

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

RBI PACKING, LLC,)	Case No. 2013-RC-002-VIS
)	
Employer,)	
)	39 ALRB No. 3
and)	
)	(March 6, 2013)
UNITED FARM WORKERS)	
OF AMERICA,)	
)	
Petitioner.)	

DECISION AND ORDER

On February 4, 2013, the United Farm Workers of America (UFW) filed an election petition with the Agricultural Labor Relations Board’s (ALRB) Visalia Regional Office naming only Gila Farm Land, LLC (Gila) as the employer in case number 2013-RC-001-VIS. Upon learning that Gila leased the land in question to RBI Packing, LLC (RBI), the UFW filed a second petition naming both Gila and RBI as the employers. Following investigation of the petition, the Acting Regional Director named only RBI as the employer in the election notice.

The election was held on February 9, 2013, with the tally of ballots producing the following results:

United Farm Workers	51
No Union	0
Unresolved Challenged Ballots	<u>0</u>
TOTAL	51

On February 15, 2013, the UFW timely filed an objection to the election pursuant to Section 20365(c) of the Board's regulations¹ on the grounds that Gila should have also been a named party to the election, albeit not as a joint employer with RBI. We dismiss the UFW's objection for failure to state facts that, if uncontroverted or unexplained, are sufficient grounds for granting the relief it seeks.²

The UFW argues that Gila should have also been included as an employer and party in the notice of election and certification of results because, as the land owner and because of its ability to decide labor relations affecting the bargaining unit,³ Gila is the stable party to which the bargaining obligation should attach. (UFW's Objections to the Conduct of the Election (Objections) at p. 4.) The UFW does not, however, argue that Gila and RBI are joint employers. (Objections at p. 7, n. 2.) The UFW argues further that the Board has traditionally found that it should attach the bargaining obligation to the party with the stability and long-term interest in the *land* used for

¹ The Board's regulations can be found at the California Code of Regulations, title 8, section 20100 et seq.

² Section 20365 (c) (2) of the Board's regulations requires a party objecting to an election on the grounds that the election was not conducted properly or that misconduct occurred affecting the results shall attach a declaration or declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election. We trust the UFW invoked this section of the Board's regulations as the only means of reviewing an objection to the conduct of an election without seeking the remedy of having the Board refuse to certify the election.

³ The lease between Gila and RBI includes a clause that requires RBI, to the extent permitted by law, to not become a party to any agreement that binds Gila to bargain with any union or labor organization as a successor in interest to RBI, or to act or claim to be a joint employer with Gila of any person employed on the property. (UFW's Objections to the Conduct of the Election at Exhibit 9, p. 5.)

agriculture. (Objections at p. 6 (emphasis added).) The UFW argues that Gila has the ability to affect labor relations between its lessees and the lessees' employees such that it should be considered an employer. Each argument is unavailing.

The Board has already concluded that land ownership alone does not confer employer status. A land owner must act as an employer for any employees working on his or any other land owner's land, or must act in the interest of an employer in relation to its agricultural employees, to be considered a statutory employer. (*Tex-Cal Land Management, Inc.* (1986) 12 ALRB No. 26 at pp. 28-29.) The failure to find a land owner a statutory employer precludes a finding of joint employer status between that land owner and an employer. (*Id.* at p. 29, n. 22.)

Moreover, the Board has found that it should attach the bargaining obligation not to the party with the stability and long-term interest in the *land* used for agriculture, but to the party with the "substantial long-term interest in the *ongoing agricultural operation.*" (*Rivcom Corporation v. Agricultural Labor Relations Board* (1983) 34 Cal.3d 743, 768 (emphasis added); *S & J Ranch, Inc.* (1984) 10 ALRB No. 26 at p. 7.) The UFW cites *Coastal Growers Association* (1981) 7 ALRB No. 9, for this same argument, but *Coastal Growers* addressed the issue whether employees of grower-members that had withdrawn from two grower associations should be included in the original collective bargaining unit for the grower associations, and the Board answered in the negative. *Coastal Growers* was predicated on some involvement with the agricultural operations upon which to base a finding of employer status. The UFW not only fails to

allege sufficient facts to reach any conclusions as to Gila's involvement with and substantial long-term interest in any agricultural operations, but the UFW also included a declaration in which it is stated that Gila does not employ agricultural employees.

(Objections, Exhibit 10 at p. 1.)

The UFW states that "Gila not only has the ability to affect labor relations, but it has exercised that ability by *offering to require RBI or another unknown party to recognize the terminated collective bargaining agreement between UFW and Sun World.*" (Objections at p. 7.) The UFW states that, as of the date of the election, RBI was walking away from its lease with Gila; that Sun World, the predecessor in interest of RBI, had its lease terminated by Gila in December of 2012; and that Coachella Growers had leased the land and managed the citrus operation prior to Sun World. (Objections at p. 6.) The terms of the Gila-RBI lease do not result in Gila controlling the labor relations between its lessees and the lessees' employees, but rather results in Gila *attempting* to prohibit, to the extent permissible under the law, a lessee binding Gila as a successor to which a bargaining obligation would attach. Regardless of what Gila and RBI have agreed to, successorship status, and any ensuing bargaining obligation resulting therefrom, is a question of law; it cannot be avoided or conferred solely by contract. As noted by the California Supreme Court, we have "adopted the cautious, case-by-case common law approach to successorship questions recommended by federal decisions." (See *San Clemente Ranch, Ltd. v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 874, 886; see generally *Babbitt Engineering & Machinery, Inc. v. Agricultural Labor Relations Board* (1984) 152 Cal. App. 3d 310.)

In sum, the UFW has failed to allege facts that, if uncontroverted or unexplained, would lead to the conclusion that Gila has statutory employer status vis-à-vis the employees of RBI.

ORDER

PLEASE TAKE NOTICE that the United Farm Workers of America's objection is DISMISSED.

DATED: March 6, 2013

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

RBI Packing, LLC
(United Farm Workers of America)

Case No. 2013-RC-002-VIS
39 ALRB No. 3

Background

On February 4, 2013, the United Farm Workers of America (UFW) file an election petition with the Agricultural Labor Relations Board's (ALRB or Board) Visalia Regional Office naming only Gila Farm Land, LLC (Gila) as the employer. Upon learning that Gila leased the land in question to RBI Packing, LLC (RBI), the UFW filed a second petition naming both Gila and RBI as employers. Following investigation of the petition, the Acting Regional Director named only RBI as the employer in the election notice.

The election as held on February 9, 2013, with the tally of ballots producing the following results: "UFW," 51; "No Union," 0; "Unresolved Challenged Ballots," 0. On February 15, 2013, the UFW timely filed an objection to the election pursuant to section 20365(c) of the Board's regulations on the grounds that Gila should have also been a named party to the election, albeit not as a joint employer. The UFW argued that, as a land owner and because of its ability to decide labor relations affecting the bargaining unit, Gila was the stable party to which the bargaining obligation should attach. The UFW argued further that the Board has traditionally found that it should attach the bargaining obligation to the party with the stability and long-term interest in the land used for agriculture. The UFW also argued that Gila had the ability to affect labor relations between its lessees and the lessee's employees such that it should be considered an employer.

Board Decision

The Board dismissed the objection for failure to allege facts that, if uncontroverted or unexplained, would lead to the conclusion that Gila has statutory employer status vis-à-vis the employees of RBI. The Board has already concluded that land ownership alone does not confer employer status, and a land owner must act as an employer for any employees working on his or any other land owner's land, or must act in the interest of an employer in relation to its agricultural employees, to be considered a statutory employer. (*Tex-Cal Land Management, Inc.* (1986) 12 ALRB No. 26 at pp. 28-29.) Moreover, the Board has found that it should attach the bargaining obligation to the party with the stability and long-term interest in the *ongoing agricultural operation*. (*Rivcom Corporation v. Agricultural Labor Relations Board* (1983) 34 Cal.3d 743, 768 (emphasis added).) The Board concluded that, regardless of the terms of the lease between Gila and RBI, successorship status, and any ensuing bargaining relationship resulting therefrom is a question of law; it cannot be avoided or conferred solely by contract. (*San Clemente Ranch, Ltd. v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 874, 886.)

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