

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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|------------------------|---|--------------------|-----------------|
| CORRALITOS FARMS, LLC, |) | Case No. | 2012-RC-004-SAL |
| |) | | |
| Employer, |) | | |
| |) | | |
| and |) | 38 ALRB No. 10 | |
| |) | (October 16, 2012) | |
| UNITED FARM WORKERS OF |) | | |
| AMERICA, |) | | |
| |) | | |
| Petitioner. |) | | |

DECISION AND ORDER

On September 14, 2012, the United Farm Workers of America (UFW or Petitioner) filed a petition for representation with the Agricultural Labor Relations Board (ALRB or Board) Salinas Regional Office seeking an election among the agricultural employees of Corralitos Farms, LLC (Employer), headquartered in Watsonville, California. The employees are involved in the harvesting of strawberries.

On September 19, 2012, an election was held with the tally of ballots producing the following results:

| | |
|-------------------------------|-----------|
| United Farm Workers | 154 |
| No Union | 187 |
| Unresolved Challenged Ballots | <u>19</u> |
| TOTAL | 360 |

On September 26, 2012, the UFW timely filed an objection petition with the Board pursuant to section 1156.3(e) of the Agricultural Labor Relations Act

(ALRA).¹ The UFW argues that the Employer's misconduct affected the results of the election; therefore, the UFW asks that the Board refuse to certify the results of the election. In addition, because the UFW asserts that the Employer's misconduct renders slight the chances of a new election reflecting the free and fair choice of employees, the UFW requests that the Board certify the UFW as the collective bargaining representative pursuant to section 1156.3(f) of the ALRA.

ORDER

PLEASE TAKE NOTICE that, pursuant to section 1156.3(e)(2) of the ALRA, an investigative hearing on objections filed by the UFW in the above-captioned matter shall be conducted on November 15, 2012, and consecutive days thereafter until completed at the Salinas ALRB Regional Office, 342 Pajaro Street, Salinas CA 93901. The investigation shall be conducted in accordance with the provisions of Board regulation section 20370.² The Investigative Hearing Examiner (IHE) shall take evidence on the following issues, and determine whether any misconduct found had a tendency to affect free choice in the September 19, 2012 election to the extent that setting aside the election is warranted:

Objection No. 1: On or about August 4, 2012, did the Employer, through its supervisors or agents, threaten to discharge workers who participated in a UFW strike in early August 2012?

¹ 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.

Objection No. 2: On or about August 4, 2012, did the Employer, through its supervisors or agents, threaten to call the police and call the police in retaliation for workers engaging in a strike?

Objection No. 3: On or about August 7 and 8, 2012, did the Employer's supervisors or agents, threaten workers with job loss if they continued to support the UFW?

Objection No. 4: From on or about August 7, 2012 until September 18, 2012, did the Employer, through its supervisors or agents, insist that employees attend crew meetings in the fields that were conducted by a labor consultant, and attended by company supervisors, and during these meetings were workers threatened with job loss if the union won the election?

Objection No. 5: Did the Employer violate the ALRA by requiring workers to attend the meetings described in Objection 4 prior to the election? While the Board has never determined whether the captive audience rule set forth in *Peerless Plywood* (1954) 107 NLRB 427 applies under the ALRA, and does not do so in this decision, this objection is being set for hearing to establish a factual record on which the Board may determine whether that issue must be decided in this case.

Objection No. 6: During the alleged meetings described in Objection 4, did Employer pay workers who attended those meetings more than they would have otherwise earned for picking for the time period of the meetings?

Objection No. 7: This objection alleges that the threats of job loss described in Objection 4 constituted misrepresentations that affected the integrity of the election. The Board has not yet determined whether the National Labor Relations Board's rule concerning misrepresentations under *Midland National Life Insurance Co.* (1982) 263 NLRB 127 is applicable precedent under the ALRA. The parties are directed to brief in their post-hearing briefs the question of whether the Board should adopt the standard set forth in *Midland National Life Insurance Co.* or should instead follow the standard reflected in *Hollywood Ceramics* (1962) 140 NLRB 221. The IHE shall include in his decision a recommended resolution of this question.

Objection No. 8: Did the Employer, through its supervisors or agents, unlawfully grant a benefit to workers following the August 2012 strike by eliminating the requirement that workers pick in muddy or wet strawberry rows, allowing them to pick faster?

Objections 9 and 10: Did the Employer, through its supervisors or agents, grant an additional benefit to workers who did not support the union by giving them credit for strawberry boxes they did not pick?

Objection 11: After the August 2012 strike, did the Employer, through its supervisors and punchers, harass union supporters by excessively checking the quality of their harvesting work resulting in the pickers' work being slowed down and their losing wages? In addition, were workers who did not support the union treated differently by having no checks or only perfunctory checks of their work performed before receiving credit for boxes picked?

Objection 12: Did the Employer, through its supervisors or agents, provide anti-union supporters with unlawful assistance and preferential access to work crews when anti-union employees acting as agents of the Employer were present at lunchtime meetings of crews where access was being taken? In addition, did Employer discriminate against employees who were union supporters by providing anti-union employees a forum for campaigning during work hours that was not available to union supporters?

Objection 14: On or about the beginning of August 2012, did the Employer, through its supervisors or agents, unlawfully interrogate a key union supporter and threaten that, if he continued to organize on behalf of the union, he was going to "break" the company? In addition, did the Employer grant this employee a benefit, promise a benefit for his family, and grant a benefit to his son?

Objection No. 15: On the day of the election, did Supervisor Rigoberto Lazaro call a key union supporter, interrogate him about who he was going to vote for, and tell him that if the UFW won the election, the union supporter's salary would be reduced?

Objection No. 17: In the presence of other workers, did Supervisor Noe Merino promise a worker winter employment if the worker renounced his support for the UFW?

Objections 13 and 16 allege facts that are mirrored in two unfair labor practice charges (ULP) pending before the General Counsel. These objections are set for hearing conditioned on the outcome of the General Counsel's investigation of these two charges. Under the rule set forth in *Mann Packing Co, Inc.* (1989) 15 ALRB No. 11, where the evaluation of the merits of election objections is dependent on the resolution of issues in a pending unfair labor practice charge, the Board must defer to the exclusive authority of the General Counsel regarding the investigation of charges and the issuance of complaints.

Objection 13: Did the Employer, through its supervisors or agents, interfere with the UFW's access in such a way that it prevented the UFW from effectively communicating with the workforce about the benefits of union representation?

Objection 16: Did the Employer, through its supervisors or agents, in particular, Armando Ramirez and Juan Herrera, interrogate a union supporter about his union sympathies in the presence of his coworkers in the days prior to the August 2012 strike?

The UFW requests that the Board certify the UFW as the exclusive bargaining representative pursuant to the recently enacted provision of ALRA section 1156.3(f). That provision states:

Notwithstanding any other provision of law, if the board refuses to certify an election because of Employer misconduct that, in addition to affecting the results of the election, would render slight the chances of a new election reflecting the free and fair choice of employees, the labor organization shall be certified as the exclusive bargaining representative for the bargaining unit.

The Board applies an objective standard in evaluating the effect of election misconduct upon free choice. (*Oceanview Produce Company* (1994) 20 ALRB No. 16.) The Investigative Hearing Examiner is directed to take evidence relevant to the objective effect of the alleged misconduct on employee free choice, from which it may be determined whether certification pursuant to section 1156.3(f) would be appropriate.

DATED: October 16, 2012

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

CORRALITOS FARMS, LLC
(UFW)

Case No. 2012-RC-004-SAL
38 ALRB No. 10

Background

On September 14, 2012, the United Farm Workers of America (UFW or petitioner) filed a petition for representation with the Agricultural Labor Relations Board (ALRB or Board) Salinas Regional Office seeking an election among the agricultural employees of Corralitos Farms, LLC (Employer) in Watsonville, California. The employees are involved in the harvesting of strawberries.

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On September 26, 2012, the UFW timely filed an objection petition with the Board pursuant to Labor Code section 1156.3(e). The UFW argues that the Employer's misconduct affected the results of the election; therefore, the UFW asks that the Board refuse to certify the results of the election. In addition, because the UFW asserts that the employer's misconduct renders slight the chances of a new election reflecting the free and fair choice of employees, the UFW requests that the Board certify the UFW as the collective bargaining representative pursuant to section 1156.3(f).

Board Decision

The Board set 15 of the UFW's 17 objections for an investigative hearing, and set two objections for hearing conditioned on the outcome of the investigation of two unfair labor practice (ULP) charges currently pending before the General Counsel. These two objections allege facts that are mirrored in two pending ULP charges (see *Mann Packing Co, Inc.* (1989) 15 ALRB No. 1). The Board also directed the Investigative Hearing Examiner to take evidence relevant to the objective effect of the alleged misconduct on employee free choice, from which it may be determined whether certification pursuant to section 1156.3(f) would be appropriate.

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