

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, LP,)	Case Nos. 2013-RD-001-VIS
)	
Employer,)	
)	
and)	
)	ORDER DENYING REQUEST TO
FRANCISCO NAPOLES,)	RESPOND TO REQUESTS FOR
)	REVIEW
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS)	Admin. Order No. 2013-26-A
OF AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

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”). The Employer named in the Petition is Arnaudo Brothers, LP (the “Employer”) and the certified bargaining agent is the United Farm Workers of America (the “UFW”).

That same day, Acting Regional Director Alegria 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 filed its own request for review on June 5, 2013. The same day that the Employer filed its request for review,

the General Counsel of the ALRB (the “General Counsel”) filed a request for leave to respond to the requests for review filed by the Petitioner and the Employer.¹ The Petitioner and the Employer filed oppositions to the General Counsel’s request.

We have considered the General Counsel’s request and have decided that her request should be DENIED for the reasons stated herein.

Under the Agricultural Labor Relations Act (the “ALRA” or the “Act”), responsibility over representation matters, including the responsibility to receive election petitions, investigate petitions, and to dismiss petitions or direct elections, is assigned to the Board. (See Lab. Code § 1156 et seq. and specifically 1156.3 (b).) The Board is, however, authorized to delegate such powers as it deems appropriate to, among other things, “investigate and provide for hearings, to determine whether a question concerning representation exists, to direct an election by a secret ballot . . . and to certify the results of such election.” (Lab. Code § 1142 (b).) In the case of its authority over representation matters, including investigation and processing of petitions and direction of elections, the Board has chosen to delegate to the General Counsel the authority, among other things, to determine whether a question of representation exists, to process petitions, and to direct and conduct elections.

Thus, when a Regional Director (who is the subordinate of the General Counsel) investigates a petition, dismisses a petition, directs an election, or blocks an election, the Regional Director is acting pursuant to the Board’s delegated authority.

¹ Although the request was filed in the name of the General Counsel, it was signed by Alegria De La Cruz, acting Regional Director.

Accordingly, when the Regional Director issued the decision herein, she was acting on behalf of the Board. Now that parties have requested that the Board itself review the Regional Director's decision, it would be wholly inappropriate for the General Counsel to interject herself into the process as an advocate. To do so would create the spectacle of the General Counsel simultaneously acting as impartial decision-maker and interested advocate. The Board has cautioned in the past against the General Counsel overstepping the proper role in representation cases. (See *GH & G Zysling Dairy* (2006) 32 ALRB No. 2 at p. 2 fn 2 (General Counsel improperly acted as an advocate by filing exceptions in a representation case); *Kubota Nurseries, Inc.* (1989) 15 ALRB 12 at pp. 7-8 (by seeking sanctions against an employer in a representation case, the regional attorney improperly "became an active and partisan participant" in the proceeding); Cal. Code Regs., tit. 8, § 20370 (c).)

Furthermore, section 20390 (d) of the Board's regulations, which governs responses to requests for review of decisions dismissing election objections, provides that the Board may receive responses from "the opposing party or parties." (Cal. Code Regs., tit. 8, § 20390 (d).) The General Counsel is not a party and nowhere is the General Counsel authorized to advocate for a decision to dismiss (or block) a petition.

Finally, we note that the General Counsel's request to file a response indicates that she would present "key information" purportedly omitted from the Petitioner's request for review. To the extent that the General Counsel would offer facts in support of the decision that were not included in the decision itself, we believe it would be inappropriate for those facts to be presented at this time, particularly because the

parties would have no opportunity (absent a further round of briefing) to respond to those facts. Any facts supporting the Regional Director's decision should have been cited in the decision itself.

ORDER

For the foregoing reasons, the General Counsel's Request for Leave to Respond to Requests for Review is DENIED.

By Direction of the Board.

Dated: June 7, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB