

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, L.P.,)	Case Nos. 2013-RD-001-VIS
)	(39 ALRB No. 9)
Employer,)	
)	ORDER RECONSIDERING
and)	SUA SPONTE ORDER
)	DENYING REQUEST TO
FRANCISCO NAPOLES,)	RESPOND TO REQUESTS
)	FOR REVIEW
Petitioner,)	
)	
and)	Admin. Order No. 2013-31
)	
UNITED FARM WORKERS)	
OF AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

The Agricultural Labor Relations Board (“Board”) issued an order on June 7, 2013 in the above-titled matter denying a request to respond to requests for review.¹ The order as published provides an incorrect characterization of the role of the General Counsel in election matters and is forthwith corrected nunc pro tunc to read as follows starting from page 2, second full paragraph:

“Under the Agricultural Labor Relations Act (the “ALRA” or the “Act”), responsibility over representation matters, including the

¹ The administrative order in question was inadvertently numbered “Administrative Order 2013-26” and should be numbered “Administrative Order 2013-26-A.”

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 to the personnel of the regional offices as it deems appropriate to, among other things, “determine whether a question of representation exists, to direct an election by secret ballot . . . and to certify the results of such election.” (Lab. Code § 1142(b).) By statute, such delegation of the Board’s powers is limited to *the personnel of the regional offices*.

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. Accordingly, when the Regional Director issued the decision herein, she was acting on behalf of the Board. Now that the parties have requested that the Board itself review the Regional Director’s decision, it would be wholly inappropriate for the General Counsel, the Regional Director’s superior, to inject herself as an advocate in a process in which the Board and the Regional Directors act in a neutral manner and that does not, by statute or regulation, include a role for the General Counsel. (See, e.g., Cal. Code Regs, tit. 8, section 20300(h) (a petition for certification may be withdrawn only with the consent of the regional director); section 20300 (i) (providing for dismissal of an election

petition by a regional director); section 20300 (j)(2) (stating role of the regional director in determining the showing of interest); section 20310 (providing for the filing of employer's written response to an election petition with the regional director or his or her designated agent); section 20350 (providing that all elections shall be conducted under the supervision of the appropriate regional director).)

Furthermore, section 20393 (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, § 20393 (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: September 6, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB