

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JOHN DEGROOT AND SON)
 DAIRY,)
)
 Employer,)
)
 and)
)
 ISRAEL A. CUEVAS,)
)
 Petitioner,)
)
 and)
)
 TEAMSTERS LOCAL 63,)
)
 Certified Bargaining)
 Representative.)
 _____)

Case No. 2020-RD-001-VIS

**ORDER REMANDING
DECERTIFICATION PETITION
TO REGIONAL DIRECTOR**

Admin. Order No. 2020-17

(October 20, 2020)

After the filing of a decertification petition involving the agricultural employees of John DeGroot and Son Dairy (John DeGroot), a letter was submitted to the Visalia Region of the Agricultural Labor Relations Board (ALRB or Board), which the regional director concluded represented a disclaimer of interest by Teamsters Local 63 (Teamsters or union). The regional director has submitted this matter to the Board to determine “what actions, if any, the Board should take to confirm that [the union] is decertified as the bargaining representative of the agricultural workers at [John DeGroot].” The Board REMANDS this matter to the regional director to take such actions as he deems warranted, consistent with the following.

BACKGROUND

The Teamsters were certified as the exclusive bargaining representative of John DeGroot's agricultural employees in 1977.

On September 25, 2020, agricultural employee Israel A. Cuevas filed a petition to decertify the Teamsters. By letter dated that same day to the handling field examiner in the Visalia office, Martin Perez (Perez) wrote: "Effective immediately, Teamsters Local 63 waives and disclaims any right to represent the employees involved in Case No. 2020-RD-001-VIS." Perez further stated his letter also was being sent to John DeGroot's counsel, and sought confirmation from the field examiner the election would be cancelled.

On October 2, the regional director sent a letter to the parties (the decertification petitioner, John DeGroot's counsel, and Perez) stating he considers the disclaimer to be effective and has decided not to conduct an election. He then continued:

The power to certify or decertify a union lies with the Board. I will transmit a copy of this letter along, with a memo to the Board, through the Executive Secretary, informing them of these developments, so that they can respond accordingly. I will serve copies on all parties.

On October 7, the regional director submitted to the Executive Secretary a memorandum directed to the Board and copied the parties. After briefly recounting the situation, the regional director states the regional office "has taken all steps within our authority on this matter" and that he is submitting the matter to the Board for consideration as to what actions may be necessary to confirm the union's decertification.

While the regional director has communicated to the parties he does not intend to conduct an election, it appears the decertification petition has not yet been dismissed pending a response from the Board.

DISCUSSION

Our precedent establishes, as a general rule, that a certified union remains certified until it is decertified through the election procedures set forth in the Agricultural Labor Relations Act (ALRA or Act).¹ (*Nish Noroian Farms* (1982) 8 ALRB No. 25, p. 14; see *Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118, 1155; *Arnaudo Brothers, LP v. ALRB* (2018) 22 Cal.App.5th 1213, 1227.) We have recognized two exceptions to this “certified until decertified” rule: “Once a union has been certified, it remains the exclusive collective bargaining representative of the employees in the unit until it is decertified or a rival union is certified, or until the union becomes defunct or disclaims interest in continuing to represent the unit employees.” (*Lu-Ette Farms* (1982) 8 ALRB No. 91, p. 5, emphasis added; *Arnaudo Brothers, LP* (2014) 40 ALRB No. 3, p. 9.)

A disclaimer occurs where the union expresses an unwillingness to continue representing the bargaining unit. (*Arnaudo Brothers, LP, supra*, 22 Cal.App.5th at p. 1228, citing *Dole Fresh Fruit Co., Inc.* (1996) 22 ALRB No. 4, p. 11.) To be effective, the union’s disclaimer of interest “must be clear and unequivocal and must be made in good faith.” (*Arnaudo Brothers, LP, supra*, 22 Cal.App.5th at p.

¹ The Act is codified at Labor Code section 1140 et seq. The Act’s election procedures are set forth at section 1156 et seq. (See also Board reg. 20300 et seq. [Cal. Code Regs., tit. 8, § 20300 et seq].)

1228.) Moreover, the union’s conduct must not be inconsistent with the purported disclaimer. (*Ibid.*)

Disclaimer and decertification are two distinct concepts. While a union may be *decertified* under our Act following a secret ballot election, a union’s *disclaimer of interest* operates as an exception to this rule. Thus, an effective disclaimer “terminates the union’s certification as bargaining representative.” (*Gerawan Farming, Inc., supra*, 3 Cal.5th at p. 1159; see *Brady v. NFL* (D.Minn. 2011) 779 F.Supp.2d 992, 1021.) In circumstances similar to those presently before us, the National Labor Relations Board (NLRB) recognizes the authority of a regional director to revoke a union’s certification based upon the union’s disclaimer of interest. (NLRB Casehandling Man., Pt. 2, § 11124.2;² see *Forestwoods Farms, Inc.* (1992) 308 NLRB 1049, 1050 [regional director revoked certification after union filed a disclaimer of interest following filing of decertification petition].) Specifically, where a union disclaims interest in representing a bargaining unit following the filing of a decertification petition, the NLRB instructs that the regional director should dismiss the petition and such dismissal should contain a revocation of the union’s certification. (NLRB Casehandling Man., Pt. 2, § 11124.2.) We believe regional directors possess equivalent authority under our Act and should follow a similar course. (See Lab. Code, § 1148.)³

² Available at: <<https://www.nlr.gov/sites/default/files/attachments/pages/node-174/chm-part-ii-rep2019published-9-17-20.pdf>>.

³ We do not express any opinion concerning the appropriateness of the qualification language described in section 11124.2 of part 2 of the NLRB’s

ORDER

The Board REMANDS this matter to the regional director. If the regional director dismisses the petition based on the alleged disclaimer, any party who disputes the dismissal or contests the validity of the disclaimer may file an appeal with the Board pursuant to our regulations. (Board regs. 20300, subd. (i), 20390, subd. (e), 20393, subd. (a); see Lab. Code, § 1142, subd. (b).)

DATED: October 20, 2020

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member

Casehandling Manual.