

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, LP,)	Case No.	2013-RD-001-VIS
)		
Employer,)		
)		
and)		
)		
FRANCISCO NAPOLES,)	39 ALRB No. 9	
)		
Petitioner,)		
)	(June 13, 2013)	
and)		
)		
UNITED FARM WORKERS OF)		
AMERICA,)		
)		
<u>Certified Bargaining Representative.</u>)		

DECISION AND ORDER

On May 24, 2013, Francisco Napoles (the “Petitioner”) filed a petition for decertification (the “Petition”) in the Visalia Region of the Agricultural Labor Relations Board (the “Region”). Named as the employer in the petition is Arnaudo Brothers, LP (the “Employer”). The United Farm Workers of America (the “UFW”) is the certified bargaining representative.

On the same day that the Petition was filed, Acting Regional Director Alegría De La Cruz (the “Regional Director”) issued a Notice of Decision to Block Election. On May 30, 2013, the Petitioner filed a request for the Agricultural Labor Relations Board (the “ALRB” or “Board”) to review the Regional Director’s decision. The Employer also filed a request for review on June 5, 2013.

1. Standard of Review

Upon the filing of a decertification petition, the regional director is to immediately investigate the petition and, if there is reasonable cause to believe that a bona fide question of representation exists, direct a secret ballot election. (Lab. Code § 1156.7 (d).) If there is an outstanding complaint against the employer involved in the representation proceeding, the regional director is to determine whether any unfair labor practices alleged in the outstanding complaint will make it impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner. (*Cattle Valley Farms* (1982) 8 ALRB No. 24 at p. 14.) In the event that unfair labor practice charges have been pending for an extended period of time prior to the filing of the decertification petition and there is an unfair labor practice complaint outstanding, the regional director must “determine whether the pendency of the unfair-labor-practice case would reasonably tend to affect employee choice and, if so, whether blocking the election would be warranted.” (*Id.* at p. 15.)

Where the regional director blocks an election, any party may seek review of such decision by filing a request with the Board. In reviewing the regional director’s decision, the Board will “exercise its independent judgment as to whether the election should be blocked.” (*Cattle Valley, supra*, 8 ALRB No. 24 at p. 15.)

2. Discussion

Under the Agricultural Labor Relations Act (the “ALRA”), when an employee files a petition for decertification, the regional director must conduct an investigation and, based upon the results of that investigation, evaluate the validity of the

petition. If the petition is not valid because, for example, the showing of employee interest was insufficient, then the petition should be dismissed. If the petition is valid, the election should go forward. The Board recognizes an exception under which, if there is an outstanding unfair labor practice complaint that would make it impossible for employees to exercise their choice in a free and uncoerced manner, then the election is “blocked” and the petition is dismissed.

As explained more fully below, in this case, it is unclear whether the Regional Director made a determination as to whether the petition is valid and the extent to which an investigation took place. It appears she proceeded to consider whether the election should be blocked without deciding whether or not the petition was valid. We find that this was procedurally improper. In addition, even if the decision to block had not been premature, the Regional Director cited several additional rationales for her decision to block that do not apply to a decision to block, thus we write to correct these inaccuracies. Notwithstanding these errors, we agree with the Regional Director that there is an outstanding unfair labor practice complaint that would be sufficient to block a decertification election. Thus, there would be no purpose served by instructing the Regional Director to determine the validity of the petition at this time. Even if the Regional Director were to determine that the petition was valid and an election should go forward, the election would, in the end, be blocked by the unfair labor practice complaint.

a. The Regional Director Prematurely Reached the Issue of Blocking Without Determining the Validity of the Petition

In her decision, although she discussed the sufficiency of the showing of interest, the Regional Director did not expressly dismiss the petition or find it valid. Instead, she determined that the election should be blocked.¹ Under the Board's regulations, when a petition is filed, the regional director is to "conduct an administrative investigation to determine whether there exists an adequate showing of employee support." (Cal. Code Regs., tit. 8, § 20300(j)(2).) If the investigation or the contents of the petition "disclose the absence of reasonable cause to believe that a bona fide question concerning representation exists . . . or there is not an adequate showing of employee support" the petition "shall be dismissed." (Cal. Code Regs., tit. 8, § 20300(i)(1).) The process of determining the adequacy of the petition is to begin "immediately" upon the filing of a decertification petition. (Lab. Code § 1156.7(b).)

Thus, under the ALRA and the Board's regulations, the issue whether the petition is valid must be investigated and decided before it would be proper to consider whether an election that would result from a valid petition would be blocked by a

¹ It might be argued that, by issuing a decision blocking the election, the Regional Director was implicitly finding that the petition was valid. However, there would be no way to square such an argument with the Regional Director's statement that the showing of interest was insufficient, a finding that, if true, would mandate dismissal of the petition.

pending unfair labor practice complaint.² The Regional Director's decision to address the blocking issue without first clearly determining the validity of the petition was improper.³

b. The Regional Director Erroneously Concluded that an Inadequate Showing of Interest and Employer Assistance Not Alleged in a Complaint Would Block an Election

In her decision, the Regional Director concluded that the showing of interest submitted in support of the petition was inadequate because it was, according to the Regional Director, not properly dated and did not sufficiently show the intent of the signing employees. She further concluded that the petition was instigated, supported, and directed by a statutory supervisor. She concluded that these were “an independent basis for blocking petitions for decertification.” The Petitioner and the Employer dispute these conclusions. We find, however, that we do not need to address whether the Regional Director was correct to conclude that the showing of interest was insufficient or that the petition was tainted by employer instigation and assistance because neither of these are valid reasons to block an election.

² We recognize that our *Cattle Valley* decision states that the regional director is to investigate whether there are outstanding unfair labor practice complaints that would block the election “immediately” upon the filing of a decertification petition. (*Cattle Valley, supra*, 8 ALRB No. 24 at p. 14.) However, we think it implicit that this statement applies to situations where a valid petition was filed. To the extent that *Cattle Valley* can be read to authorize regional directors to block elections prior to determining the validity of the underlying petition, we disapprove such an interpretation.

³ This very case illustrates the importance of determining the sufficiency of a petition before deciding whether it is blocked. Here, we have decided that the outstanding unfair labor practice complaint in this case would be sufficient to block the decertification petition. However, had the nature of the complaint been different, and had we reversed the Regional Director's blocking decision, the parties would be left with the uncertainty of a petition whose basic sufficiency had yet to be determined.

As discussed previously, the Board's regulations state that findings by the regional director that the showing of interest is insufficient or tainted by employer misconduct are reasons to dismiss a petition, not to block an election. (Cal. Code Regs., tit. 8, § 20300(i) & (j)(4).) Furthermore, the *Cattle Valley* decision clearly states that only allegations that are contained in a pending unfair labor practice complaint are sufficient to block an election. (*Cattle Valley, supra*, 8 ALRB No. 24 at p. 3 (“Neither the Board nor any Regional Director will block an election except in appropriate cases wherein a complaint has already issued”).) The Regional Director mistakenly cites *S & J Ranch, Inc.* (1992) 18 ALRB No. 10 for the proposition that employer assistance is a basis for blocking a petition for decertification. In that case, a complaint had issued, the Board found that the employer had engaged in unlawful assistance, and the employer's unfair labor practice had not been fully remedied. (*S & J Ranch, supra*, 18 ALRB No. 10 at p. 5.) That case is hardly analogous to the present case where the purported employer assistance has not even resulted in a charge, much less a complaint.

The Regional Director's conclusion that the purported inadequacy of the showing of interest and employer assistance were grounds to block an election was erroneous and we reverse that portion of the Regional Director's decision.

c. The Regional Director's Conclusion That Concurrent MMC Proceedings Preclude Proceeding with a Decertification Election Is Erroneous

In her decision, the Regional Director noted that the Employer and the UFW were referred to Mandatory Mediation and Conciliation (“MMC”) in February, 2013 (see Admin. Order No. 2013-08) and that the MMC process was ongoing. The

Regional Director concluded that proceeding with a decertification election during the MMC process would be “violative of the spirit of the Act.” The Regional Director’s conclusion appears to have been simply taken from whole cloth. There is no authority for the proposition that an employer’s ongoing participation in MMC bars a decertification election among its employees. We reject that proposition and reverse this portion of the Regional Director’s decision.⁴

d. The Outstanding Unfair Labor Practice Complaint Would Be Sufficient To Block a Decertification Election

The Regional Director decided to block any prospective election on the basis of an unfair labor practice complaint that issued against the Employer in Case No. 2012-CE-030-VIS on May 9, 2013, based upon a charge that was filed on September 10, 2012. The complaint alleges that, in response to a request for information from the UFW, the Employer provided information that was incomplete or inaccurate in violation of Labor Code section 1153 subdivisions (a) and (e). More specifically, it is alleged that the UFW requested a list of employees employed during the 2011 and 2012 seasons along with mailing addresses, classifications, foreperson names, employment dates, and other information. The UFW also requested nine other categories of information. It is alleged that the Employer provided the names and addresses of 2012 season employees but did not provide any of the other requested information and that some of the addresses for the

⁴ In fact, the Board recently rejected arguments that the pendency of the instant decertification petition justified holding the MMC case referred to by the Regional Director in abeyance pending the outcome of the decertification case. (*See Arnaudo Bros., Inc.* (2013) 39 ALRB No. 7.)

2012 season employees were inaccurate. The complaint further alleges that between August 2012 and January 2013, the Employer refused to make itself available for bargaining at reasonable times in violation of Labor Code section 1153 subdivision (e).

In determining whether the pendency of an unfair labor practice complaint blocks a decertification election, the issue is whether the unfair labor practices alleged “will make it impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner.” (*Cattle Valley, supra*, 8 ALRB No. 24 at p. 14.) The Board has recognized that a complaint alleging that the employer has unlawfully refused to bargain generally warrants blocking of an election. (*Id.* at pp. 4-5 (noting that, under the NLRA, “if the Regional Director’s investigation indicates that the employer has violated . . . section 8(a)(5) [§ 1153 (e)] . . . by unlawfully refusing to bargain, a complaint issues and the election petition is generally dismissed.”) (bracketed material in original).) We are not permitted to “look behind” the face of the complaint and attempt to evaluate its merits. Rather, we are constrained to assume that the allegations contained therein are true. (*Cattle Valley, supra*, 8 ALRB No. 24 at p. 14 (regional director to determine whether “allegations” contained in an outstanding complaint preclude free and uncoerced election).)⁵

The allegation that the Employer refused to provide information requested by the UFW is a serious one, particularly because it could impact the UFW’s ability to

⁵ See also *B.A. Mullican Lumber & Manufacturing Co.* (2007) 350 NLRB 493, 495 (“if the Regional Director finds that the charges have prima facie merit, and that they should be a block to the election, the election will be postponed.”). (Chairman Battista concurring.)

communicate with employees. We do note that the complaint concedes that the Employer did provide names and addresses for 2012 season employees and although some of the addresses are alleged to be “inaccurate,” it is unclear how extensive this problem was. Nevertheless, even if the Employer provided accurate information for most of the 2012 season employees, the complaint alleges that no information was provided for 2011 season employees and that the Employer provided no response with respect to nine other categories of information. Additionally, there are allegations that the Employer refused to meet with the UFW at reasonable times for a period of approximately six months. We agree with the Regional Director that these allegations are sufficient to warrant blocking the decertification election. (*Cattle Valley, supra*, 8 ALRB No. 24; *P.H. Ranch, Inc.* (1995) 21 ALRB No. 13 (decertification petition dismissed where employer refused to negotiate with the union directly and insisted that all communications go through a mediator).)⁶

⁶ See also *S & J Ranch, supra*, 18 ALRB No. 10 at p. 3 (blocking election and dismissing petition where employer had not fully remedied unfair labor practice by mailing, posting, and reading notice to employees); *Big Three Industries, Inc.* (1973) 201 NLRB 197, 197-198 (affirming regional director’s decision to dismiss decertification petition on grounds that refusal to bargain complaint had issued and noting that only “unusual and special situations” would “impel the holding of elections in the face of unremedied refusal-to-bargain charges.”); *American International Manufacturing Corp.* (1992) 306 NLRB 978, 979 (“the [NLRB] will sustain dismissal of a decertification petition, subject to reinstatement, where a complaint has issued alleging that the employer has refused to bargain . . . and the remedy, if such an allegation were proven, would be an affirmative bargaining order.”)

e. Blocking The Election at the Present Time is Appropriate

As discussed herein, we have very serious reservations concerning the manner in which the Regional Director reached her decision to block the election in this case. Given these circumstances, we have considered reversing the Regional Director's decision and directing her to make a determination as to the validity of the petition. However, in the event that the Regional Director were to determine that the Petition is, in fact, valid, she would then be required to again consider whether the election should be blocked by the outstanding unfair labor practice complaint. As we have indicated herein, the nature of the unfair labor practice complaint is sufficient to block an election.

We see no purpose that would be served by putting the parties through the futile exercise of returning the matter for further investigation and consideration of the Petition when the only two possible outcomes would be that the Petition would be dismissed as invalid or, if it is valid, the election would be blocked by the unfair labor practice complaint. Accordingly, we have determined that the election sought in the Petition should be blocked by the pending unfair labor practice complaint in Case No. 2012-CE-030-VIS. This results in the dismissal of the Petition. (*Sam & Carmen Knevelbaard dba Bayou Vista Dairy* (2006) 32 ALRB No. 6 at p. 4 fn. 3.)

ORDER

The requests for review are GRANTED. The Acting Regional Director's Decision to Block Election is AFFIRMED. The decertification petition is DISMISSED.

DATED: June 13, 2013

Genevieve A. Shiroma, Chair

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

ARNAUDO BROTHERS, LP
(UNITED FARMWORKERS OF AMERICA)

Case No. 2013-RD-001-VIS
39 ALRB No. 9

Background

On May 24, 2013, Francisco Napoles (the “Petitioner”) filed a petition for decertification (the “Petition”) in the Visalia Region of the Agricultural Labor Relations Board. That same day, the Acting Regional Director (the “Regional Director”) issued a Notice of Decision to Block Election. The Regional Director blocked the election on the basis of an outstanding unfair labor practice complaint, deficiencies in the showing of interest supporting the Petition, alleged employer initiation and assistance, and the pendency of Mandatory Mediation and Conciliation (“MMC”) proceedings. The Petitioner and Arnaudo Brothers (the “Employer”) filed requests for review of the Regional Director’s decision with the Agricultural Labor Relations Board (the “Board”).

Board Decision

The Board granted the requests for review and affirmed the Regional Director’s decision with modifications and clarifications. The Board found that, under the Board’s regulations, the Regional Director was required to determine, based upon an investigation, whether the Petition was valid before deciding whether, in the event that the Petition was valid, the election should be blocked. Her failure to clearly do so was erroneous. The Board further found that, even if the decision to block was not premature, the Regional Director’s conclusion that the showing of interest was insufficient and tainted by employer misconduct as well as the pendency of concurrent MMC proceedings were not valid reasons to block an election. The Board did conclude, however, that the outstanding unfair labor practice complaint against the Employer, which alleged that the Employer had provided an incomplete response to a request for information and had refused to meet with the union at reasonable times for approximately six months, would be sufficient to block an election. The Board concluded that, because the unfair labor practice complaint would ultimately block an election, no purpose would be served by returning the petition to the Regional Director for a determination as to its validity. Accordingly, the Board upheld the Regional Director’s decision to block the election and dismissed the Petition.

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