

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROS.,)	Case No. 2014-RD-001-VIS
)	
Employer,)	
)	
and)	ORDER DENYING EMPLOYER'S
)	REQUEST FOR REVIEW OF
HORACIO TORRES,)	REGIONAL DIRECTOR'S
)	DECISION TO BLOCK ELECTION
Petitioner,)	AND DISMISS
)	DECERTIFICATION PETITION
and)	
)	
UNITED FARM WORKERS OF)	Admin. Order No. 2014-15
AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

On May 23, 2014¹, 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 Bros. (Arnaudo or Respondent) in Tracy, California. On May 29, Visalia Regional Director Silas M. Shawver sent a letter to all parties informing them that the decertification election (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

¹ All dates refer to 2014 unless otherwise stated.

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,² for review of the Regional Director's decision to block the election. In the request, counsel for Petitioner argued that the Regional Director's blocking of the election was improper, and the pending complaints had no present impact on the employees' capacity for free choice. On June 5, the Board issued Administrative Order (Admin. Order) No. 2014-14, which, for the reasons discussed therein, denied Petitioner's request and affirmed the Regional Director's decision to block the election and dismiss the decertification petition.

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

Arnaudo filed its own request³ for review of the Regional Director's decision on June 5, shortly after the Board issued Admin. Order No. 2014-14. Arnaudo argued that the UFW had not done anything to help the employees for years; that the ULP complaints cited by the Regional Director are without merit; and that the Regional Director should have conducted the election and impounded the ballots, rather than blocking the election. For the reasons discussed both in Admin. Order No. 2014-14 and below, Arnaudo's request is DENIED, and the Regional Director's decision is AFFIRMED.

Arnaudo's argument alleging that the UFW had not done anything to assist the employees in years is irrelevant. As the Board explained in *Nish Noroian Farms* (1982) 8 ALRB No. 25, once a union is certified as the exclusive collective bargaining representative for an employer, it remains so until it is decertified.

Arnaudo's argument that the UFW complaints against it are without merit is not properly before the Board, as the merits of said complaints will be determined through the ALRA's procedures for the adjudication of unfair labor practice complaints. As explained in Admin. Order No. 2014-14, while 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

³ The Board notes that counsel for Arnaudo made several ad hominem attacks impugning 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.

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* (1982) 8 ALRB No. 24 at p. 15 (*Cattle Valley*)). As stated in Admin. Order 2014-14, we agree with the Regional Director that the allegations contained in the unremedied unfair labor practice complaints against Arnaudo warrant blocking the election in this matter.

As to Arnaudo’s arguments that the election should have been held and the ballots impounded, the Board held in *Bayou Vista Dairy* (2006) 32 ALRB No. 6, at page 4, (*Bayou Vista Dairy*), pursuant to *Cattle Valley*, that where investigation of unfair labor practice charges discloses that violations have made a fair election impossible, the election may be blocked if a complaint issues on the charge before the election has been conducted. The two complaints against Arnaudo had issued not only before the election but before the petition was received and therefore, the Regional Director’s decision to block the election was proper under the rationale of *Cattle Valley*.

Thus, under the Board’s holdings in *Nish Noroian Farms*, *Cattle Valley* and *Bayou Vista*, the Regional Director acted properly in blocking the election in this matter. Therefore, Arnaudo’s request for review in this case is DENIED. Accordingly,

the Board AFFIRMS the Regional Director's decision to block the decertification election. As stated in Admin. Order No. 2014-14, the petition for decertification is DISMISSED.

Dated: June 10, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member