

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS)	
CORPORATION AND GIUMARRA)	
FARMS INC.,)	Case No. 05-RC-7-VI
)	
Employer,)	ORDER DENYING INTERIM
)	APPEAL OF IHE RULING
and)	
)	Admin. Order No. 2006-2
)	
UNITED FARM WORKERS OF)	
AMERICA,)	
)	
<u>Petitioner.</u>)	

ORDER

On March 3, 2006, the United Farm Workers of America (UFW) filed an Application for Special Permission for Interim Appeal of IHE (Investigative Hearing Examiner) Ruling in the above-entitled case. On March 6, 2006, Giumarra Vineyards Corporation and Giumarra Farms Inc. (Employer) filed an opposition to the interim appeal. In the ruling at issue, the IHE refused to allow the testimony of witnesses who were to testify about an incident that was not included in the UFW's detailed statement of facts submitted in support of its election objections.

PLEASE TAKE NOTICE that the Agricultural Labor Relations Board (ALRB or Board) has considered the merits of the interim appeal and that the interim appeal is hereby DENIED for the reasons that follow.

While the incident that is the subject of the disallowed testimony involves an alleged threat of job loss by an agent of the Employer that is similar to other alleged incidents described in the UFW's detailed statement of facts, it is a discreet incident involving different actors and a different time and place that was not referenced in the statement of facts. As such, allowance of the disputed testimony can not be squared with various provisions of Section 20365 of the Board's regulations,¹ which governs the election objections procedure.²

Subdivision (c)(2)(C) requires that allegations of election related misconduct "shall include identification of the person or persons alleged to have engaged in the misconduct and their relationship to any of the parties, a statement of when and where the misconduct occurred; and a detailed description of the misconduct including, if speech is complained of, the contents of what was said." Subdivision (c)(2)(D) requires that a party choosing to serve opposing parties with a detailed statement of facts in lieu of the supporting declarations filed with the Executive Secretary "shall describe the content of the declarations in sufficient detail to allow an opposing party to secure its own witnesses and otherwise prepare itself to counter the objections at an evidentiary hearing." Failing to include the incident in

¹ The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

² While it is axiomatic that the Board's duly promulgated regulations are controlling in regard to election procedures under the Agricultural Labor Relations Act (Act), it should be noted that it has been held expressly that the requirement in section 1148 of the Act that the Board follow applicable precedents of the National Labor Relations Act does not apply to procedural rules. (*Tex-Cal Land Management, Inc. v. ALRB* (1979) 24 Cal.3d 335.)

question in its detailed statement of facts but nonetheless seeking to litigate it at hearing is in clear violation of these provisions. Moreover, subdivision (b) provides that “no amendments to objections petitions shall be permitted for any reason after the five-day filing period has elapsed.” The addition at hearing of a discreet incident not alleged in election objections would be tantamount to such a prohibited amendment.

By Direction of the Board.

Dated: March 8, 2006

JOSEPH A. WENDER, JR.
Acting Executive Secretary, ALRB