

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GEORGE AMARAL RANCHES,	)	Case Nos. 2012-RC-001-SAL
INC.,	)	
	)	
Employer,	)	
	)	
and	)	38 ALRB No. 5
	)	
UNITED FARM WORKERS OF	)	(July 13, 2012)
AMERICA,	)	
	)	
Petitioner.	)	

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**DECISION AND ORDER**

On June 27, 2012, Employer George Amaral Ranches, Inc. (Employer) filed timely six election objections in its petition to set aside a “strike election” (or “48-hour election”) held pursuant to California Labor Code section 1156.3(b)<sup>1</sup> on June 19 and 20, 2012. On July 9, 2012, the United Farm Workers of America (UFW) filed a Motion

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<sup>1</sup> All statutory references are to the California Labor Code unless otherwise stated herein. Labor Code section 1156.3(b) provides:

(b) Upon receipt of a signed petition, as described in subdivision (a), the board shall immediately investigate the petition. If the board has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. *If, at the time the election petition is filed, a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of the petition.* The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections. (Emphasis added.)

to Dismiss Employer’s election objections on the grounds that they were not properly served on the UFW. We dismiss Employer’s Objections 4, 5 and 6 for failure to present a *prima facie* case, direct a hearing on Objections 1, 2 and 3, and deny the UFW’s Motion to Dismiss.

**Facts and Procedural History**

On June 18, 2012, the UFW filed a Notice of Intent to Take Access, a Notice of Intent to Organize, and a Petition for Certification. The Petition for Certification stated that Employer had approximately 300 employees, of whom approximately 200 were on strike when the petition was filed. A strike election was held on June 19 and June 20, 2012. The Regional Director issued a corrected tally of ballots on June 22, 2012 that showed the following results:

UFW .....	265
No Union .....	65
Unresolved challenged ballots .....	<u>14</u>
Total number of ballots .....	344

The tally listed two void ballots and a total of 422 names on the eligibility list.

Employer’s counsel filed a declaration on June 18, 2012 in compliance with Section 20377(c) of the Board’s regulations<sup>2</sup> objecting to holding a 48-hour election on

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<sup>2</sup> The Board’s regulations are codified at Title 8, California Code of Regulations, section 20100, et seq. Section 20377(c) provides:

(Footnote continued....)

the grounds that fewer than half of the eligible employees were engaged in a strike at the time the UFW's petition was filed. Employer alleges it again objected to the imposition of a 48-hour election on the same grounds via email on June 19, 2012. A pre-election conference was held at the ALRB Salinas Regional Office on June 19, 2012, and a dual voting procedure was imposed with the Employer's striking employees voting on June 19 at the ALRB Salinas Regional Office and the remaining employees voting on June 20 at Chualar.

Employer alleges that during the seven-hour pre-election conference, the UFW held a demonstration at the ALRB Salinas Regional Office during which demonstrators elicited public support on a megaphone, barbequed, drank, and distributed union material until the time of the opening of polling areas there at 5:00 p.m. Employer alleges that, due to the demonstration, its observers felt that their participation put them and their families at risk such that they withdrew, leaving Employer without any observers.

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(Footnote continued)

§ 20377 Elections Under Strike Circumstances

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(c) Any party who contends that a 48-hour election is improper shall notify the regional director of its contention and shall submit evidence in the form of a written declaration under penalty of perjury supporting the contention and the manner in which the party would be prejudiced. The notification and submission of evidence must be made prior to the pre-election conference. Absent such notice, the regional director's determination shall not be reviewable in post-election objections under Section 20365.

Employer further alleges that, due to the truncated election, the ALRB was forced to do immediate noticing in and around Chualar and as far south as San Ardo. Employer alleges that employees at its shop location were never approached by ALRB staff regarding the election, and while its San Ardo employees were approached about the election by ALRB staff, they were not informed of a time or location for voting.

Employer's objections are as follows:

1. The petition fails to satisfy the statutory requirements with respect to having a majority of employees engaged in a strike at the time of the filing of the Petition in order for a forty-eight (48) hour election to take place under Labor Code section 1156.3(b).
2. The Board, through its representatives and agents, failed to properly investigate the election petition's allegation that a majority of the Employer's work force was engaged in a strike at the time the petition was filed.
3. The Board, through its representatives and agents, abused its discretion by allowing a 48-hour election to take place because at the time of the filing of the petition less than a majority of Employer's workers were not [sic] engaged in a strike.
4. The Board, through its representatives and agents, improperly allowed separate voting processes for those employees who were engaged in the strike, resulting in the striking employees threatening to beat up the non-striking employees if the non-striking employees voted.
5. The Board, through its representatives and its agents, engaged in misconduct affecting the outcome of the election because Board agents allowed a union-supportive mob (in front of their Salinas Regional office) to remain barbequing, drinking, distributing Union materials and threatening company observers in front of their Salinas regional office until voting began, making free choice impossible.

6. The Board, through its representatives and its agents, engaged in misconduct affecting the outcome of the election because Board agents did not provide proper notice to the non-striking employees.

(Employer's Objections and Petition to Set Aside Election at p. 2.)

The California Supreme Court has upheld the Board's conditioning of a full evidentiary hearing of election objections upon the presentation of objections and factual declarations that establish a *prima facie* case pursuant to section 20365 (c) of the Board's regulations. (*Lindeleaf v. ALRB* (1986) 41 Cal.3d 861, 874-875; *J.R. Norton Company, Inc. v. ALRB* (1979) 26 Cal.3d 1, 17.) The burden is on the objecting party to establish a *prima facie* case based on supporting materials filed timely with the objections petition (*Monterey Mushrooms, Inc.* (1995) 21 ALRB No. 2 at pp. 6-7), and hearings on objections relating to the conduct of an election are appropriate where a petition states facts which, if uncontroverted or unexplained, would constitute grounds for setting aside the election and where substantial and material issues of fact are in dispute. (*George Arakelian Farms, Inc.* (1989) 14 ALRB No. 53 at p. 3, fn. 1, citing *John V. Borchard Farms* (1976) 2 ALRB No. 16).

We address the objections below.

### **Discussion**

I. Objections 1, 2 and 3: Failure to Meet the Strike Election Statutory Prerequisite of Having a Majority of Eligible Employees on Strike; Failure to Investigate the Election Petition

Employer argues that a 48-hour strike election should not have been permitted because a majority of eligible employees were not on strike. The legislative purpose behind authorizing a strike election to occur within forty-eight hours of the filing

of a representation petition was the legislature's recognition of the inherently volatile nature of a strike and the potential for violence and/or disruption in production. A strike election should be held as soon as possible, provided adequate notice is provided to the parties and the employees, no party is prejudiced, and eligible employees are not denied an opportunity to vote. (*Muranaka Farms* (1983) 9 ALRB No. 20 at pp. 5-6.)

We find the objections and supporting declarations to be sufficient to warrant a hearing on the question of whether the number of employees on strike at the time the election petition was filed was less than a majority of the total eligible voters. Inherent in that inquiry, in the event that it is found that a majority were not on strike, is the secondary question of whether the Regional Director's conclusion that a majority were on strike was reasonable based on the information available to him at the time of the election. (*See T. Ito and Sons Farms* (1983) 9 ALRB No. 56, IHED at pp. 74-76.)

Specifically, we direct the Investigative Hearing Examiner to take evidence and reach findings of fact and conclusions of law on the following issues:

1. How many eligible workers were on strike at the time the election petition was filed and did they constitute a majority of eligible workers at the time the election petition was filed?
2. If there was not a strike majority at the time the election petition was filed, was the Regional Director's conclusion that that there was a strike majority

reasonable in light of the information available to him at the time of the election? (*See T. Ito and Sons Farms, supra*, IHED at pp. 74-75; *Muranaka Farms, supra*, at pp. 4-6.)<sup>3</sup>

3. Did the holding of the strike election result in any prejudice to the parties? (*See, e.g., Perez Packing Company*, (1989) 15 ALRB No. 19 at pp. 7-8; *T. Ito and Sons Farms, supra*; *Muranaka Farms, supra*).

II. Objection 4: The Board Improperly Allowed Separate Voting Processes for Those Employees Who Were Engaged in the Strike, Resulting in the Striking Employees Threatening to Beat Up Non-Striking Employees Who Voted

In its Statement of Facts and Memorandum of Law, Employer argues that the initial voting process on the evening of June 19, 2012 created a threatening and intimidating environment and that its observers withdrew from the voting process as a result of threats and intimidation. In support of this allegation, Employer offers the declarations of its observers, Baltazar Rosalez (Declaration No. 3) and Jose A. Garcia Ramirez (Declaration No. 4) as support. Both declarations are insufficient on their face.

The declarations, which are identical, state the following:

2. The voting took place at the Agricultural Labor Relations Board (hereafter "ALRB) Salinas Regional office. [sic] When I arrived, I immediately felt threatened and intimidated to the point where I decided to leave the ALRB office out of fear for my safety.
3. The ALRB did nothing to stop the hostile environment during the election process.

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<sup>3</sup> Pursuant to Section 20370 (c) of the Board's regulations, the regional director or a designated representative of the regional director may participate to the extent necessary to ensure that the evidentiary record is fully developed and that the basis for the Board's action is fully substantiated. The regional director is not, however, a party to the proceedings. (*GH & G Zysling Dairy* (2006) 32 ALRB No. 2, p. 2, fn. 2.)

(Declarations 3 and 4, ¶¶ 2 and 3). Section 20365(c)(2)(B) of the Board’s regulations states, “The facts stated in each declaration shall be within the personal knowledge of the declarant. The details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election shall be set forth with particularity.” Moreover, objectionable misconduct in the context of elections cannot be tested by subjective individual reactions of employees. The test is whether the conduct, when measured by an objective standard, was such that it reasonably would tend to interfere with employee free choice. (*Oceanview Produce Company* (1994) 20 ALRB No. 16 at p. 6.) These declarations fail to state who caused the observers to feel threatened and intimidated or how, and are therefore deficient on their face. This objection must be dismissed under Section 20365(d) for failure to comply with Section 20365(c)(2)(B).

I. Objection 5: The Board Engaged in Misconduct Affecting the Outcome of the Election by Allowing a Union-Supportive Mob in Front of the Salinas Regional Office

This objection also relies on Declarations 3 and 4 and must be dismissed for the same reasons.

II. Objection 6: The Board Engaged in Misconduct Affecting the Outcome of the Election Because Board Agents Did Not Provide Proper Notice to the Non-Striking Employees

Employer alleges that the Board failed to provide adequate notice to non-striking employees. Declarations 5 through 26 are from employees who allege that they did not receive notice of the time and place for the June 20, 2012 election.

Employer argues that the outcome determinative effect of the failure to provide notice



should not be the focus of the Board's inquiry, and that the Board should set aside the election to protect the public confidence in the integrity of the election process.

Declarations 5 through 26 are insufficient to state a *prima facie* case because none of the declarants allege that they did not vote or were prevented from voting.

Declarations 5 through 26 all contain the same third paragraph:

3. The ALRB agent did not inform me of a time or location for the election that was to take place on June 20, 2012.

(Declarations 5 through 26, ¶ 3.) None of the declarants state that they did not vote or were prevented from voting. An objection based on inadequate notice will generally be dismissed unless the objecting party can show that an outcome determinative number of voters will be disenfranchised. (*Gilroy Foods, Inc.* (1997) 23 ALRB No. 10 at 9, citing *R.T. England Company* (1976) 2 ALRB No. 23.) Here, Employer hasn't demonstrated that the declarants did not vote or were prevented from voting. The declarations are insufficient on their face.

### **UFW's Motion to Dismiss**

The UFW filed a Motion to Dismiss the Employer's election objections on the grounds of untimely service. The UFW states that it received a facsimile of Employer's election objections on June 27, 2012 at approximately 7:58 p.m. and that the facsimile was not completed until 8:13 p.m. that evening. The UFW further states that it did not receive personal service of the objections until July 3, 2012. The UFW cites Section 20168(a) of the Board's regulations to the effect that a timely fax transmission shall be no more than fifteen pages in length and must have begun prior to 4:00 p.m. on

that date. The UFW also cites Sections 20164 and 20166 of the Board's regulations, which requires service on other parties prior to or simultaneously with the filing with the Board, through personal service, registered or certified mail, or overnight carrier. The UFW cites *Silver Terrace Nurseries, Inc.* (1993) 19 ALRB No. 5, *California Redi-Date, Inc.* (1994) 20 ALRB No. 11, and *Pete Vanderham Dairy, Inc.* (2002) 28 ALRB No. 1,<sup>4</sup> for the proposition that the Board's regulations with respect to the filing of elections objections are strictly interpreted. The UFW's motion is denied.

Section 20365(b) of the Board's regulations provides that an objections petition be filed by personal service on the executive secretary, or by registered or certified mail postmarked within the five-day period provided in Section 20365(a). Section 20365(c) requires that an objection petition consist of, among other things, a declaration of service upon all parties as provided in Section 20166 of the Board's regulations. Whereas no extension of time may be provided for the filing of election objections, making the timely filing of them jurisdictional, the timely service of those objections on the parties is not similarly jurisdictional under the Board's regulations.

The authorities cited by the UFW are unavailing. Although the Board in *Silver Terrace Nurseries* cited the fact that, in addition to being untimely filed on the executive secretary, the election objections at issue were also improperly served, the Board affirmed dismissal of the objections because they were untimely filed with the executive secretary. (*Silver Terrace Nurseries, Inc.*, 19 ALRB No. 5 at p. 10 ("The

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<sup>4</sup> The citation provided by the UFW for *Pete Vanderham Dairy, Inc.*, (2002) 20 ALRB No. 1, is incorrect. We assume the UFW meant (2002) 28 ALRB No. 1.

Board will not delay its election procedures to allow the Employer to present evidence that should have been presented during the objections filing period.”.) In *California Redi-Date, Inc.*, the issue was the timeliness of the Employer’s request for review of the Executive Secretary’s dismissal of timely filed election objections, not the timeliness of the filing and service of the election objections. (*California Redi-Date, Inc., supra*, 20 ALRB No. 11 at p. 3 (dismissing the request for review of the executive secretary’s dismissal of election objections as untimely and without merit.).) In *Pete Vanderham Dairy, Inc.*, the Board disregarded a document filed with a request for review of a dismissal of election objections that had not been filed with the original objections petition. (*Pete Vanderham Dairy, Inc.* (2002) 28 ALRB No. 1 at p. 4, fn. 3)

The UFW alleges no prejudice resulting from receiving an after-hours fax transmission of the election objections on the day the objections were required to be and were filed with the Executive Secretary. Section 20365 of the Board’s regulations does not require responsive pleadings in response to election objections.

The UFW’s motion is denied.

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**ORDER**

PLEASE TAKE NOTICE that Employer's Objections 4, 5 and 6 are hereby dismissed. Employer's Objections 1, 2 and 3 are to be set for hearing consistent with the direction provided in this decision. The UFW's Motion to Dismiss is denied.

DATED: July 13, 2012

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

## CASE SUMMARY

**GEORGE AMARAL RANCHES, INC.**  
(United Farm Workers of America)

Case No. 2012-RC-001-SAL  
38 ALRB No. 5

On June 27, 2012, the United Farm Workers of America (UFW) filed a Petition for Certification to represent the agricultural employees of George Amaral Ranches, Inc. (Employer). The Petition for Certification stated that Employer had approximately 300 employees, of whom approximately 200 were on strike when the petition was filed. A strike election was held on June 19 and June 20, 2012, and the Tally of Ballots showed the following result: "UFW," 265; "no union," 65; "unresolved challenged ballots," 14. The tally listed a total of 422 names on the eligibility list.

Employer timely filed six election objections: 1) The petition failed to satisfy the statutory requirements of a strike majority; 2) The Board failed to properly investigate the election petition's allegation of a strike majority; 3) The Board abused its discretion by allowing a 48-hour election to take place when fewer than a majority of Employer's workers were on strike when the election petition was filed; 4) The Board improperly allowed separate voting processes for employees engaged in the strike; 5) The Board engaged in misconduct affecting the outcome of the election by allowing a union-supportive mob to, among other things, threaten company observers; and 6) The Board did not provide proper notice to non-striking employees. The UFW filed a Motion to Dismiss Employer's Election Objections on the grounds that it received a faxed copy of the objections at approximately 7:58 p.m. on June 27, 2012, the day the election objections were required to be filed with the Executive Secretary.

The Board found the Objections 1, 2 and 3 and the supporting declarations to be sufficient to warrant a hearing on the question whether the number of employees on strike at the time the election petition was filed was less than a majority of total eligible voters and whether the Regional Director's conclusion that a majority were on strike was reasonable based on the information available to him at the time of the election. (*T. Ito and Sons Farms* (1983) 9 ALRB No. 56, IHED at pp. 74-75; *Muranaka Farms* (1983) 9 ALRB No. 20 at pp. 4-6). The Board dismissed Objections 4, 5 and 6 on the grounds that the supporting declarations were insufficient on their face. The supporting declarations for Objections 4 and 5 failed to state with particularity as required by Section 20365(c)(2)(B) of the Board's regulations who caused Employer's observers to feel threatened and intimidated or how. The supporting declarations for Objection 6 failed to state that the employees who are alleged to have not received sufficient notice of the election did not vote or failed to vote. An objection based on inadequate notice will generally be dismissed unless the objecting party can show that an outcome determinative number of voters will be disenfranchised. (*Gilroy Foods, Inc.* (1997) 23 ALRB No. 10 at 9, citing *R.T. Englund Company* (1976) 2 ALRB No. 23). The UFW's Motion to Dismiss was denied because timely service of election objections on parties is not jurisdictional, the UFW alleged no prejudice, and Section 20365 of the Board's regulations does not require responsive pleadings in response to election objections.

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