially factual and therefore require resolution on a case-by-case basis. (See *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, and cases cited therein.)

In this case, there is no effective relief to be granted, nor any practical effect on the parties, from deciding the merits of the objections at this time. As discussed in 32 ALRB No. 4, there is no longer any bar to an election at stake, nor the possibility of a certification of representative. Consequently, setting aside or upholding the results of the election would have no effect on the rights of the parties. It would in essence constitute an advisory opinion on the issues raised by the Employer's exceptions. Therefore, we agree that the case is moot. This result is consistent with *Karahadian & Sons, Inc.*, where the Board dismissed as moot unresolved election objections where the challenged ballot process, which resulted in an ostensible "No Union" victory, had taken more than a year to be finalized.²

However, as illustrated by the principles utilized by the courts in these circumstances, after finding a case to be moot, an additional evaluation must be made as to whether the issues involved nonetheless warrant resolution. The findings of misconduct to

² The UFW attempts to distinguish *Karahadian* by noting the reference in that case to "a majority of valid votes being cast for "No Union," purportedly in contrast to the findings here by the IHE that the tally was affected by Employer misconduct. However, the reference to "valid" votes in *Karahadian* relates only to the finality of the challenged ballot process, not to whether there was nonetheless conduct affecting the results of the election.

which the Employer has excepted consist of various threats of adverse consequences in the event the UFW prevailed in the election. As such, these issues are extremely fact-sensitive and, consequently, their resolution would provide limited guidance for future cases.

While the Employer has raised several ancillary legal issues involving the IHE's evaluation of evidence and the effect of the misconduct, none are open issues or issues that require clarification. This is true even assuming that the threshold for resolving moot issues should be somewhat lower for an administrative agency such as the ALRB than it is for the courts. Here, the legal issues are well-settled and any doubts raised by the Employer's arguments are easily resolved via an accurate assessment of the relevant precedent and a reasonable application of that precedent to the facts of this case.³ In sum, we find none of the issues raised warrant resolution in spite of their mootness.

But the result in this case illustrates a larger systemic problem with the adjudication of election objections where, as here, there is an ostensible "No Union" victory and no parallel unfair labor practice charges are filed. In these instances, the Agricultural Labor Relations Act (ALRA) confers on the Board only the authority to uphold or set aside the election. The statute does not provide for any other sanctions for engaging in misconduct

³ For example, the Employer mistakenly asserts that to be objectionable, it is critical that statements be shown to have been motivated by anti-union animus. In fact, it is well-established that anti-union animus is not a necessary element in finding that a statement interferes with employee free choice. The ALRB consistently has applied an objective standard, in which the inquiry is whether the conduct would tend to interfere with employee free choice. (See, e.g., *Karahadian Ranches, Inc. v. ALRB* (1985) 38 Cal.3d 1; *J.R. Norton v. ALRB* (1987) 192 Cal.App.3d 874, 891; *S. F. Growers* (1978) 4 ALRB No. 58.) This is true under both the ALRA and the National Labor Relations Act, and none of the cases cited by the Employer are to the contrary.

affecting the results of an election. Further, as explained in 32 ALRB No. 4, in these circumstances the only matter at stake is the existence of the one-year election bar.⁴ Where, as is common in complex cases involving numerous disputed issues, resolution of challenged ballots and election objections may take more than a year, the election bar has expired. Even where the disputed issues are resolved in less than a year, all that is at stake is a diminishing portion of the one-year election bar.

In these circumstances, due to the lack of any sanctions other than setting aside the election, there is no method of removing the taint on employee free choice created by the election misconduct. As a result, the setting aside of the election merely returns the situation to the status quo before the election petition was filed, but with the residual effect on free choice from the misconduct. Obviously, this allows wrongdoers to profit from their misconduct even if it results in the setting aside of the election.

Thus, we are forced to conclude that the election objections process where, as here, the tally of ballots indicates an ostensible “No Union” victory, is all but a meaningless exercise in terms of its affect on the rights of the parties and the employees. Regrettably, the statute in its present form does not provide the Board with remedial authority through which it might address this problem. Consequently, it is a problem that may be addressed only by the Legislature. While it is not our place to prescribe the most appropriate form of legislative

⁴ In contrast, where there is an ostensible victory by a union, or it is a decertification election, the existence, or continuing existence, of a union certification depends on the outcome of the case.

action, meaningful reform would require, at minimum, the authority to issue cease and desist orders and to provide for notice remedies.

ORDER

In accordance with the discussion above, the election objections are hereby DISMISSED as moot. As such, no certification of results of election shall issue.

DATED: November 8, 2006

IRENE RAYMUNDO, Chair

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member

CASE SUMMARY

GIUMARRA VINEYARDS CORP.
(United Farm Workers of America)

Case No. 05-RC-7-VI
32 ALRB No. 5

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, which were the subject of an investigative hearing. On August 17, 2006 the Investigative Hearing Examiner (IHE) issued a modified decision, in which he found that the Employer engaged in misconduct sufficient to affect an outcome determinative number of voters, and recommended that the election be set aside. The Employer filed exceptions to the IHE's decision. In the interim, the Board issued its decision in *Giumarra Farms, Inc.* (2006) 32 ALRB No. 4, in which the Board held that a new election petition was not barred by the pending objections because the only relevant bar to an election, the one-year election bar, had expired.

Board Decision and Order

Because there is no effective relief to be granted, nor any practical effect on the parties, from deciding the merits of the objections at this time, the Board found the case to be moot. As discussed in 32 ALRB No. 4, there is no longer any bar to an election at stake, nor the possibility of a certification of representative. Citing the principle that courts will decide cases otherwise moot where they present important legal issues of continuing public interest, the Board evaluated whether the issues raised nonetheless warranted resolution. Because the findings of misconduct to which the Employer excepted consisted of various threats of adverse consequences in the event the UFW prevailed in the election, these issues were extremely fact-sensitive and, consequently, the Board concluded that their resolution would provide limited guidance for future cases. The Employer also raised several ancillary legal issues involving the IHE's evaluation of evidence and the effect of the misconduct, but the Board found those issues to be well-settled and any doubts raised by the Employer's arguments could be easily resolved via an accurate assessment of the relevant precedent and a reasonable application of that precedent to the facts of this case. Therefore, the Board dismissed the election objections as moot.

However, the Board commented that the result in this case illustrated a larger systemic problem with the adjudication of election objections where, as here, there is an ostensible "No Union" victory and no parallel unfair labor practice charges are filed. In these instances, the Agricultural Labor Relations Act (ALRA) confers on the Board only the authority to uphold or set aside the election. The statute

does not provide for any other sanctions for engaging in misconduct affecting the results of an election. As a result, the setting aside of the election merely returns the situation to the status quo before the election petition was filed, but with the residual effect on free choice from the misconduct, allowing wrongdoers to profit from their misconduct. Since the statute in its present form does not provide the Board with remedial authority through which it might address this problem, it is a matter that can be addressed only by the Legislature.

* * *

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