

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DOLE BERRY NORTH,)	Case Nos.	2013-RD-001-SAL
)		(39 ALRB No. 18)
Employer,)		
)		
and)	ORDER DIRECTING THE	
)	OPENING AND COUNTING OF	
JOSÉ AGUILAR)	BALLOTS; ORDER SETTING	
)	INVESTIGATIVE HEARING	
Petitioner,)		
)	Admin. Order No. 2014-08	
and)		
)		
UNITED FARM WORKERS OF)		
AMERICA,)		
)		
<u>Certified Bargaining Representative.</u>)		

On October 18, 2013, José Aguilar (Petitioner) filed a petition with the Agricultural Labor Relations Board (ALRB or Board) to decertify the United Farm Workers of America (UFW) as the certified bargaining representative of all Dole Berry North (Employer) agricultural employees in Watsonville, Salinas and Marina. The bargaining unit description was later amended by the Regional Director to include all of Employer's agricultural employees in Monterey and Santa Cruz counties. The UFW filed two unfair labor practice (ULP) charges against Employer on October 18 and 22, 2013, as Case Nos. 2013-CE-051-SAL and 2013-052-SAL. The election was held on October 25, 2013, and, as a result of these ULP charges, the Regional Director

impounded the ballots pursuant to the procedure established by the Board in *Cattle Valley Farms* (1982) 8 ALRB No. 24.

We are guided here by the general principles adumbrated in *Mann Packing Company, Inc.* (1989) 15 ALRB No. 11. In that case, the Board established the general principle that where the General Counsel has dismissed ULP charges analytically peculiar and distinct to the ULP prohibitions contained in the statute, and which overlap with election objections, the Board is precluded from litigating the objections as they relate to such charges, as the Board would otherwise infringe upon the General Counsel's exclusive authority under the Agricultural Labor Relations Act¹ (Act) to determine whether ULP charges warrant the issuance of a formal complaint. Of course, as *Mann Packing* itself noted² it is axiomatic that the dismissal of a ULP charge does not necessarily preclude the Board from addressing election objections. (Cf. *Dal-Tex Optical Co.* (1962) 137 NLRB 1782, 1786.)³

¹ The Act is codified at California Labor Code section 1140 *et seq.*

² “[it] is well established that conduct sufficient to warrant the settling aside of an election need not rise to the level of an unfair labor practice, and not all unfair labor practices necessarily constitute conduct which, by an objective standard, would reasonably tend to interfere with employee free choice.” (*Mann Packing Company, Inc., supra*, 15 ALRB No. 11, pp. 8-9.)

³ As the NLRB has said: “[W]here it is not necessary to conclude that an employer committed an unfair labor practice in order to find conduct objectionable, the fact that an unfair labor practice charge concerning the same conduct that has been dismissed does not require the pro forma overruling of the objection because ‘the effect of preelection conduct on an election is not tested by the same criteria as conduct alleged by a complaint to violate the Act.’” (*ADIA Personnel Services, Inc.* (1997) 322 NLRB No. 180, fn. 2 citing *Texas Meat Packers* (1961) 130 NLRB 279, 280.)... [T]he Board retains total discretion under Sec. 9(c) regarding representation proceedings and,
(Footnote continued....)

In the instant case, the UFW filed six election objections on November 1, 2013. On November 22, 2013, the Board issued its decision in 39 ALRB No. 18, dismissing Objections Four, Five, and Six. The Board also ruled that Objections One and Two would be held in abeyance until the ULP charges were resolved, as the objections mirrored the charges. The Board further held that Objection Three, which alleged a defective eligibility list, would be held in abeyance until the ballots were counted, in accordance with the rule set forth by the Board in *Gallo Vineyards, Inc.* (2005) 35 ALRB No. 6. The Board lastly stated that an investigative hearing on all three objections would be scheduled after the counting of the ballots, in order to determine whether the election should be set aside.

On April 7, 2014, at the request of the UFW, the Regional Director provided written consent to allow the UFW to withdraw the ULP charges, in accordance with section 20212 of the Board's regulations⁴. The Board retains authority to litigate objections where an overlapping ULP complaint or charge was withdrawn, as

(Footnote continued)

in determining whether certain conduct is objectionable, will defer to the General Counsel's dismissal of the unfair labor practice allegations where "the conduct which is alleged to have interfered with the election could only be held to be such interference upon an initial finding that an unfair labor practice was committed." (*Texas Meat Packers*, supra, 130 NLRB 279.) Therefore it is properly within the Board's authority to consider, in the context of an objection, conduct which has been dismissed as an 8(a)(1) allegation where conduct may be found objectionable without determining that it is a (sic) unfair labor practice. (*ADIA Personnel Services, Inc.* (1997) 322 NLRB No. 180, fn. 2.)

⁴ The Board's regulations are codified at California Code of Regulations, title 8, section 20100 *et seq.*

there is no potential to interfere with the General Counsel's authority in such situations. (See also *Bayou Vista Dairy* (2006) 32 ALRB No. 6; *Richard's Grove & Saralee's Vineyard, Inc.* (2007) 33 ALRB No. 7 (holding, at p. 6, that "By extension, the withdrawal of a [ULP] charge also would not preclude the Board from litigating a parallel issue in an election proceeding).

In light of this withdrawal, the Board ORDERS the Regional Director to open and count the ballots and provide advance notice to all parties of the date, time, and place of the ballot counting, in accordance with section 20360(a) of the Board's regulations. The Board further DIRECTS the Executive Secretary to schedule an investigative hearing on Objections One, Two, and Three at an appropriate time and place after the tally of ballots is completed.

Dated: May 14, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member