

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,)	Case Nos. 2013-RD-003-VIS
)	
Employer,)	
)	
and)	
)	ORDER VACATING REGIONAL
SILVIA LOPEZ,)	DIRECTOR'S DISMISSAL OF
)	PETITION FOR
Petitioner,)	DECERTIFICATION
)	
and)	Admin. Order No. 2013-46
)	
UNITED FARM WORKERS OF)	
AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

On October 25, 2013, Petitioner Silvia Lopez (“Petitioner”) filed a Petition for Decertification of the United Farm Workers of America (the “UFW”) as the certified bargaining representative of the agricultural employees of the employer, Gerawan Farming, Inc. (“Gerawan”).¹ On October 28, 2013, the Regional Director dismissed the Petition as untimely based upon his conclusion that the decision of the Agricultural Labor Relations Board (the “Board”) in a Mandatory Mediation and Conciliation (“MMC”) case between the UFW and Gerawan (Case No. 2013-MMC-

¹ This is the second decertification petition filed by Ms. Lopez. The first, 2013-RD-002-VIS, was dismissed for an inadequate showing of interest in a dismissal letter. Though unclear how many signatures would have constituted an adequate showing of interest, we declined to review the Regional Director’s determination in accordance with Cal. Code of Regs., tit.8, section 20300(1)(5).

003) resulted in a “contract bar” that precluded the holding of an election. The Board subsequently vacated the Regional Director’s dismissal on the grounds that the issue of whether the terms of the mediator’s report were to be effectuated was currently before the Board.² (*Gerawan Farming, Inc.* Admin. Order 2013- 44.) The Board instructed the Regional Director to continue to investigate the decertification petition to determine whether a bona-fide question concerning representation existed.

On October 31, 2013, the Regional Director issued a letter concerning the decertification petition indicating that, although he had concluded that Petitioner had met the statutory requirements for holding an election, the election should be blocked based on the pendency of three unfair labor practice complaints. (Case Nos. 2013-CE-010-VIS (complaint issued May 17, 2013), 2013-CE-027-VIS (complaint issued August 15, 2013; first amended complaint issued October 25, 2013) and 2012-CE-041-VIS, et al. (consolidated complaint issued October 30, 2013).

The Complaint in Case No. 2013-CE-010-VIS alleges that Gerawan proposed and insisted on excluding farm labor contractor (“FLC”) employees from the bargaining unit in negotiations with the UFW. The Board does not view these allegations, standing alone, as being sufficient to warrant blocking the petition, as their effect on free choice, if any, would be dependent on the establishment of surrounding facts and circumstances. The complaint in Case No. 2013-CE-027-VIS contains

² The Board ultimately determined that the Agricultural Labor Relations Act (the “ALRA”) precluded immediate effectuation of the terms of the mediator’s report because Gerawan had challenged them in its petition for review. (*Gerawan Farming, Inc.*, Admin. Order 2013-45.)

serious allegations of employer interference in a decertification petition along with other unlawful conduct. The Regional Director's letter, however, fails to mention the degree to which remedial efforts by the General Counsel and agreed upon by Employer, which were allegedly represented by the General Counsel to the Fresno Superior Court in injunctive relief proceedings as having remedied some of the alleged unfair labor practice charges, in fact did so.

With respect to the consolidated complaint in 2012-CE-041-VIS et al., the complaint is based upon a series of charges pertaining to conduct alleged to have occurred as early as November 2012. The latest of the charges was filed in July 2013 and pertains to conduct alleged to have occurred in June 2013. Despite no complaint having previously been issued on any of these charges, the Regional Director issued a consolidated complaint on October 30, 2013 and cited the complaint as a basis to block the petition the next day.

The Board's blocking policy generally contemplates blocking an election based on a complaint that has already been issued, not one issued in the midst of the investigation of an election petition. (*Cattle Valley Farms* (1982) 8 ALRB No. 24.) It may be entirely proper to rely on such a late-filed complaint to block an election under the appropriate circumstances such as where the allegations relate directly to the validity of the election petition itself. However, under the present circumstances, notably that the charges on which the consolidated complaint was based were up to ten months old, the issuance of a complaint so close in time to the election leaves us with serious doubts as to the propriety of using that complaint to block the election. The

Board noted in its *Cattle Valley Farms* decision that “[s]tale or eleventh-hour charges which may subsequently be the basis for a complaint will not be permitted to delay or block a scheduled election.” (*Cattle Valley Farms, supra*, 8 ALRB No. 24 p. 3.) While the Board referred in that decision to charges, and not complaints, the rationale underlying the two situations of avoiding last-minute tactics to delay the holding of an election is the same.

At this point, and under the unique circumstances presented in this case, there are enough questions regarding the degree to which any taint has been remedied, as well as questions as to the appropriateness of relying on the late-filed complaint to block the election, to justify holding the election, impounding the ballots, and resolving these issues through election objections and litigation of the complaints.

PLEASE TAKE NOTICE that pursuant to the authority over election matters vested in the Board itself under Labor Code section 1142, subdivision (b), the Board hereby VACATES the Regional Director’s October 31, 2013 decision to block the above-captioned petition for decertification. The Board hereby orders that the election be held on **Tuesday, November 5, 2013** and the ballots be impounded pending

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resolution of any election objections and related unfair labor practice complaints.³ No further dismissals shall be filed by the Regional Director.

Dated: November 1, 2013

GENEVIEVE A. SHIROMA, Chair

CATHRYN RIVERA-HERNANDEZ, Member

HERBERT O. MASON, Member

³ Although the Regional Director's decision to block the petition necessarily results in the election being held outside the seven day time period specified in Labor Code section 1156.3 subdivision (a), the holding of an election outside of the statutory period does not invalidate the election. (*Radovich v. Agricultural Labor Relations Board* (1977) 72 Cal.App.3d 36.)