

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

LEWIS FARMS,)	
)	
Employer,)	Case No. 95-RD-2-VI
)	
and)	
)	
ADOLFO PALACIOS RODRIGUEZ,)	
)	
Petitioner,)	21 ALRB No. 7
)	(September 1, 1995)
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Certified Bargaining)	
Representative.)	
)	

DECISION ON REVIEW OF REGIONAL
DIRECTOR'S DISMISSAL OF DECERTIFICATION PETITION

On August 17, 1995, the Agricultural Labor Relations Board's (ALRB or Board's) Visalia Regional Director dismissed the petition herein, finding that the Employer had improperly assisted in the circulation of the decertification petition. On August 24, 1995, the Employer filed a request for review of the Regional Director's dismissal and on August 30, 1995, filed supplemental points and authorities in support thereof. The Board has reviewed the Regional Director's action under Labor

////////////////////
////////////////////
////////////////////

Code section 1142(b)¹ and affirms the dismissal of the second petition for the following reasons.

Section 20393(a) of the Board's Regulations provides inter alia, that "(d)ismissal of a representation petition . . . by a regional director pursuant to section 20300(i) . . . may be reviewed by the Board pursuant to Labor Code section 1142(b), upon a written request for review by the party whose petition was dismissed." Under this provision, only the decertification petitioner in this case has standing to appeal the Regional Director's dismissal.

Regulations section 20393(a), which applies to dismissals of petitions for certification filed by labor organizations, cross-petitions, petitions for intervention and objection petitions, as well as dismissals of decertification petitions, is consistent with the Agricultural Labor Relations Act (Act). As the court stated in *F & P Growers Assn. v. ALRB* (1985) 168 Cal.App.3d 667, at 678 [214 Cal.Rptr. 355], "[t]he clear purpose of the Legislature . . . [was] to preclude the employer from active participation in choosing or decertifying a

¹The Board on August 11, 1995, dismissed the Employer's request for review in a case involving a substantially identical decertification petition, Case No. 95-RD-1-VI. The Board cited the language of Board Regulations section 20393(a), discussed herein, which provides that only the petitioning party can file a request for review of the dismissal. In view of the repetition of the same contentions in this request for review, the Board is of the view that a published decision under Labor Code section 1142(b) is warranted to bring the Board's understanding of the language of Board Regulations section 20393(a) (Cal.Code Regs., tit. 8, sec. 20393(a)) to the attention of the Regions and all parties.

union, . . ." To allow the employer to initiate an appeal, rather than the decertification petitioner, would therefore involve the employer in the election process in a manner not contemplated by the Act.²

DATED: September 1, 1995

MICHAEL J. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

²The Employer also argues that denying it standing to appeal the dismissal of the decertification petition violates its federal and state constitutional rights of freedom of contract and association. While the Board perceives no constitutional infirmity, the Board does not, in any event, have the authority to declare its regulations, or any portion of the Act, unconstitutional. (Cal. Const., art. III, sec. 3.5.)

CASE SUMMARY

Lewis Farms (Adolfo
Palacios Rodriguez
and UFW)

21 ALRB No. 7
Case No. 95-RD-2-VI

Background

On August 17, 1995, the Regional Director dismissed the decertification petition herein, finding evidence of Employer assistance. The Employer filed a request for review of the Regional Director's dismissal.

Board Decision

The Board denied the Employer's request for review. Board Regulations section 20393(a) provides that only the party whose petition for certification or decertification or objections petition has been dismissed by the regional director (or executive secretary, in the case of objections petitions) may request that the Board review a dismissal. The application of Regulations section 20393(a) to decertification petitions is consistent with the Agricultural Labor Relations Act, which provides that only employees may initiate a change of collective bargaining representative.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *