Delano, California

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of M. CARATAN, INC., Employer and JOSE L. CADIZ, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Certified Bargaining Representative.	Case No. 78-RD-2-D 4 ALRB No. 68

DECISION AND ORDER DISMISSING PETITION

This matter comes before the Board on a petition for decertification filed under Labor Code Section 1156.7 and 8 Cal. Admin. Code Section 20390 and an order impounding ballots issued under 8 Cal. Admin. Code Section 20360(c).

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO, (UFW) on September 2, 1975, a representation election was held on September 6, 1975. The tally of ballots showed that the UFW had received a majority of the votes cast. Following resolution of objections to the election, the UFW was certified on March 22, 1977, as the exclusive collective bargaining representative of all agricultural employees of the Employer in Kern and Tulare Counties, including agricultural employees in the Employer's packing sheds.

After more than a year of bargaining, the UFW and the Employer signed a contract on May 11, 1978. The term of the agreement was one year, from May 11, 1978, to May 10, 1979. Under the terms of the agreement, the contract would automatically renew itself on the expiration date unless either party gave written, notice to the other party 60 days prior to the expiration date requesting negotiations for a new agreement and 30 days prior notice to the State Conciliation Service.

On August 25, 1978, a petition to decertify the UFW as bargaining representative was filed by Jose L. Cadiz, an employee in the bargaining unit. After investigation and over the objection of the UFW that the contract barred such *a* petition at that time, the Regional Director issued a Notice and Direction of Election for September 1, 1978. A motion to dismiss the decertification petition or in the alternative to stay the election pending resolution of the legal question of whether the contract constituted a bar to an election was filed with the Board by the UFW on August 31, 1978. Following review of the motion, the Board refused to stay the election, but issued an order impounding the ballots under 8 Cal. Admin. Code Section 20360(c) in order to maintain the status quo pending a decision on the contract bar issue. A subsequent motion by the Employer

to reconsider the order impounding ballots was denied by the Board on September 7, 1978.[1/]

We are asked to decide whether a collective bargaining agreement for a fixed terra of one year bars the filing of a petition for an election for all or part of its term. The answer to this question requires the balancing of the sometimes conflicting interests of society in peace in the agricultural fields through stable collective bargaining agreements and of employees in the freedom to change or reject their collective bargaining representative. See Section 1 of the Agricultural Labor Relations Act of 1975 (Act) and Labor Code Section 1140.2. In striking this balance, the statutory scheme incorporates rules developed by the NLRB in the regulation of labor relations in an industrial setting. These rules are known as bars to elections. Collectively, they stand for the proposition that employees are entitled to change or reject their representative, if they desire, but only at reasonable intervals. Thus, an election will not be directed in a bargaining unit where a valid election has been held in the immediately preceding year, the "election bar". Labor

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[1/]The Employer argues that the Board has jurisdiction to review a Regional Director's decision directing an election only in post-election objection proceedings under 8 Cal. Admin. Code Section 20365(c) and that such proceedings can only begin once a tally of ballots is completed. We reject this contention. Whenever it appears necessary to effectuate the purposes of the Act, the Board may order impoundment of the ballots in an election. 8 Cal. Admin. Code Section 20360(c). As discussed, infra, this case presents an important question of first impression which can be effectively isolated from the particular facts of the case. The order of impoundment permits the Board to rule on the legal question without prejudicing the rights of any party.

Code Section 1156.5. Nor will an election be directed during the first year of a certification or during an extended certification, the "certification bar". Labor Code Section 1156.6. Finally, a written collective bargaining agreement, executed by an employer and the certified bargaining representative and incorporating the substantive terms and conditions of-employment, will bar *a* petition for an election for the term of the agreement for a period not to exceed three years, the "contract bar". Labor Code Section 1156.7(b). Employees or rival unions may file petitions seeking decertification or replacement of the bargaining representative in the 12 months preceding expiration of a contract which would otherwise bar the holding of an election. Labor Code Section 1156.7(c) and (d).

While the various bars to an election serve different purposes, the central theme of such rules is that employees should be bound by their choice of a bargaining agent for a period of time sufficient to allow the bargaining relationship to develop and mature in order to attain the stability which is also an objective of the statute. See Kaplan's Fruit & Produce Co., 3 ALRB No. 23 (1977) (certification bar). The United States Supreme Court, in a case involving the certification bar, concluded that binding employees to their chosen representative for a fixed time promotes a sense of responsibility in the electorate necessary for healthy labor relations. Ray Brooks v. NLRB, 349 U. S. 98, 35 LRRM 2153 (1954). Furthermore, as the Court recognized, a union should be given ample time to carry out its mandate on behalf of the employees it represents and should not

be under pressure to produce hot-house results. The union's duty does not cease with the signing of a collective bargaining agreement. Particularly where the agreement is the first contract between a union and an employer, the early months of operation under its terms involve diligent administration of the agreement and adjustments to make the agreement conform in practice to the expectations of the employees as well as those of the employer. A major benefit to employers who sign collective bargaining agreements is the stability that results from having the conditions of employment fixed for a definite period of time.

Early in its history the NLRB recognized the necessity of balancing employee freedom of choice against stability in labor relations. In National Sugar Refining Co., 10 NLRB 1410, 3 LRRM 544 (1939), the NLRB dismissed a petition filed during the term of a one-year contract stating that a new petition would be accepted only at a reasonable time before the expiration of the existing contract. In subsequent years, the NLRB sought to define what constituted a reasonable time prior to expiration of a contract for the filing of a petition. In 1958, in an attempt to bring some certainty and simplicity to its contract bar rules, the NLRB issued two decisions. In Pacific Coast Ass'n of Pulp & Paper Mfrs., 121 NLRB 990, 42 LRRM 1477 (1953), the NLRB held that a contract with a fixed duration would usually constitute a bar for as much of its term as did not exceed two years. Any contract with more than a two-year term would be treated as a contract with a two-year term. In the companion case of DeLuxe Metal Furniture Co., 121 NLRB 995, 42 LRRM 1470 (1958),

the NLRB created, an "open period" prior to the expiration of a contract during which petitions could be filed. This was a 60-day period from 90 to 150 days prior to the expiration of the contract. The last 90 days of a contract were designated as an "insulated period" during which collective bargaining for a new contract could proceed without the disruption of petitions being filed. However the NLRB continued to accept decertification or other petitions in seasonal industries even if filed more than 150 days before the expiration of the contract. DeLuxe Metal Furniture, supra , citing, South Porto Rico Sugar Co. , 100 NLRB 1309, 30 LRRm 1454 (1952) . This exception was necessitated by the possibility that the open period might fall during an off-peak season, but did not tend to disrupt contract stability as, under NLRB procedures, the election would not be conducted until the first peak following the expiration of the contract. Cf . Cooperative Azucarera Los Canos, 122 NLRB 817, 43 LRRM 1193 (1958).

Four years later, in 1962, the NLRB found further revision of these rules necessary. The NLRB extended the period during which a fixed-duration contract would act as a bar to three years. General Cable Corp., 139 NLRB 1123, 51 LRRM 1444 (1962). In making the extension, the NLRB found that the limitation on employees' free choice was relatively slight when weighed against the following factors: instability in the economy, developments in the labor movement and labor legislation and court decisions, and most significantly, statistics which showed

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that the majority of labor contracts were for terms longer than two years. The NLRB stated:

> Compositely, all these factors serve to stress the efficacy of collective agreements, the need to respect their provisions, the desirability of discouraging raids among unions, the wisdom of granting relief to employees to assist them in eradicating major causes of discontent arising within their own institutions and from their relations with their employers, and the imperative for long-range planning responsive to the public interest and free from any unnecessary threat of disruption.
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> The accommodation we have made in balancing the interest of employee freedom to choose representatives, and the interest of stability of industrial relations, is in the perspective of these conditions and events. All point to a climate of greater adherence to already chosen bargaining representatives, reliance on the agreed-upon law of existing contracts and recourse to remedies proffered within the framework of established relationships for the redress of assorted wrongs.

Also in 1962, the NLRB reduced the period during which a petition could be timely filed to a 30-day period from 50 to 90 days prior to the expiration of the contract. Leonard Wholesale Meats, Inc., 136 NLRB 1000, 41 LRRM 1901 (1962). This coincided with the NLRB's delegation of much of its decision-making power in representation cases to its Regional Directors, a factor which substantially shortened the time between the filing of a petition and the conduct of an election. We note that in elections requiring a Regional Director decision, it now takes the NLRB a median time of about 75 days to process a petition from filing to election. Thus, in effect, the NLRB does not conduct decertification elections during the life of an existing contract with a term of three years or less. This is especially true for seasonal industries in which the NLRB conducts the election during the peak season following the contract expiration date.

In summary, NLRB rules provide that every contract of three years duration or less is a bar to an election for most of its term, and every contract has an open period of 30 days when petitions will be considered timely. The NLRB extended the time when considerations of stability warranted the denial of an election because of a contract bar from one to two, and finally to three years, contingent upon the term of the contract agreed upon by the parties. The California legislature expressly adopted this NLRB precedent in providing that a collective bargaining agreement shall be a bar to petition for an election for as much of its term as does not exceed three years. Labor Code Section 1156.7(b). Recognizing that in agriculture a complete cycle takes one year, the Act departs from the more limited 30-day "open period" during which timely petitions may be filed under the NLRB and provides for a one-year open period to permit an election at a time when the number of agricultural employees is not less than 50 percent of the employer's peak agricultural employment for the current calendar year. The Act does not provide for a 60-day "insulation period" comparable to that provided by the NLRB.

The Employer argues that the statutory language is clear and requires that every contract, regardless of its length, be open to the filing of a petition within the 12 months preceding the expiration of the contract, so long as the peak of season requirement is met. We do net agree. The statutory section (1156.7(c)) cited by the employer in support: of its position states:

> ....a petition [for decertification] shall not be deemed timely unless it is filed during the year preceding the expiration of a collective bargaining agreement which would otherwise bar the holding of an election....

A reading of the statute as a whole, together with the statement of purpose and its commitment to applicable NLRB precedent in Section 1148,indicates that the legislature intended this language regarding the timely filing of a petition to refer to three-year contracts. Under the Employer's reading, a one-year contract could never be a "collective bargaining agreement which would otherwise bar the holding of an election." Such a result would create a special class of collective bargaining agreements limited to one-year in duration, which, contrary to NLRB precedent and the intent of the legislature, would be open to attack as soon as they are signed without any intervening period in which the stability of labor relations is guaranteed. This would discourage parties from entering one-year contracts as a means of resolving the years of mistrust which have built up in agricultural labor relations between the parties and of adjusting contract terms to actual practice. Section 1148 and the entire statute establish that the legislature was aware of the body of NLRB precedents, and this section contains no suggestion that the incorporation of the three-year limitation on contract bars was intended to make the rest of such precedents inapplicable. In striving to effectuate the intent of the legislature, we are raquired to try to achieve an equitable balance between the stability of labor relations in agriculture and the employees' right to exercise freedom of choice. In doing so, we are

mindful of the clear statements about statutory construction made by the California courts. A recent expression of general principles consistent with numerous other cases is set forth in Steilberg v. Lackner, 69 CA 3d 730, 735 (1977):

> In construing a statute, the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law (Cossack v. City of Los Angeles (1974) 11 Cal. 3d 726, 732 [114 Cal. Rptr. 460, 523 P. 2d 260]; Select Base Materials v. Board of Equal. (1959) 51 Cal. 2d 640 645 [335 P.2d 672]). In determining the legislative intent, the court turns first to the words used in the statute (People v. Knowles (1950) 35 Cal. 2d 175, 182 [217 P.2d 1]). The words, however, must be read in context, keeping in mind the nature and obvious purpose of the statute (Johnstone v. Richardson (1951) 103 Cal. App.2d 41, 46 [229 P.2d ()], and the statutory language applied must be given such interpretation as will promote rather than defeat the objective and policy of the law (City of L.A. v. Pac. Tel. & Tel. Co. (1958) 164 Cal. App. 2d 253, 256 [330 P.2d 883]).Statutes or statutory sections relating to the same subject must be construed together and harmonized if possible (Mannheim v. Superior Court (1970) 3 Cal. 3d 678, 687 [91 Cal. Rptr. 585, 478 P.2d 17]; County of Placer v. Aetna Cas. etc. Co. (1958) 50 Cal. 2d 182, 188-189 [323 P.2d 735]). Finally, in ascertaining legislative intent, the courts should consider not only the words used, but should also take into account other matters, such as the object in view, the evils to be remedied, the history of the times, legislation upon the same subject, public policy and contempraneous construction (Alford v. Pierno (1972) 27 Cal. App. 3d 682,688 [104 Cal. Rptr. 110]; Estate of Jacobs (1943) 61 Cal. App. 2d 152, 155 [142 P.2d 4542).

After reviewing these principles, the statute, and the briefs filed by the parties, we conclude that a one-year contract can bar a petition filed during the first eleven months of its term. As our statute mandates an election within seven days of the filing of a proper petition compared to the 75 days it currently takes under NLRS prcceedures, we consider the last 30 days of the contract to be an appropriate open period for filing decertification or rival union petitions. A petition for

decertification may be filed at any time during the twelve months following the 30th day prior to the expiration date so long as the peak of season and other filing requirements of Labor Code Section 1156.7 are satisfied. A renewal of the existing contract or the execution of a new contract prior to the filing of such a petition will not act as a bar to the petition. This rule will assure that the parties to collective bargaining agreements in the early period of bargaining under this Act will be free to develop satisfactory bargaining relationships and mutual trust for at least 11 months without the interruption or disruption which an organization campaign might cause. Conversely, the employees will not be deprived of their freedom to change or reject their bargaining representative at reasonable intervals.

Accordingly, pursuant to Labor Code Section 1156.7, it is hereby ordered that the petition for decertification filed in this matter be, and it hereby is, dismissed as untimely, without prejudice to the filing of a new petition at a time consistent with the rule set forth in this decision, and we hereby declare the election conducted in this matter on September 1, 1978 to be null and void.

DATED: September 29, 1978

GERALD A. BROWN, Chairman

RONALD L. RUTZ, Member

HERBERT A. PERRY, Member

MEMBERS HUTCHINSON AND McCARTHY, Dissenting:

The majority takes the position that, in order to promote stability in collective bargaining relationships, the farm workers at M. Caratan, Inc. are to be denied, at this time, the freedom to decide for themselves whether or not they wish to retain their present bargaining representative. We disagree because we conclude that the ALRA clearly permits a decertification petition to be filed under the circumstances presented herein.

Labor Code Section 1156.7 (c) is the provision applicable to the petition in this case. That section provides in pertinent part:

> ... such a petition shall not be deemed timely unless it is filed during the year preceding the expiration of a collective bargaining agreement which would otherwise bar the holding of an election ... .

The majority opinion focuses on the word "otherwise" in concluding that the Legislature intended the contract bar

to apply only to three-year contracts. The majority reasons that if a decertification petition were timely during the entire term of a one-year contract, such contract could not be an agreement which "would otherwise bar the holding of an election." A reading of the statute as a whole, however, quickly reveals the error in this conclusion.

Labor Code Section 1156.7 (a) provides that no contract entered into prior to the effective date of the Act will bar a petition for an election. Similarly, Sections 1156.7 (b) (1) and (2) exclude, as election bars, agreements which are not reduced to writing and signed by all parties thereto and those which do not incorporate the substantive terms and conditions of employment. Thus, for the sake of clarity, it was necessary for the drafters to use the words "otherwise bar" to indicate that the agreements described in paragraphs (a), (b)(1), and (b)(2) are not subject to decertification procedures because they are not agreements which would "otherwise bar" an election.

By referring to the period during which a decertification petition could be filed as "the year preceding the expiration of a collective bargaining agreement," the Legislature was simply using an expression which would permit the "year preceding" requirement to be included in the same sentence with the peak employment requirement. By the plain, literal meaning of the statute, peak employment is the only factor which limits when a petition may be filed during the life of a one-year contract.

If, as the majority claims, the Legislature had

intended to exclude one-year contracts from the provisions of Section 1156.7 (c), it would have been a simple matter to have clearly expressed that intention.

The majority further argues that considering the purposes of the statute as a whole, together with NLRB precedent, the Legislature could not have intended decertification provisions to apply to one-year contracts. We, however, believe that these considerations point to the opposite conclusion.

To properly understand the intent behind Section 1156.7(c), we look to other provisions of the statute which reflect the thinking of the Legislature. The provisions with respect to election procedures, many of which are unique to the ALRA, evidence the Legislature's desire to grant to farm workers the widest possible scope of freedom of choice.

For example, the ALRA permits bargaining only with a certified union. Certification can only be obtained by secret ballot election. The NLRB, on the other hand, permits voluntary recognition. Under the NLRA, the employer, in certain circumstances, can petition for an election. Such is not the case with the ALRA.

The ALRA requires that all election petitions be accompanied by a 50 percent showing of interest [except decertification petitions which require only a 30 percent showing], and be timely filed with respect to peak employment periods. Cur Act also requires that elections be conducted within seven days of the filing of the petition, leaving issues such as voter eligibility, scope of the unit, and objections to

the conduct of the election for resolution in post-election procedures. All of these previsions demonstrate that the Legislature placed a high priority on employees' freedom of choice and that it molded the law to accommodate the particular needs of agricultural employment patterns.

The ALRA and the collective bargaining relationships that exist thereunder are still new. At a comparable period in the development of the NLRA, the National Board took the position that until the relationships between workers and their representatives, and labor organizations and employers, became more firmly established, a greater emphasis should be placed upon employee freedom of choice. Thus, in General Motors Corp., 102 NLR3 1140 (1953), the Board noted that:

> During the period when the techniques and potentialities of collective bargaining were first being slowly developed under the encouragement and protection of Federal legislation, the Board laid greater emphasis upon the right of workers to select their representative frequently than upon prolonged adherence to a bargaining agent, once chosen. Id. At 1142.

Under NLRB rules, every contract, including a one-year agreement, has an open period of 30 days [from the 90th to 60th day prior to expiration of the agreement] during which decertification petitions or rival union petitions can be filed. Because of the seasonal peak requirements such a provision would be unworkable in the agricultural setting. It is, in cur view, he recognition of this fact that led our legislature to provide for a 12—month open period for filing such petitions regardless

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of the term of the contract.[1/]

Under NLRB precedent, the last 60 days prior to expiration of a contract constitute a closed period. The purpose of this rule is to accommodate the need for stability curing the time negotiations are under way for renewal of the contract. By declaring an open period during the last 30 days of a one-year contract the majority will permit filing precisely at the time set aside by the NLRB. The negotiation process will, therefore, be encumbered with the uncertainty and disruption which accompanies any election campaign.[2/]

In those instances where the peak requirement cannot be met during this 30-day period there is a danger that a subsequent filing will occur soon after execution of a new contract. If the new contract has a three-year term, the unstabilizing influence appears obvious. In our opinion the Legislature intended that the question of decertification be decided prior to commencement of new negotiations in order that any cloud over the incumbent union's status might be removed

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[1/]The NLRB has recognized that an exception must be made for seasonal industries. In Cooperativa Azucarera Los Canos, 122 NLRB 817, 43 LRRM 1193 (1958), the NLRB accepted a decertification petition during the life of a one-year contract, but delayed the election because the petition was filed during an off-peak season. At issue in the case before us is a petition filed during peak under a statute which requires that the election be conducted within seven days.

[2/]In Goonerativa Azucarera Los Canos, supra, the NLRB noted that the insulated period immediately preceding and including the expiration date of an existing contract is fully applicable to seasonal industries, and that a petition filed during such period will be dismissed as untimely regardless of the nature of the industry.

before the oftentimes laborious process of bargaining takes place.

The point we wish to emphasize is that an analysis of all of the provisions of the ALRA, together with NLRB history and precedent, demonstrates the Legislature was cognizant of the important, but conflicting, policy considerations and purposefully tailored the legislation to accommodate those considerations within the unique context of California agriculture.

To the extent that further need exists to alter the balance struck by the ALRA between the conflicting interests of employee freedom of choice and stability in bargaining relationships, the necessary changes must come from the Legislature. They should not be imposed by administrative fiat.[3/]

Under all the circumstances presented herein, we conclude that observance of the cardinal rule of statutory construction is required. That principle provides that the function of a judicial body is to:

> . . . ascertain and declare what is in terms or in substance contained [in the statute], not to insert what has been omitted, or to omit what

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[3/]In our view the record in this case *is* inadequate not only for purposes of resolving the issues of this case but, most certainly, inadequate for adoption of a general rule to be applied in all cases. Because of the procedural history of this case we are ignorant of the nature of the campaign and vote tally which would shed light on the actual degree of stability that currently exists. For example, we do not know he percentage of currently employed people who actually voted or the degree of turnover that has occurred among the employees since the time of the initial election. Obviously, questions concerning the degree of employer involvement in the campaign would be relevant to consideration of the issues.

has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. [California Code of Civil Procedure, Section 1858.]

It is not within the province of this Board, even as an expert administrative agency, to contravene the clear language of the statute which we are charged with implementing, especially where, as here, important and conflicting policy considerations have been resolved by the Legislature and where insufficient experience and an inadequate record prevent a full understanding of the complexities involved.

Dated: September 29, 1978

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

M. Caratan, Inc.

78-RD-2-D
4 ALR3 No. 68

BOARD DECISION

Following the filing of a petition for decertification under Labor Code Section 1156.7(c), an election was conducted on August 25, 1978, over the objection of the UFW that the election was barred by its existing one-year contract with the Employer. After a UFW motion to dismiss the petition or, in the alternative, to stay the election pending resolution of the contract-bar issue, the Board ordered impoundment of the ballots under 8 Cal. Admin. Code Section 20360(c), in order to preserve the status quo pending resolution of the legal issue, on which the parties were permitted to submit briefs.

The Board held that a reading of the statute as a whole, together with the statement of its purpose and its commitment to applicable NLRA precedent, indicates that the legislature intended the language in Labor Code Section 1156.7(c) regarding the period for filing a decertification petition to apply to a three-year contract. For one-year contracts, the Board struck an equitable balance between the stability of agricultural labor relations and the employees' right to change or reject their representative, by holding that a one-year contract bars a petition filed during the first eleven months of its term, but that a decertification petition could be timely filed during the 12 months following the 30th day preceding the expiration date of the contract so long as the peak of season and other filing requirements of Labor Code Section 1156.7 were satisfied. A renewal of the existing contract or the execution of a new contract prior to the filing of such a petition would not act to bar a petition during that period.

The Board also held that it has the authority to impound ballots under 8 Cal. Admin. Code Section 20360(c) and to review a Regional Director's direction of an election prior to post-election objections proceedings where, as here, the case presents an important question of first impression which can be effectively isolated from the particular facts of the case.

The Board dismissed the decertification petition as untimely, without prejudice to the filing of a new petition at a time consistent with the Board's ruling, and declared the election null and void.

DISSENT

The dissent contends that Labor Code Section 1156.7(c) Permits the filing of a decertification petition in this case and that the only factor which limits when such a petition peak of season requirement.

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