

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAM & CARMEN KNEVELBAARD	)	
dba BAYOU VISTA DAIRY,	)	
BAYOU VISTA FARMS WEST,	)	Case No. 06-RD-4-VI
KNEVELBAARD CALVES and	)	
HORSESHOE TRANSPORTATION, LLC,	)	32 ALRB No. 6
	)	
Employer,	)	(November 14, 2006)
	)	
and	)	
	)	
UNITED FOOD AND COMMERCIAL	)	
WORKERS, LOCAL 1096,	)	
	)	
Certified Bargaining Representative,	)	
	)	
and	)	
	)	
ALEJANDRO AYALA,	)	
	)	
Petitioner.	)	
_____	)	

DECISION AND ORDER

This case is before the Agricultural Labor Relations Board (Board) on the Regional Director’s September 11, 2006,<sup>1</sup> dismissal of the decertification petition in this case. On October 5, the Board issued an order inviting all parties to provide briefing concerning the Regional Director’s dismissal of the petition. Only the Regional Director filed a brief in response to the Board's order.

<sup>1</sup> All dates referred to below are in 2006.

The petition was filed on July 18 by Alejandro Ayala seeking to decertify United Food and Commercial Workers Local 1096 (the Union) as representative of the agricultural employees of Sam and Carmen Knevelbaard dba Bayou Vista Dairy, Bayou Vista Farms West, Knevelbaard Calves and Horseshoe Transportation, LLC (Employer). The Region issued its notice of election on July 21, setting an election for July 25. On July 24 the Union filed unfair labor practice charges. The issues in this case were raised by the charge filed in Case No. 06-CE-42-VI. That charge alleges that the day before the election, the Employer's owner told all employees at meetings that he had heard that the Union was threatening to report voters to immigration authorities.<sup>2</sup>

An election pursuant to the petition was conducted on July 25. The parties were advised by a letter from the Regional Director the day of the election that the ballots had been impounded because of the filing of a charge "alleging conduct that may impact the election." The Regional Director did impound the ballots. No appeal of the Regional Director's impoundment decision was filed by any party.

The Union and Employer each filed objections to the election. The Union's objection was based on the conduct alleged in its unfair labor practice charge in Case No. 06-CE-42-VI referred to above.

On August 14 the Regional Director issued a complaint based on one of the charges the Union had filed the day before the election, including the allegation that the

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<sup>2</sup> The other charge, in Case No. 06-CE-46-VI, alleges that the Employer had refused the Union access on July 24.

Employer's owner had told all of his employees he had heard that the certified Union was threatening to call the immigration authorities concerning their immigration status.

On September 11 the Regional Director dismissed the election petition, based on his decision to issue a complaint on the alleged threat noted above. The Regional Director's September 11 dismissal letter informed the parties that they could file an expedited request for review. No request for review was filed by any party.

Because the dismissal raised novel issues, the Board is reviewing the dismissal sua sponte and invited briefing by the parties. (Admin. Order 2006-07, Oct. 5, 2006, p. 2.) Only the Regional Director submitted a brief.

Following the briefing submitted to the Board, the parties entered into an informal bilateral settlement agreement that addressed, inter alia, the complaint upon which the Regional Director based his dismissal. The informal bilateral settlement agreement provides that at the conclusion of the Employer's full compliance with the terms of the settlement agreement, the Regional Director shall withdraw the complaint and dismiss the charge in Case No. 06-CE-42-VI. Further, there is a provision that the Employer makes no admission of liability by entering into the settlement. The effect of the settlement is addressed in the following discussion.

#### DISCUSSION

The Regional Director's dismissal letter and brief in response to the Board's order relied upon Board regulations sections 20300(i)(1) and 20360(c) and the Board's decision in *Cattle Valley Farms* (1982) 8 ALRB No. 24.

Cattle Valley Blocking

*Cattle Valley Farms* held that where investigation of unfair labor practice charges discloses that violations have made a fair election impossible, the election may be blocked if a complaint issues on the charge before the election has been conducted. It further held that where the investigation could not be concluded before the date scheduled for the election, the regional director could postpone the election for a day or two to conclude the investigation or impound the ballots. In this case, the Regional Director impounded the ballots.

The Regional Director's September 11 dismissal letter specified the immigration-related statement alleged in the complaint in Case No. 06-CE-42-VI as the basis for dismissal. The dismissal letter further cited the statement's alleged timing (the day before the election) and direct communication from Employer's owner to all the voters as showing a pervasive impact creating an atmosphere making it impossible to have conducted a fair election. He concluded that though the complaint was issued after the election and impoundment of the ballots, dismissing the petition was a natural extension of his authority to block an election.<sup>3</sup>

Contrary to the Regional Director's argument, a regional director's authority to block or dismiss a petition must be exercised before the election has commenced. In *Conagra Turkey Company* (1993) 19 ALRB No. 11, an election was conducted while a complaint alleging that union supporters had been disciplined for

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<sup>3</sup> Under the procedures adopted by the Board, the blocking of an election results in the dismissal of the petition.

protected activities was pending. The acting Executive Secretary referred the case to the Board for it to consider whether the election should have been blocked *nunc pro tunc* as the Regional Director urges here. The Board held that an election petition can be blocked only if the blocking action is taken *before* an election has been conducted, as the decision to hold an election is final and nonreviewable. As explained in *Conagra Turkey*, at that point the impact of any conduct alleged to have interfered with free choice in the election must be addressed through the adjudication of election objections and/or unfair labor practice complaints. We therefore conclude that *Cattle Valley's* blocking authority does not support the dismissal of the petition in this case.

Board Regulations Section 20300(i)(1)

Section 20300(i)(1) implements section 1156.3(b) of the Agricultural Labor Relations Act (ALRA or Act), which directs the Board to investigate whether an election petition includes the prerequisites listed in section 1156.3(a) of the Act. Those allegations are the existence of 50 percent of peak employment and the absence of any bar to an election resulting from contract, certification or a valid election in the calendar year preceding the petition's filing. Section 20300(i)(1) provides that the regional director "shall" dismiss petitions only when his administrative investigation or the petition itself discloses that (1) no reasonable cause to believe that a bona fide question concerning representation exists, (2) that the unit petitioned for is inappropriate, or (3) that the showing of interest is inadequate.

By its nature, the authority described in section 20300(i)(1) pertains to the period prior to an election when the regional director is determining whether the

necessary predicates to an election have been established. There is no provision in this regulation, or in any of the Board's regulations or case law, indicating that this authority continues to exist after an election is held. Indeed, the provision of such authority would generate due process issues, as the regional director, in the role of prosecutor, would be able to implement the most serious of remedies unilaterally, without benefit of an evidentiary hearing. The authority delegated to regional directors by *Cattle Valley* is a narrow exception to the need for adjudication of disputed issues that is grounded in the statutory authority, conferred on the Board by ALRA section 1156.3, to determine if there is reasonable cause to believe that a bona fide question of representation exists. That inquiry, by definition, takes place prior to the election.

#### Board Regulations Section 20360(c)

The remaining regulatory ground relied on by the Regional Director is found in section 20360(c). Section 20360(c) directs that ballots shall be impounded "whenever it appears necessary to effectuate the purposes and policies of the Act." This language authorizes impoundment but not the dismissal of a petition.

#### Coordination of Unfair Labor Practice and Election Proceedings

The Board has two principal lines of cases governing the coordination of unfair labor practice and election proceedings. The first, *Cattle Valley*, authorizing blocking and impoundment, has been discussed. The second line of cases follows *Mann Packing* (1989) 15 ALRB No. 11.

In *Mann Packing* the Board adopted, with some minor modifications, the National Labor Relations Board's rule in *Times Square Stores* (1948) 79 NLRB 361.

*Mann Packing* is based on the Board's recognition of the exclusive authority granted by section 1149 of the Act to the General Counsel to determine whether unfair labor practice charges warrant the issuance of a complaint. Where an election case under Chapter 5 of the Act turns upon an unfair labor practice issue, General Counsel's dismissal of a charge for lack of merit will preclude separate litigation of those issues in a challenged ballot or election objections proceeding.

However, the Board made it clear in *Mann Packing* that in the absence of potential to interfere with the General Counsel's authority, such as where no parallel unfair labor practice charges have been filed, the Board retained its full authority to adjudicate objections and challenges. Because the unfair labor practice charge at issue here will be dismissed, pursuant to the settlement agreement, without any determination of its merits, it is the legal equivalent of no charge having been filed. Therefore, we find that in these circumstances the election objection process may go forward.

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ORDER

In accordance with the discussion above, the Regional Director's dismissal of the petition in this case is hereby REVERSED and the petition REINSTATED, subject to the adjudication of pending election objections. The Regional Director is hereby ORDERED to open and count the ballots and issue a tally of ballots.

Dated: November 14, 2006

IRENE RAYMUNDO

GENEVIEVIE A. SHIROMA

CATHRYN RIVERA-HERNANDEZ



## CASE SUMMARY

Bayou Vista Dairy, et al.  
(United Food and Commercial Workers  
Local 1096)

32 ALRB No. 6  
Case No. 06-RD-4-VI

### Regional Director's Dismissal of Election Petition

The Regional Director dismissed a decertification petition based on the allegations of a complaint that issued after the election had been conducted and the ballots impounded. The Regional Director relied on the Board's decision in *Cattle Valley Farms* (1982) 8 ALRB No. 24 and Board Regulations sections 20300(i)(1) and 20360(c). The Board invited briefing on the issue of a regional director's authority to dismiss a petition based on the issuance of an unfair labor practice complaint after the election had been conducted.

### Board Decision

The Board found that the authority cited by the Regional Director did not authorize the Regional Director's administrative dismissal of the election petition in these circumstances.

*Cattle Valley* authorized blocking of a petition based on the pendency of an unfair labor practice charge only when the complaint has issued before the election has been conducted. In *Conagra Turkey Company* (1993) 19 ALRB No. 11, the Board held an election petition can be blocked only if the blocking action is taken *before* an election has been conducted, as the decision to hold an election is final and nonreviewable.

Section 20300(i)(1) does not confer authority on the regional director to dismiss a petition because of the pendency of an unfair labor practice charge where a complaint has not issued before the election is conducted. The dismissal authority granted by section 20300(i)(1) extends only to situations where the administrative investigation or petition itself discloses that a bona fide question concerning representation does not exist, that the unit petitioned for is inappropriate or that the showing of interest is insufficient. By its nature, the authority described in section 20300(i)(1) pertains to the period prior to an election when the Regional Director is determining whether the necessary predicates to an election have been established. There is no provision in this regulation, or in any of the Board's regulations or case law, indicating that this authority continues to exist after an election is held.

Section 20360(c) authorizes only the impoundment of ballots, not the dismissal of a petition, where an unfair labor practice charge investigation has not resulted in the issuance of a complaint before the election has been conducted.

Further, an informal settlement was entered into providing that the complaint would be withdrawn and the underlying charge dismissed upon the Employer's completely complying with the settlement. The Union and the Employer each filed objections to the election. The Union's election objection parallels the complaint's allegation. In *Mann Packing* (1989) 15 ALRB No. 11, the Board recognized the exclusive authority granted by section 1149 of the Act to the General Counsel to determine whether unfair labor practice charges warrant the issuance of a complaint. Where an election case under Chapter 5 of the Act turns upon an unfair labor practice issue, General Counsel's dismissal of a charge for lack of merit will preclude separate litigation of those issues in a challenged ballot or election objections proceeding. Because the unfair labor practice charge at issue here will be dismissed, pursuant to the settlement agreement, without any determination of its merits, it is the legal equivalent of no charge having been filed. Therefore, the election objections process may go forward.

The Board reversed the dismissal and referred the reinstated petition to the Board's election objections process for consideration of objections filed by the Union and the Employer.

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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.