

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DOLE BERRY NORTH,)	Case No.	2013-RD-001-SAL
)		
Employer,)		
)		
and)		
)		
JOSÉ AGUILAR)	39 ALRB No. 18	
)		
Petitioner,)	(November 22, 2013)	
)		
and)		
)		
UNITED FARM WORKERS OF)		
AMERICA,)		
)		
<u>Certified Bargaining Representative.</u>)		

DECISION AND ORDER

On October 18, 2013, José Aguilar filed a petition to decertify the United Farm Workers of America (UFW) as the certified bargaining representative of all Dole Berry North (Employer) agricultural employees in Watsonville, Salinas and Marina. The bargaining unit description was later amended by the Regional Director to include all of Employer’s agricultural employees in Monterey and Santa Cruz counties. The UFW filed two unfair labor practice (ULP) charges against Employer on October 18 and 22, 2013, and Employer filed an unfair labor practice charge against the UFW on October 23, 2013. The election was held on October 25, 2013, and, as a result of the ULP charges, the Regional Director impounded the ballots. The UFW filed six election objections on November 1, 2013.

The following objections allege conduct and facts that mirror unfair labor practice charges 2013-CE-051-SAL and 2013-CE-052-SAL and will be held in abeyance pursuant to Section 1149 and *Mann Packing* (1989) 15 ALRB No. 11 pending the General Counsel's resolution of those charges:

Objection One: Unlawful Employer Assistance and Support (mirroring 2013-CE-051-SAL);

Objection Two: Unlawful Assistance to the Decertification Campaign Through Disparate Treatment (mirroring 2013-CE-052-SAL).

Objection Three, in which the UFW alleges a defective eligibility list, shall be held in abeyance pursuant to *Gallo Vineyards, Inc.* (2009) 35 ALRB No. 6 until the ballots have been counted, since it is not possible to know whether the number of defective addresses exceeds the shift in votes needed to change the outcome in the election.

Objections Four, Five and Six are dismissed for failure to state a prima facie case. Objection Four, in which the UFW alleges unlawful promise of benefits by a former employee of Employer's, is not supported by a declaration stating that an employee thought that Francisco Cerritos, the former employee at issue who is alleged to have made the unlawful promise of benefits, was acting on behalf of Employer or that an employee reasonably believed Cerritos was acting on behalf of Employer.

An employer may be held responsible for an unlawful promise of benefits under the ALRA even when the employer has not directed, authorized or ratified improperly coercive actions directed against its employees (1) if the workers could reasonably believe that the coercing individual was acting on behalf of the employer or

(2) if the employer has gained an illicit benefit from the misconduct and realistically has the ability to either prevent the repetition of such misconduct in the future or to alleviate the deleterious effect of such misconduct on the employees' statutory rights. (*Vista Verde Farms v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 207, 322; *Superior Farming Company, Inc. v. Agricultural Labor Relations Board* (1984) 151 Cal.App.3d 100, 118.)

Unlike *Vista Verde Farms*, which involved the liability of an employer for its farm labor contractor's actions, or *Superior Farming*, which involved the liability of an employer for a crew leader's actions, this allegation involves a former employee who also happens to be a former UFW organizer. The declarations provided in support of this objection do not state that the declarants or any employees believed Cerritos was speaking on behalf of Employer. One declarant stated he "understood Cerritos to mean that the company would continue giving workers insurance coverage." Moreover, the UFW makes the conclusory assertion that Employer gained an illicit benefit from Cerritos' taking access and speaking to workers during working hours without support in any declaration and without stating how that access actually benefited Employer.

Objection Five is dismissed for failure to state a prima facie case. The UFW alleges in this objection that Cerritos misrepresented that the UFW would raise its dues to 4 percent, and the UFW did not know about this misrepresentation until the night before the election, leaving it without sufficient time to respond. The UFW failed to provide a declaration stating when it became aware of Cerritos' alleged misrepresentation. The declaration it provided in support of this objection disputes when

the UFW became aware of Cerritos' alleged misrepresentation and supports the inference that the UFW became aware on October 16, 2013 when Cerritos made the alleged misrepresentation. The Board has held that even four days provide enough time to respond to a misrepresentation. (*Gallo Vineyards* (2008) 34 ALRB No. 6 at p. 25.)

Objection Six is also dismissed for failure to state a prima facie case. The UFW alleges that Petitioner included the names of some workers as signatories to the petition who had never signed the petition. In support of this objection, the UFW provided two declarations in Spanish in which the declarants both state they did not sign any document to remove the union. Neither declaration states that the declarants' signatures were in fact on the petition, and the UFW provided no declaration from someone with personal knowledge stating that the declarants or any other employee's signature was forged on the petition or stating who allegedly forged their signatures.

ORDER

PLEASE TAKE NOTICE that, pursuant to section 1156.3(i)(1)(c)(3) of the Agricultural Labor Relations Act (ALRA)¹, an investigative hearing in the above-titled matter shall be held in abeyance. A hearing on Objections One and Two will be held in abeyance until the resolution of unfair labor practice charges 2013-CE-51-SAL and 2013-CE-52-SAL. A hearing on Objection Three will be held in abeyance until the ballots have been counted. The Investigative Hearing Examiner (IHE) shall take evidence on the following issues and determine whether any misconduct found had a tendency to

¹ The ALRA is codified at Labor Code section 1140 et seq.

affect free choice in the October 25, 2013 election to the extent that setting aside the election is warranted:

Objection One: Did Employer unlawfully assist and support in the gathering of signatures for the petition and unlawfully assist the Petition in the decertification campaign?

Objection Two: Did Employer provide unlawful and preferential access to the decertification petitioners?

Objection Three: Did Employer provide an eligibility list that was defective and prevented the union from communicating with a substantial number of voters such that the election should be set aside?

Given that the resolution of these challenges depends in part on the resolution of unfair labor practice charges, the Board requests the Regional Director to expedite investigation and resolution of charges 2013-CE-051-SAL and 2013-CE-052-SAL.

DATED: November 22, 2013

Genevieve A. Shiroma, Chair

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

DOLE BERRY NORTH
(United Farm Workers of America)

Case No. 2013-RD-001-SAL
39 ALRB No. 18

On October 18, 2013, José Aguilar filed a petition to decertify the United Farm Workers of America (UFW) as the certified bargaining representative of all Dole Berry North (Employer) agricultural employees in Watsonville, Salinas and Marina. The bargaining unit description was later amended by the Regional Director to include all of Employer's agricultural employees in Monterey and Santa Cruz counties. The UFW filed two unfair labor practice charges against Employer on October 18 and 22, 2013, and Employer filed an unfair labor practice charge against the UFW on October 23, 2013. The election was held on October 25, 2013 and the ballots were impounded because of the ULP charges.

The UFW timely filed six election objections alleging 1) unlawful employer assistance and support; 2) unlawful employer assistance through disparate treatment; 3) a defective eligibility list; 4) unlawful promise of benefits; 5) misrepresentation; and 6) forged signatures on the election petition.

The Board held Objections 1 and 2 in abeyance pending a resolution of the UFW's unfair labor practice charges pursuant to *Mann Packing* (1989) 15 ALRB No. 11 and *Gallo Vineyards* (2008) 34 ALRB No. 6 because the wrong asserted and facts alleged in those objections are the same as in the unfair labor practice charges filed by the UFW. The Board held Objection 3 in abeyance pursuant to *Gallo Vineyards* (2009) 35 ALRB No. 6 because it is not possible to determine whether the number of defective addresses were outcome determinative without a tally of ballots.

The Board dismissed Objections 4, 5 and 6 for failure to state a prima facie case. Objection 4 was dismissed because the UFW failed to provide evidence in its declarations that the person making the unlawful promise of benefits, a former Dole employee and former UFW organizer who stated that the Employer would continue medical insurance for the employees even without a union, was or was thought to have been acting on behalf of the Employer in accordance with *Vista Verde Farms v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 307, 322 and *Superior Farming Company, Inc. v. Agricultural Labor Relations Board* (1984) 151 Cal.App.3d 100, 118. Objection 5 was dismissed because the UFW did not provide a declaration stating when it became aware of the alleged misrepresentation and, in any event, one of its bargaining team members was present during the alleged misrepresentation far enough in advance to the election to provide a reasonable opportunity to respond. Objection 6 was dismissed because the declarants who stated they never signed the election petition did not state that their signatures had been forged on or even appeared on the election petition.

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