Watsonville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case No. 96-NO-10-SAL
DUTRA FARMS, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	22 ALRB No. 6 (June 21, 1996)

DECISION OF THE BOARD ON REQUEST FOR REVIEW

Chapter 5 of the Agricultural Labor Relations Act (ALRA or Act), California Labor Code section 1140 et seq.,[1] invests the Agricultural Labor Relations Board (ALRB or Board) with original and continuing jurisdiction over all representation matters, including the holding of secret-ballot elections in order that agricultural employees may determine whether or not they wish to be represented by a labor organization for purposes of collective bargaining with their employer concerning their hours, wages, and other terms and conditions of employment.

Pursuant to the authority of section 1142 (b), the Board has delegated to its regional offices the power to implement representation procedures in accordance with Board policy, including the Board's interpretation of pertinent statutory provisions as reflected in the Board's decisions and regulations.

[1]Unless otherwise indicated herein, all section references are to the California Labor Code.

Section 1142(b) also provides that the Board may, upon the request of any interested party, review any action taken in regard to such delegated authority.

On June 7, 1996, Dutra Farms (Employer) filed a request for review of the manner in which the Salinas Regional Office resolved an issue on which the particular enabling regulation is silent. The question is whether the Regional Director (RD) acted appropriately in ultimately releasing to a labor organization the names and addresses of employees submitted by an employer pursuant to the filing of a Notice of Intent to Organize (NO) in which the initial showing of interest was inadequate. Thereafter, the United Farm Workers of America, AFL-CIO (UFW or Union) filed a response in which it contends that the Employer's request for review should be dismissed as the issue now is moot.

As the underlying question concerns the interpretation of a particular regulation of the Board which has broad application in all election cases, the Board believes it will be useful for all interested parties to have the benefit of a full discussion of the matter.

Employees' Names And Address Lists

Section 1157.3 of the Act requires that "[e]mployers shall maintain accurate and current payroll lists containing the names and addresses of all their employees, and shall make such lists available to the board upon request." That section is a codification by the California Legislature of a decision of the National Labor Relations Board (NLRB or national board) which ten

years before held that parties to a pending election are entitled to receive a list of the names and addresses of all employees eligible to vote. (Excelsior Underwear (Excelsior) (1966) 156 NLRB 1236 [61 LRRM 1217].) In light of the statutory requirement that elections be held within seven days of the filing of petitions for elections, the ALRB has adopted a regulation which provides that "Excelsior" lists must be provided by an employer within 48 hours of the filing of a representation petition and must contain, inter alia, a complete roster of the names and home addresses of all employees who worked at any time during the most recent payroll period preceding the filing of the petition. (Cal. Code Regs., tit. 8, section 20310 (a) (2).) The accuracy of the names is vital for Board purposes as the list will enable the RD to determine whether the petition has the support of at least a majority of the current employees, as required by section 1156. 3 (a), and will become the eligibility roster for the election. Where the RD determines that the showing of interest requirement has been met, he or she will release the list to the petitioning union for the purpose of home visitations to potential voters prior to actual balloting. For that reason, the Board has held that "addresses" means the street address where the employee

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is living while working for the employer. (Laflin & Laflin (1978) 4 ALRB NO. 28.)

The Board, with approval of the California Supreme Court,[2] subsequently developed a procedure whereby potential bargaining representatives may obtain employees' names and addresses prior to the filing of a petition for certification, if filed within 30 days of the filing of a Notice of Intent to Take Access (NA) to the worksite.[3] Thus, Title 8, California Code of Regulations, section 20910 provides that any labor organization which has previously filed a bona fide NA to a specified unit of agricultural employees may, within 30 days of such filing, qualify to receive a "prepetition" list of the names and addresses of the employees in such unit upon the submission of the NO. The NO must be served and filed in the same manner as the NA, but must be accompanied by authorization cards signed by at least 10 percent of the current employees. After notification by the RD that the NO has been accepted for filing, the employer is allowed five days in which to supply the same type of names and address information as is required following the filing of petitions for elections.

The provisions governing the filing of the NO which are

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[2]Carian v. Agricultural Labor Relations Board (1984) 36 Cal.3d 654 [205 Cal.Rptr. 657].

[3]The Board's "Access Rule" (Cal.Code Regs., tit.8, section 20900 et seq.) permits representatives of labor organizations to take preelection organizational access to worksites under certain time and manner restrictions. The right to take such access requires service on the employer and the filing with the appropriate Regional Office of the ALRB of a Notice of Intent to Take Access as specified in Title 8, California Code of Regulations, section 20900 (e)(1)(b).

pertinent to this Decision are set out in Title 8, California Code of Regulations, section 20910, as follows:

> 20910(b): A notice of Intention to organize shall be deemed filed upon its receipt [in the Regional Office with proof of service on the employer]...;
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> 20910(c): Within five days from the date of filing...the employer shall submit...an employee list...;
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> 20910(d): Upon receipt of the list, the [RD] shall determine if the ten percent showing of interest requirement has been satisfied, and, if so, shall make available a copy of the employee list to the filing labor organization. The same list shall be made available to any other labor organization which within 30 days of the original filing date files a notice of intention to organize the [same employees].
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> 20910(e): No employer shall be required to provide more than one employee list pursuant to this section within any 30 day period.

Facts In This Case

On or about May 23, 1996, within 30 days of its having filed an NA, the UFW filed an NO which the RD compared with the employee list timely submitted by the Employer herein and determined that, at the time the NO was filed, the Union had not met the requisite 10 percent showing of interest in order to qualify for receipt of the names and addresses.[4] Thereafter, over the Employer's objection, the RD permitted the Union additional time to attempt to perfect its initial showing of interest and the Union ultimately did demonstrate the support of

[4]The UFW believes that the shortfall was the result of its inability to precisely ascertain the size of the employer's payroll, or because some authorizations in support of the NO were those of employees who did not work during the pertinent payroll period, some of whom may have been on leaves of absence or temporary layoff status.

at least 10 percent of the unit employees and received a copy of the list.

On June 7, the Employer filed with the Board the instant appeal of the RD's actions which the Board construes as a Request for Review within the meaning of section 1142(b) and the Union filed a response. The question is whether a union whose showing of interest is inadequate at the time the NO is filed has some period of time in which to perfect the showing of interest.

The Employer contends that there is no ambiguity in the present regulations and therefore the plain language of the relevant provision requires that a valid NO must be supported by a 10 percent showing of interest at the time of filing and there is nothing in the regulations which could be read to allow for a post-filing extension of time in which to perfect the requisite showing. In that case, it is proposed that the list submitted by the employer be immediately returned to the employer. The Union, on the other hand, believes the RD's have adopted a practical approach to deficient NO's, by merely holding the employee list for 30 days, during which time the Union may seek to satisfy the showing of interest requirement. Such a procedure, the Union contends, is not prejudicial to employers.

The Board has considered the relevant regulations in light of the positions of the parties as expressed in the briefs before the Board, and the RD's action in this matter, and concludes that the most reasonable interpretation of the pertinent regulations is as follows: A properly filed NO remains open for

30 days from the date on which a proper NA has been filed. A deficient initial showing of interest may be cured at any time during the pendency of the NA. If the requisite showing is not perfected prior to expiration of the NA, the original list of employee names and addresses submitted by the employer will be returned to the employer and the NO file will be closed. In no case shall the time for perfecting the requisite showing of interest be extended beyond the 30 day period from the filing of the NA on which the NO is based. However, a confidential copy of the list may be retained by the RD, but only as a record in the event the matter later becomes the subject of Board review.

Accordingly, the Board finds that the RD's acceptance of additional authorization cards following the actual filing of the NO was consistent with the interpretation of relevant regulation (Cal.Code Regs., tit. 8, section 20910) which we have set forth above. Therefore, we affirm the decision of the RD that the Union herein complied with the necessary prerequisites in order to qualify for receipt of the list of employee names and addresses.

DATED: June 21, 1996

MICHAEL J. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

DUTRA FARMS
(UFW)

22 ALRB No. 6
Case No. 96-NO-10-SAL

Background

The Board's regulations provide that any labor organization which seeks to take organizational access to an employer's premises prior to an election under the Board's access rule must first serve on the employer and file with the Board a Notice of Intent to Take Access (NA). Thereafter, at anytime during the 30 day pendency of the NA, the same labor organization may qualify to receive employees' names and home addresses by filing a Notice of Intent to Organize (NO) supported by at least 10 percent of the employees in the bargaining unit. This matter came before the Board for a determination as to whether failure to submit the requisite 10 percent showing of employee interest at the time the NO is filed should result in the immediate dismissal of the NO.

Board Decision

The Board concluded that since an NO remains open for 30 days from the date on which the NA was filed, it is reasonable to permit a deficient initial showing of interest to be cured at any time during the pendency of the NA. Where, however, the showing is not perfected prior to expiration of the NA, no extensions may be granted and the NO file will be closed.

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