

petition,² and Petitioner thereafter filed a response. Grounds for the Petition

The petition, which is unsworn, alleges that Petitioner was certified on May 25, 1993, that the parties began negotiating on July 14, 1993, and that the Employer has refused to bargain in good faith by refusing to provide information requested by Petitioner. The petition further alleges that the Employer refused to sign a "settlement agreement" purportedly reached by the parties on April 21, 1994. Petitioner asks the Board to grant a 12-month extension of the certification.

Attached to the petition are copies of three documents. The first is Petitioner's December 13, 1993 request to the

²In its motion, the Employer states that, beginning in July 1993, the union negotiator proposed to alter the bargaining agent from Local 517 to Local 517, Local 386 and Joint Council 38, on grounds that Local 386 was geographically the proper local to service the employees of P-H while Local 517 was far distant in Visalia, California. We note that under the ALRA, a labor organization continues as the certified bargaining representative of the unit's employees until those employees vote to decertify that labor organization, or elect a rival union, and the results of such elections are certified by the Board. (See, e.g., *Nish Noroian Farms* (1982) 8 ALRB No. 25; *United Farm Workers of America, AFL-CIO (The Careau Group dba Egg City)* (1989) 15 ALRB No. 10.) We also note that on September 12, 1994, a decertification election was held in this case, and that the ballots have been impounded by the Regional Director because of a pending unfair labor practice charge. However, we advise the parties herein that in the event that the election results do not ultimately show that the union was decertified, this may be an appropriate case for filing a petition for amendment of certification under section 20385 of the Board's regulations. (Cal Code Regs., tit. 8, 5 20385.) See *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Local Union No. 389 (Adam Farms)* (1990) 16 ALRB No. 2, and *NLRB v. Financial Institution Employees of America, Local 1182* (1986) 475 U.S. 192 [106 S.Ct. 1007, 121 LRRM 2741], cited therein.)

Employer for information about wage rates, medical benefits and premiums, and the Employer's profit sharing plan. The second is a February 24, 1994 letter from Ralph Miranda of the Joint Council of Teamsters No. 38 to the Employer requesting a date to meet and continue negotiating. The final document is a May 31, 1994 letter to the Employer from Teamsters Local 386 outlining the terms of a tentative proposal.

The Statute and Regulations

Section 1155.2(b) of the Act provides that a petition for extension of certification may be filed no earlier than the 90th day nor later than the 60th day preceding expiration of the 12-month period following the initial certification. If the Board finds that the employer has not bargained in good faith, it may extend the certification for up to one additional year commencing immediately upon the expiration of the initial 12-month certification period. (Lab. Code § 1155.2(b).)

Board regulations provide that a labor organization seeking an extension of certification under Labor Code section 1155.2(b) must submit a petition, under oath, containing the date of certification, the length of time for which extension is requested, a description of the progress of negotiations between the employer and the union, and any supporting documentation. Within 10 days, the employer may file a response to the petition, under oath, stating whether it objects to the extension. If the employer disagrees with the union's description of the progress of the negotiations, it shall submit its own description. The

regulations further provide that the Board may grant the extension for a specified time, deny the petition, or notice a hearing. (Cal. Code Regs., tit. 8, § 20382.)

Analysis

In numerous cases, the National Labor Relations Board (NLRB) has extended certification of a union after finding that the employer has refused to bargain in good faith. (See, e.g., *N.L.R.B. v. All Brand Printing Corp.* (2d Cir. 1979) 594 F.2d 926 [100 LRRM 3142]; *Franks Bros. Co. v. National Labor Relations Board* (1944) 321 U.S. 702 [14 LRRM 591].) The ALRB, as well, has extended union certifications after determining in unfair labor practice proceedings that the employer refused to bargain in good faith. Thus, in *Adamek & Dessert, Inc. v. Agricultural Labor Relations Bd.* (1986) 178 Cal.App.3d 970 [224 Cal.Rptr. 366] the Board extended the union's certification for one year after determining that the employer had failed to bargain in good faith. The court of appeal upheld the Board's extension of certification, after noting that the Board has considerable discretion in determining appropriate remedies under Labor Code section 1160.3 once it has concluded that an unfair labor practice has occurred. (*Id.*, 178 Cal.App.3d at 983.)

An important distinction must be made, however, between an extension of certification granted pursuant to the Board's remedial powers under Labor Code section 1160.3 and the Board's authority to extend certification pursuant to a petition filed under section 1155.2(b). Section 1155.2(b) allows the filing of

such a petition only within a very narrow window period, no earlier than the 90th day nor later than the 60th day before expiration of the initial 12-month certification. In the instant case, Local 517 was initially certified on May 25, 1993. Thus, the window period was between February 24, 1994 and March 24, 1994. Since the petition herein was filed on July 25, 1994, it was not timely filed under the statute.

In its response to the Employer's opposition to the petition, Petitioner admits that the petition was filed outside the window period provided in section 1155.2(b), but asserts that the Board may issue an extension of certification after the window period if the parties are actively engaged in collective bargaining during the window period and beyond the 12-month initial certification period. Petitioner also states that it had no need to file its petition during the window period, because the parties had reached a tentative "settlement" on April 21, 1994. Petitioner has cited no authority for either of these contentions, and we have found no authority for granting a petition under section 1155.2(b) when it is filed outside the window period specified in the statute.

The petition filed herein also fails to comply with the regulatory requirement that a petition for extension of certification must be filed under oath. (Cal. Code Regs., tit. 8, §20382.) The instant petition is not in the form of a declaration or other sworn statement, but consists merely of unsworn allegations submitted by a Teamsters representative.

The Third District Court of Appeal considered a similar situation in *Yamada Brothers v. Agricultural Labor Relations Bd.* (1979) 99 Cal.App.3d 112 [159 Cal.Rptr. 905]. In *Yamada*, the union had filed an unsworn petition consisting of hearsay allegations that the employer had failed to bargain in good faith, and requested that the Board extend the union's certification pursuant to Labor Code section 1155.2(b). The employer filed in response a sworn statement challenging the sufficiency of the union's petition as a statement made "under oath," as required by the Board's regulations. The Board, without making any finding that the employer had failed to bargain in good faith, issued an order extending the union's certification. The court of appeal held that the Board had acted in excess of its jurisdiction in extending the certification without following the mandatory statutory language requiring that the Board "shall determine whether an employer has bargained in good faith with the currently certified labor organization...." (*Yamada Brothers v. Agricultural Labor Relations Bd.*, *supra*, 99 Cal.App.3d at 123.)

Because the petition filed herein consists merely of unsworn, hearsay allegations, there are no "facts" before the Board from which it could make any finding that the Employer has failed to bargain in good faith. Since the Board has no evidence before it from which to make such a finding, it would be precluded under the *Yamada* court decision from extending the

certification herein, even if the petition had been timely filed.³

Conclusion

The petition for extension of certification filed herein is denied⁴ on grounds that it was not filed within the window period specified in Labor Code section 1155.2(b), and further that it failed to comply with the regulatory requirement

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³Member Prick agrees that the petition roust be denied because it is not accompanied by a sworn statement as required by the Board's regulations. However, she would not rely on *Yamada* for this proposition because, in her view, the court's holding in that case did not rely on the unsworn nature of the petition involved therein.

⁴Denial of the petition herein should not be viewed as a commentary on the status of negotiations between the parties. If the pending election results do not ultimately show a decertification of the union, we encourage both parties to continue meeting in good faith with the goal of reaching a bargaining agreement.

that a petition for extension of certification shall be submitted under oath. (Cal. Code Regs., tit. 8, S20382(b).)⁵

DATED: September 29, 1994

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

⁵We do not address the Employer's contention that the petition contains an insufficient description of the progress of negotiations, since the hearsay contents of the petition cannot, in any case, support a finding of failure to bargain in good faith. We also do not address the Employer's argument that the petition was improperly filed by a labor organization other than the organization originally certified by the Board, since we are dismissing the petition on other grounds. We note, however, that Labor Code section 1155.2(b) permits the filing of such a petition "by any person."

CASE SUMMARY

P-H RANCH, INC, et al.
(Teamsters Local 517)

20 ALRB No. 18
Case No. 93-RC-2-VI

Background

On May 25, 1993, the International Brotherhood of Teamsters, Local 517, Creamery Employees & Drivers (Local 517) was certified by the Agricultural Labor Relations Board (ALRB or Board) as the exclusive representative of all the agricultural employees of P-H Ranch, Inc., R-V Dairy and Veldhuis Dairy (P-H or Employer) in the State of California. On July 28, 1994, a Petition for Extension of Certification was filed with the Board by International Brotherhood of Teamsters, Local 517, Local 386 and Joint Council of Teamsters No. 38 (Petitioner), pursuant to Labor Code section 1155.2(b). The Employer filed a motion opposing the petition, and Petitioner filed a response.

The petition, which was unsworn, alleged, inter alia, that the Employer had refused to bargain in good faith by refusing to provide information requested by Petitioner in December 1993 and February 1994. Petitioner asked the Board to grant a 12-month extension of the certification.

The Employer opposed the petition, arguing that it was outside the statutory time limits within which a union may file for an extension of certification. The Employer also alleged that the petition did not contain an adequate description of the progress of negotiations, as required by Labor Code section 1155.2(b).

Board Decision

The Board found that an important distinction must be made between an extension of certification pursuant to the Board's remedial authority under Labor Code section 1160.3, and the Board's authority to extend certification pursuant to a party's petition filed under section 1155.2(b). Section 1155.2(b) allows the filing of such a petition only within a narrow window period, no earlier than the 90th nor later than the 60th day before expiration of the initial 12-month certification. Since Local 517 had been certified on May 25, 1993, the Board found that the applicable window period would have been between February 24 and March 24, 1994. Because the petition herein was filed on July 25, 1994, the Board denied the petition as untimely filed. The Board denied the petition on the further ground that it failed to comply with the regulatory requirement that a petition for extension of certification shall be submitted under oath. (Cal. Code Regs., tit. 8, §20382.)

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

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