

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

D'ARRIGO BROS. CO. OF
CALIFORNIA,
A California Corporation,

Employer,

and

ALVARO SANTOS,

Petitioner,

and

UNITED FARM WORKERS OF
AMERICA,

Certified Bargaining Representative.

) Case Nos.: 2010-RD-004-SAL
) 2010-CE-050-SAL

) **ORDER DENYING APPLICATION**
) **FOR PERMISSION TO APPEAL**
) **RULING OF ADMINISTRATIVE**
) **LAW JUDGE**

) **Admin. Order 2011-14**

On June 27, 2011, Respondent and Employer in the above-captioned case, D'Arrigo Bros. Co. of California (D'Arrigo), filed an Application for Permission to Appeal Ruling of Administrative Law Judge. By order dated July 1, 2011, the Board provided that any opposition to the application be received by close of business on July 8, 2011. On July 8, 2011, the General Counsel and the United Farm Workers of America filed responses to the application.

PLEASE TAKE NOTICE that the Application for Permission to Appeal Ruling of Administrative Law Judge is hereby DENIED.

In its application, D'Arrigo asserts that the administrative law judge (ALJ) ruled that the General Counsel may litigate allegations concerning the improper promise of benefits that 1) are not included in the complaint issued in this matter, and 2) previously were included in a withdrawn charge and are now time-barred. Further, D'Arrigo asserts that admission of evidence on these allegations would be contrary to a stipulation between D'Arrigo and the United Farm Workers of America (UFW) that an election objection raising the same allegations would be withdrawn and, in the event the Executive Secretary did not dismiss the objection, would not be pursued in any fashion by the UFW.

No where in the transcript excerpts provided by D'Arrigo does the ALJ indicate that he intends to allow the General Counsel to seek to establish any violation not contained in the complaint. Nor does the ALJ state that he intends to allow the UFW to violate the stipulation noted above. Rather, the transcript reflects only that the ALJ declined to preclude the General Counsel from introducing evidence of the promise of benefits to the extent it is relevant to the allegations that are contained in the complaint. In other words, we do not view the ALJ's ruling as allowing the introduction of evidence of the promise of benefits to establish an independent unfair labor practice not alleged in the complaint or to establish an independent basis for setting aside the election.

By Direction of the Board.

Dated: July 11, 2011

JOSEPH WENDER
Acting Executive Secretary, ALRB