

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, LP,	)	Case No. 2014-RD-001-VIS
	)	
Employer,	)	
	)	
and	)	<b>AMENDED ORDER DENYING</b>
	)	<b>PETITIONER’S REQUEST FOR</b>
HORACIO TORRES,	)	<b>REVIEW; AFFIRMING</b>
	)	<b>REGIONAL DIRECTOR’S</b>
Petitioner,	)	<b>DECISION TO BLOCK</b>
	)	<b>ELECTION; AND DISMISSING</b>
and	)	<b>DECERTIFICATION PETITION</b>
	)	
UNITED FARM WORKERS OF	)	
AMERICA,	)	Admin. Order No. 2014-14
	)	
<u>Certified Bargaining Representative.</u>	)	

On June 5, 2014, the Board issued Administrative Order No. 2014-14.

The footnotes in the order were inadvertently omitted. We hereby re-issue the order to include the footnotes.

On May 23, 2014<sup>1</sup>, Horacio Torres (Petitioner) filed, with the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB or Board), a petition to decertify the United Farm Workers of America (UFW) as the certified bargaining representative of the agricultural employees of Arnaudo Brothers, LP, (Arnaudo or Employer) in Tracy, California. On May 29, Visalia Regional Director Silas M. Shawver sent a letter to all parties informing them that the decertification election

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<sup>1</sup> All dates refer to 2014 unless otherwise stated.

(election) would be blocked, as there were two unremedied unfair labor practice (ULP) complaints against Arnaudo. The Regional Director explained that the first of these complaints (Case No. 2012-CE-030-VIS) involved allegations that Arnaudo failed to bargain in good faith with the UFW by refusing to make itself available to bargain and refusing to provide relevant information. This matter is currently on remand to the Administrative Law Judge for further proceedings; the complaint is outstanding.

(*Arnaudo Bros, LP* (2014) 40 ALRB No. 3.) The Regional Director further explained that the second of the complaints (Case No. 2013-CE-028-VIS), issued before the filing of the petition, involved unremedied allegations that Arnaudo committed ULPs in the form of threats against several of its employees who supported the UFW. The Regional Director concluded that blocking of the election was necessary, as the atmosphere created by these circumstances would make it impossible for Arnaudo's employees (the employees) to freely exercise their choice, without coercion, during the election.

On June 3, Petitioner filed a request with the Board, pursuant to section 20393(a) of the Board's regulations,<sup>2</sup> for review of the Regional Director's decision to block the election. In the request<sup>3</sup>, counsel for Petitioner argued that the Regional Director's blocking of the election was improper, and the pending complaints had no

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<sup>2</sup> The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

<sup>3</sup> The Board notes that counsel for Petitioner engaged in multiple ad hominem attacks against the Regional Director in the request. The Board admonishes counsel to avoid such improper conduct in the future. See section 20800(a) of the Board's regulations.

present impact on the employees' capacity for free choice. For the reasons discussed below, Petitioner's request is DENIED, and the Regional Director's decision to block the election is AFFIRMED.

In *Cattle Valley Farms* (1982) 8 ALRB No. 24 (*Cattle Valley*), the Board held, at page 3, that elections could not be blocked unless a ULP complaint had already issued, as mere ULP charges would not suffice. The Board further described the Regional Director's power to block elections, as well as the Board's standard of review for such blocking:

Henceforth, when a petition for certification or decertification is filed, the Regional Director shall immediately investigate and determine whether any unfair labor practices alleged in an outstanding complaint against the employer(s) and/or union(s) involved in the representation proceeding will make it impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner.

...

Where the Regional Director has decided to block an election and has served notice of that decision on all parties, including the employer, any party, including the employer, may file with the Board an appeal from the Regional Director's decision, in which event this Board will, on an expedited basis, review the Regional Director's decision and exercise its independent judgment as to whether the election should be blocked. In this manner we shall ensure that elections will be conducted in the proper atmosphere while minimizing the possibility of blocking elections unnecessarily.  
(*Id.* at pp. 14-15.)

When reviewing a complaint that the Regional Director has relied upon to block an election, the Board is not permitted to "look behind" the face of the complaint and attempt to evaluate its merits. Rather, the Board is constrained to assume that the

allegations contained therein are true. (*Arnaudo Bros., LP* (2013) 39 ALRB No. 9, at p. 8.) While the Regional Director has the responsibility of determining in the first instance whether allegations contained in an outstanding complaint preclude a free and uncoerced election, if a party appeals a blocking decision, the Board is to “review the Regional Director’s decision and exercise its independent judgment as to whether the election should be blocked.” (*Cattle Valley Farms, supra*, 8 ALRB No. 24 at p. 15.)

In *S & J Ranch, Inc.* (1992) 18 ALRB No. 10 (*S & J Ranch*), the Board clarified this standard, at page 3:

Under the ALRB's blocking policy, when a petition for certification or decertification is filed at a time when there is an outstanding unfair labor practice complaint against the employer or the union which has not been fully remedied, the regional director shall immediately conduct an investigation to determine whether there is a valid question concerning representation. If the regional director determines that the probable impact of the unremedied unfair labor practices alleged in the complaint would be to deprive the employees of a free and uncoerced choice in the election, the regional director shall block the election and promptly notify the parties of the decision to block and the basis therefore.

In *S & J Ranch*, the Regional Director blocked a decertification election on the grounds that the employer had not remedied the effects of ULPs for which the employer had been found liable by the Board in its decision in case no. 18 ALRB No. 2. (*Id.* at pp. 3-4.) The Board upheld the Regional Director’s decision to block the election, reasoning that the effects of the ULPs had not dissipated, and that an election could not be conducted in an atmosphere of free and uncoerced choice. (*Id.* at p. 5.)

Because there are outstanding ULP complaints against Arnaudo that have not been remedied, the facts of the current matter are analogous to those of *S & J Ranch*, and therefore, the same analysis applies. The Regional Director explained in his May 29 decision that he promptly conducted an investigation, determined that there existed unremedied ULPs as described in two complaints against Arnaudo, and properly concluded that the election had to be blocked, as Arnaudo's employees would not be able to exercise free choice due to the atmosphere created by the ULPs. The blocking of an election causes the underlying petition to be dismissed. (*Bayou Vista Dairy* (2006) 32 ALRB No. 6.)

Thus, under the Board's holdings in *Cattle Valley* and *S & J Ranch*, the Regional Director acted properly in blocking the election in this matter. Therefore, the Petitioner's request for review in this case is hereby DENIED. Accordingly, the Board AFFIRMS the Regional Director's decision to block the decertification election. The petition for decertification is hereby DISMISSED.

Dated: June 19, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member