

Watsonville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MONTEREY MUSHROOMS , INC . ,	)	
	)	
Employer,	)	Case No. 94-RC-3-SAL
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	20 ALRB No. 5
AMERICA, AFL-CIO,	)	May 3, 1994
	)	
Petitioner,	)	
	)	
and	)	
	)	
COMITE DE CAMPESINOS UNIDOS,	)	
	)	
Certified Collective	)	
Bargaining Representative.	)	

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DECISION ON REVIEW

On March 4, 1991, the Agricultural Labor Relations Board (Board) certified Comite de Campesinos Unidos (CCU) as the exclusive collective bargaining representative of the employees in the unit at issue in this case. CCU and Monterey Mushrooms, Inc. (Employer) entered into a five-year collective bargaining agreement, expiring on March 29, 1997. On March 29, 1994, the United Farm Workers of America, AFL-CIO (UFW) filed its petition for an election herein.

The Acting Regional Director dismissed the UFW's petition on April 1, 1994, as untimely, because of the continuing collective bargaining agreement covering the unit. The Acting Regional Director determined that the petition was barred by

Labor Code section 1156.7 (b)<sup>1</sup> and did not meet the conditions set forth in section 1156.7(d), governing the filing of petitions by labor organizations where another labor organization has a contract in effect.

The UFW requested review of the Acting Regional Director's dismissal on April 4.<sup>2</sup> The UFW argues that section 1156.7 of the ALRA must be construed consistently with contract bar rules set forth in decisions of the National Labor Relations Board (NLRB) . The general NLRB rule is that when the contract duration is three years or longer, a 30-day "window" period begins 90 days prior to the last day of the third year, followed by a 60-day "insulated" period in which no petitions may be filed. The UFW claims that "in certain circumstances the NLRB moves the open period to occur sooner than the 90 days prior to the end of the third year." By extension, the UFW argues that the ALRA's statutory contract bar rules permit an election petition to be filed in the third year of a contract irrespective of its duration.

The Employer argues that the petition should be dismissed as untimely under section 1156.7(d), dealing with rival union petitions. Section 1156.7(d) provides that the petitioning rival union must show that an existing contract expires within 12 months of the filing of the petition. CCU contends that the

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<sup>1</sup> Sections of the Agricultural Labor Relations Act (ALRA), Labor Code sections 1140 et seq., will be referred to herein as section, followed by the appropriate number.

<sup>2</sup> All dates herein are in 1994, unless otherwise stated.

UFW's petition can only be timely if filed after the third year of the existing contract.

### Analysis

Section 1156.7(b) provides that a collective bargaining agreement executed by an employer and a union that has been certified by the Board shall be a bar to a petition for an election for the term of the agreement, but that in any event, the bar shall not exceed three years. Section 1156.7(b) conditions its bar effect upon the contract being in writing and covering substantial terms of employment.

Section 1156.7(c) deals with petitions filed by employees to decertify the union that has been certified as their representative while the certified union and the employer have a contract in effect between them.

Section 1156.7(d) governs petitions filed by unions where another union is certified by the Board and where the incumbent union has a contract with the employer that has not expired. This is the situation before us in this case. The petitioning union must allege that section 1156.7(d)(3) is satisfied. Section 1156.7(d)(3) provides that the certified union's collective bargaining agreement "would otherwise bar the holding of an election and that this agreement will expire within the next twelve months."

We believe that section 1156.7(d), which provides an open period during the last year of an existing contract during which petitions may be filed, must be read in conjunction with

section 1156.7(b), which provides that a contract may bar an election for a maximum period of three years. Taken together, an existing contract will bar an election for up to three years, with the bar period expiring at the start of the last year of the contract. If the contract is four years or longer in duration, the bar period ends, and the open period begins, at the start of the fourth year, and continues until the end of the contract. Under no circumstances, however, may this contract bar exceed three years. Hence, although a contract may exceed four years duration, a petition may be filed after the three year bar period; that is, at the beginning of the fourth year of the contract.

While the Board is bound by section 1148 to follow applicable precedents of the National Labor Relations Act (NLRA), the Board is first and foremost bound by the language of the ALRA. Where the ALRA differs from NLRA precedent, the former and not the latter is controlling. For this reason, we decline to incorporate wholesale the NLRB's contract bar rules into our reading of section 1156.7.<sup>3</sup>

This construction is consistent with Cadiz v. ALRB (1979) 92 Cal.App.3d 365 [155 Cal.Rptr. 213]. The court in Cadiz

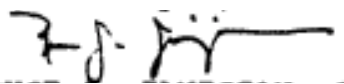
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<sup>3</sup> The critical distinction between the NLRB contract bar and the language of section 1156.7 is the NLRB's express rule that contracts of a duration in excess of three years are treated for contract bar purposes as if they were of three years duration. However, section 1156.7 contains no language that can be construed as placing such a restriction on contracts in excess of three years. The only qualification expressed in section 1156.7(b) is that the barring effect of a contract upon election petitions cannot exceed three years.

specifically rejected the Board's effort to import the NLRB case law concept of an open period of thirty days before the end of a collective bargaining agreement, holding that only the statutory one year period before the expiration of the contract stated in section 1156.7(c) could define when decertification petitions could be filed during the term of a collective bargaining agreement.

The contract in this case was executed on March 27, 1992. By operation of section 1156.7(d) alone, its expiration date, March 29, 1997, would result in an open period for filing of petitions beginning March 30, 1996. However, because of the maximum three year bar imposed by section 1156.7(b), the period for filing petitions would commence on March 28, 1995. We, thus, give effect to both the language of section 1156.7(d), which requires the rival union to allege that the contract in force between the certified union and the employer will expire within one year, and the language of section 1156.7(b), which provides that in no event shall a petition be barred for more than three years. We therefore sustain the Acting Regional Director's dismissal of the petition in this case.

DATED: May 3, 1994



BRUCE J. JANIGIAN, Chairman

BRUCE J. JANIGIAN, CHAIRMAN



IVOWE RAMOS RICHARDSON, Member



LINDA A. FRICK, Member

## CASE SUMMARY

MONTEREY MUSHROOMS, INC.  
(United Farm Workers of  
America, APL-CIO)

Case No. 94-RC-3-SAL  
20 ALRB No. 5

### Background

On March 27, 1992, the Employer and the certified union, Comite de Campesinos Unidos (CCU) entered into a five year collective bargaining agreement expiring March 29, 1997. On March 29, 1994, the United Farm Workers (UFW) filed a rival union petition. On April 1, 1994, the Acting Regional Director dismissed the petition as untimely, finding that the Act imposes a contract bar until the final year before the contract expires, and in any event not to exceed a period of three years.

The UFW appealed, contending that where a collective bargaining agreement is in effect, an open period for the filing of petitions must be provided before the end of the bar period, consistent with contract bar precedent of the National Labor Relations Board.

### Board Decision

The Board sustained the Acting Regional Director's dismissal of the petition. Section 1156.7(b) prohibits any contract bar period from extending beyond three years. If a collective bargaining agreement is currently in effect, section 1156.7(d)(3) requires rival unions to allege in their petitions that the contract will expire within one year. The Board, reading 1156.7(b) and (d) together, found that contracts of any length less than four years bar a petition for their duration less one year. Contracts of four years or longer bar a petition for a period of three years. Under *Cadiz v. ALRB* (1979) 92 Cal.App.3d 365 [155 Cal.Rptr. 213], the Board is precluded from relying on NLRB precedent where the language of section 1156.7 differs from the NLRB's case law-based contract bar rules.

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