

AGRICULTURAL LABOR RELATIONS BOARD
CASE DIGEST SUPPLEMENT, VOLUME 32 (2006)
AND PUBLISHED COURT DECISIONS

- 300.01 Regional Director's authority to administratively dismiss election petition under Regulations section 20300(i) for lack of question concerning representation, inappropriate unit or showing of interest ends when election has been conducted.
BAYOU VISTA DAIRY, 32 ALRB No. 6
- 302.01 There is no bar to the filing of an NA or a new election petition due to a pending election case involving the same parties and bargaining unit where the final tally of ballots showed an ostensible "No Union" victory and where more than a year has elapsed since the prior election. In such circumstances, the certification bar could not be triggered by the Board's decision because it could not result in the certification of the union, but only in the setting aside of the election or the certification of the "No Union" result. Nor could the one-year election bar be triggered, as it runs from the date of the election, not from the date the Board determines the validity of the election. Nor does the Board's access regulation bar an NA in these circumstances, as the regulation allows access 30 days prior to the expiration of any bar to the election and makes no exception based solely on an unresolved prior election case.
GUIMARRA VINEYARDS CORP., 32 ALRB No. 4
- 307.06 *Cattle Valley Farms* 8 ALRB No. 24 authorizes regional director to block election only before the election has been conducted.
(*ConAgra Turkey Company* (1993) 19 ALRB No. 11.)
BAYOU VISTA DAIRY, 32 ALRB No. 6
- 307.6 Board regulations section 20360(c) empowering regional director to impound ballots where necessary to effectuate the policies of the Act does not authorize the regional director to dismiss an election petition in which ballots have been impounded based on a complaint which issued after the election has been conducted.
BAYOU VISTA DAIRY, 32 ALRB No. 6
- 308.01 There is no bar to the filing of an NA or a new election petition due to a pending election case involving the same parties and bargaining unit where the final tally of ballots showed an ostensible "No Union" victory and where more than a year has elapsed since the prior election. In such circumstances, the certification bar could not be

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GUIMARRA VINEYARDS CORP., 32 ALRB No. 4

308.04 There is no bar to the filing of an NA or a new election petition due to a pending election case involving the same parties and bargaining unit where the final tally of ballots showed an ostensible "No Union" victory and where more than a year has elapsed since the prior election. In such circumstances, the certification bar could not be triggered by the Board's decision because it could not result in the certification of the union, but only in the setting aside of the election or the certification of the "No Union" result. Nor could the one-year election bar be triggered, as it runs from the date of the election, not from the date the Board determines the validity of the election. Nor does the Board's access regulation bar an NA in these circumstances, as the regulation allows access 30 days prior to the expiration of any bar to the election and makes no exception based solely on an unresolved prior election case.

GUIMARRA VINEYARDS CORP., 32 ALRB No. 4

310.02 New eligibility list required for runoff election where long period between original election and runoff.

GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.01 Independent contractor status established even though handyman doing non-agricultural work during eligibility period had no contractor's license. Government-issued license not required to establish independent contractor status where other independent contractor indicia are present.

GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.01 Payment records showing payment of gross amounts without indication of tax withholding not of significant probative value in determining whether challenged voters were independent contractors.

GH & G ZYSLING DAIRY, 32 ALRB No. 2

- 312.01 Declarations stating that employees “work under the direction of” or “receive instructions from” the owner are not inconsistent with independent contractor status and, thus, do not contradict the conclusions in a challenged ballot report that the employees are ineligible to vote.
ARTESIA DAIRY, 32 ALRB No. 3
- 312.04 Employee who had ceased being a supervisor two years before election did not resume being a supervisor when the day before the election when other employees were purportedly told he was “in charge” of the milking barn when the only authority conferred was to ensure that not all the milkers went to vote at the same time.
GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.06 Voter found to be independent contractor ineligible to vote where she operated a cleaning business, had a business license, had other clients, paid her own taxes, and submitted invoices and was paid in cash.
GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.06 Electrician who was a licensed electrical contractor and who had specialized skills and worked without supervision found to be independent contractor even though he accepted less formal arrangements more akin to employment when business was slow.
GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.06 Independent contractor status established even though handyman doing non-agricultural work during eligibility period had no contractors license. Government-issued license not required to establish independent contractor status where other independent contractor indicia are present.
GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.06 Handyman was engaged in construction work under Board test stated in *Dutch Brothers* 3 ALRB No. 80. The handyman did only work involving building of fence. His projects did not involve Employer’s agricultural workers and he and his helper were not integrated into the Employer’s agricultural work force.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

- 312.06 Voter who normally worked as a salesman for one of the employer's suppliers was an agricultural employee, not an independent contractor, when periodically hired to pull stumps and clear weeds. GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.06 Voter who vaccinated cows, at the direction of the employer and with employer provided syringes and at several dairies found to be a part-time employee of the dairies, not an independent contractor. GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.06 Voter who normally worked as a cattle broker and semen salesman, but periodically worked for dairy sorting and loading cattle for an hourly wage during the eligibility period, unrelated to his normal business, was an agricultural employee eligible to vote. GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.06 Unlicensed mechanic who had at an earlier time performed work on the employer's premises for her husband's independent mechanic business was an employee eligible to vote where her husband's business had ceased prior to the eligibility period and she worked for an hourly wage during the eligibility period for the employer, primarily using the employer's tools, and shortly thereafter was hired as a full-time employee. GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 312.11 If worker hurt on the job has been replaced legally, so that under workers compensation laws he no longer has a right to return to his former job, he would have no reasonable expectation to return to work and would not be eligible to vote. If not legally replaced, still necessary to determine whether there was any expectation that employee would eventually heal sufficiently to perform former job of milker, or whether dairy could accommodate any work restrictions. ARTESIA DAIRY, 32 ALRB No. 3
- 316.01 Anti-union animus is not a necessary element in finding that a statement interferes with employee free choice. The ALRB consistently has applied an objective standard, in which the inquiry is whether the conduct would tend to interfere with employee free choice. (See, e.g., *Karahadian Ranches, Inc. v. ALRB* (1985) 38 Cal.3d 1; *J.R. Norton v. ALRB* (1987) 192 Cal.App.3d 874, 891; *S. F. Growers* (1978) 4 ALRB No. 58.) GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

- 316.11 Board sua sponte included issue of payments to former employees to come to vote in election in objection hearing since the facts raised the possibility of an extraordinary circumstance potentially affecting the integrity of the election process.
GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 321.01 Where General Counsel has issued complaint but then settled the complaint's unfair labor practice allegations, under *Mann Packing* (1989) 15 ALRB No. 11 the Board can consider the same conduct in objections proceedings.
BAYOU VISTA DAIRY, 32 ALRB No. 6
- 321.02 Where General Counsel has issued complaint but then settled the complaint's unfair labor practice allegations, under *Mann Packing* (1989) 15 ALRB No. 11 the Board can consider the same conduct in objections proceedings.
BAYOU VISTA DAIRY, 32 ALRB No. 6
- 323.16 Where there is an ostensible "No Union" victory and no parallel unfair labor practice charges are filed, the ALRA confers on the Board only the authority to uphold or set aside the election. The statute does not provide for any other sanctions for engaging in misconduct affecting the results of an election. As a result, the setting aside of the election in those circumstances merely returns the situation to the status quo before the election petition was filed, but with the residual effect on free choice from the misconduct, allowing wrongdoers to profit from their misconduct.
GIUMARRA VINEYARDS CORP., 32 ALRB No. 5
- 324.01 Payment of amount approximating or exceeding a day's wages to certain former employees to come to employer's premises to vote in election may constitute coercion potentially compromising the integrity of the election even if it does not constitute a ground for challenging the ballots of three voters shown to have received such payments. Board sua sponte included issue of payments to former employees to come to vote in election in objection hearing since the facts raised the possibility of an extraordinary circumstance potentially affecting the integrity of the election process.
GH & G ZYSLING DAIRY, 32 ALRB No. 2
- 324.01 A case becomes moot when a ruling can have no practical effect or cannot provide the parties with effective relief. However, issues

otherwise moot may be decided where they present important legal issues of continuing public interest. Conversely, moot issues generally will not be decided where the issues are essentially factual and therefore require resolution on a case-by-case basis. Election objections dismissed as moot where there was no effective relief to be granted, nor any practical effect on the parties, from deciding the merits of the objections where there was an ostensible “No Union” victory and the one-year election bar had expired. Issues raised either were factual so that there would be little guidance from their resolution or they implicated only well-settled legal issues.

GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

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GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

- 325.04 Though Board is of the view that serious consideration should be given to prohibiting the submission of evidence, without legal excuse, not submitted to the RD during the investigation, because of existing precedent allowing this practice, it would offend principles of fundamental fairness to change this rule at this stage of proceedings. Such change in policy would more appropriately be accomplished through an amendment to the Board's regulations. Therefore, where evidence offered in support of exceptions contradicts RD's conclusions so as to create a material factual dispute, the challenges must be set for hearing.
ARTESIA DAIRY, 32 ALRB No. 3
- 325.04 While it is appropriate for an RD, in the exercise of discretion, to require employees not on the regular payroll to cast challenged ballots so that their relationship to the employer may be thoroughly examined in a subsequent investigation, it is improper to assign a burden of proof, or even production, based on that decision. In such circumstances, the RD should simply weigh the evidence gathered in the investigation to determine if there is a material factual dispute warranting an evidentiary hearing. It shall continue to be appropriate to assign to a party challenging a voter the burden of producing some evidence to support the challenge. (*Rod McLellan* (1978) 4 ALRB No. 22.)
ARTESIA DAIRY, 32 ALRB No. 3
- 325.04 Agricultural employees found to have worked during the eligibility period are eligible to vote even if their names do not appear on the employer's regular payroll list. (*Valdora Produce Co.* (1977) 3 ALRB No.8.) While irregular or unusual payment practices fairly may be viewed as casting some doubt on the accuracy of declarations containing assertions that the challenged voters did work during the eligibility period, they do not render the declarations unbelievable.
ARTESIA DAIRY, 32 ALRB No. 3
- 435.01 Employer's pattern of paying its employees more than it was willing to offer in subsequent contract proposals, while not unlawful in and of itself, was strong evidence that the employer was merely going through the motions of bargaining with no intention of reaching agreement, and therefore supported a finding of surface bargaining
D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

- 435.01 Where the proffered grounds for regressive provisions in an employer's contract proposal made during the statutory period were found to be pretextual, a surface bargaining violation was established.
D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1
- 435.01 Content of Employer's proposals evidenced an approach to bargaining that was inconsistent with a good faith effort to reach agreement, and when viewed in context with the totality of Respondent's conduct, supported the conclusion that Respondent engaged in surface bargaining.
D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1
- 436.01 Employer's failure to provide employee social security numbers in response to union's information request did not violate the Act. Recent NLRB cases have held that social security numbers are not presumptively relevant. Although the union's representatives provided sufficient justification for *future* requests for social security numbers during the ULP hearing, the record did not support the finding that the union had demonstrated the relevance of the numbers during the time period at issue in the case currently before the Board.
D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1
- 436.01 Even assuming employees in one of employer's operations were not part of the certified bargaining unit, employer's refusal to provide requested wage data regarding those employees violated the Act because the terms and conditions of employment of workers in those operations were relevant to the union in framing demands for unit workers engaged in the same type of work.
D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1
- 436.02 Employer's delay of over two months in providing employee wage data in response to union's request violated the Act where employer's contradictory statements evidenced bad faith dilatory tactics.
D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1
- 436.04 Employer's failure to provide requested information on the costs of farm labor contracts violated the Act. Under Section 1140.4 (c) of the ALRA, the employees of farm labor contractors are part of the bargaining unit, therefore the compensation paid to the labor contractor is just as much an element of unit labor costs as the wages

paid to the labor contractor's employees, and is therefore presumptively relevant.

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D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

436.05 Employer's failure to compile and provide comprehensive wage data for unit employees violated the Act where compiling the data was a minor inconvenience to employer, it had been over ten months since the parties had a negotiation session, and where the employer was aware that the union had not always received its communications about wage adjustments.

D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

436.05 Employer's failure to provide employee telephone numbers in response to union's request violated the Act where the record supported the conclusion that employer's foremen and supervisors had access to the numbers and employer's bargaining representative made insufficient efforts to obtain them.

D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

436.07 Employer's failure to provide employee telephone numbers in response to union's request violated the Act where the record supported the conclusion that employer's foremen and supervisors had access to the numbers and employer's bargaining representative made insufficient efforts to obtain them.

D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

436.07 Employer's failure to provide employee job classifications in response to union's information request violated the Act. Board found that employer's claim that it did not maintain job classifications was inherently implausible in light of documentary evidence in the record.

D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

436.07 Employer's failure to provide employee social security numbers in response to union's information request did not violate the Act.

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D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

451.04 The Board rejected employer's argument that the ALJ impermissibly relied on evidence prior to the statute of limitations period to support his finding that employer engaged in surface bargaining. The Board found that the ALJ's discussion of prior similar conduct was properly used to shed light on conduct occurring within the limitations period.

D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

463.01 The Board rejected employer's argument that the makewhole period should be cut off as of the date the union ceased to request bargaining. The Board found that the record supported the conclusion that the union ceased bargaining because employer had given union reason to believe any further bargaining would be futile. In addition, the union actually had made additional efforts to bargain, and the employer committed additional bargaining related ULPs.

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463.02 The Board rejected employer's argument that the makewhole period should be cut off as of the date the union ceased to request bargaining. The Board found that the record supported the conclusion that the union ceased bargaining because employer had given union reason to believe any further bargaining would be futile. In addition, the union actually had made additional efforts to bargain, and the employer committed additional bargaining related ULPs.

D'ARRIGO BROS. CO. OF CALIFORNIA, 32 ALRB No. 1

700.01 Mandatory mediation statute, which is in fact one imposing interest arbitration, is constitutional. The statute does not violate substantive due process, the scope of judicial review is adequate to safeguard constitutional rights, does not constitute unlawful protectionism,

does not violate equal protection guarantees, and constitutes a lawful delegation of legislative authority.
HESS COLLECTION WINERY v. ALRB (2006) 140 Cal.App.4th 1584

701.11 Though Labor Code section 1164, subdivision (e) and Regulation 20407, which list factors to be considered by the mediator, use the term “may,” in this context it means “must.”
HESS COLLECTION WINERY v. ALRB (2006) 140 Cal.App.4th 1584