

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PHELAN & TAYLOR PRODUCE CO.,)	
)	
Employer,)	Case No. 80-RC-12-OX(SM)
)	
and)	
)	
UNITED FARM WORKERS OF)	7 ALRB No. 8
AMERICA, AFL-CIO,)	
)	
Petitioner,)	
)	
and)	
)	
INTERNATIONAL UNION OF)	
AGRICULTURAL WORKERS,)	
)	
Incumbent.)	
)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW), on August 26, 1980, a representation election was conducted on September 3, 1980, among the agricultural employees of Phelan & Taylor Produce Co. (Employer). The incumbent union, the International Union of Agricultural Workers (IUAW), was also on the ballot. The results of the election were as follows :

UFW	42
IUAW	13
No Union	31
Challenged Ballots	<u>2</u>
Total	88

As none of the three choices on the ballot received a majority of

the votes cast, a run-off election between the UFW and No Union was held on September 5, 1980. The official Tally of Ballots showed the following results:

UFW	53
No Union	38
Challenged Ballots	<u>5</u>
Total	96

The IUAW thereafter filed a timely petition objecting to the September 3, 1980, election, on the grounds that the UFW's representation petition was not timely filed. The IUAW contended that the election was held in violation of the three-year contract bar set forth in section 1156.7(b)^{1/} of the Agricultural Labor Relations Act (ALRA or Act), asserting that no petition could be filed prior to November 30, 1980, two years after the signing of a collective bargaining agreement between the IUAW and the Employer.^{2/}

On September 30, 1980, the Executive Secretary transferred the case to the Board for decision pursuant to 8 Cal. Admin. Code section 20365 (f) (8), since the petition raised a novel legal issue

^{1/} Section 1156.7(b) provides, in part, "A collective-bargaining agreement executed by an employer and a labor organization ... shall be a bar to a petition for an election among such employees for the term of the agreement, but in any event such bar shall not exceed three years...."

^{2/} Section 1156.7(d)(3) provides that a rival labor organization may file an election petition where the incumbent labor organization and the employer have a collective bargaining agreement if such agreement will expire within 12 months. The original collective bargaining agreement between the Employer and the IUAW was due to expire on July 15, 1981. Thus the section 1156.7 (b) contract bar expired on July 15, 1980, not on November 30, 1980, as the IUAW contends.

not previously decided by the Board. The issue was whether the Board should adopt the NLRB's premature extension doctrine. The IUAW and the UFW subsequently filed briefs on the legal issue.

The facts in this case are not in dispute. In November 1978, the IUAW was certified as the collective bargaining representative of the agricultural employees of Phelan & Taylor Produce Co. The parties signed a collective bargaining agreement on November 30, 1978, which had an expiration date of July 15, 1981. On November 29, 1979, the parties executed a memorandum of understanding extending the term of the agreement to July 15, 1982.

The UFW filed its election petition on August 26, 1980, during the last year of the original collective bargaining agreement, which would have expired on July 15, 1981. If this Board were to adopt the NLRB's premature extension doctrine, the petition would be timely filed. Under that doctrine, a collective bargaining agreement whose expiration date has been extended during the term of the original agreement does not bar a representation petition filed by a rival union, if the petition has been timely filed with regard to the expiration date of the original agreement. In other words, only the original agreement will act as a contract bar to a petition. The IUAW argues that this NLRA precedent is inapplicable since, unlike the Agricultural Labor Relations Act, the National Labor Relations Act (NLRA) contains no specific provision for any contract bar to the filing of petitions.

We find that the premature extension doctrine constitutes applicable NLRA precedent. The NLRB has, through decisional law, developed a number of rules concerning the timeliness of election

petitions, in an effort to balance the need for stability in ongoing collective bargaining relationships, with the right of employees to freely select or reject collective bargaining representatives. See Deluxe Metal Furniture Co. (1958) 121 NLRB 995 [42 LRRM 1470]. Contracts for terms up to three years serve as a bar to an election during that period. General Cable Corp. (1962) 139 NLRB 1123 [51 LRRM 1444]. NLRB petitions must be filed by the rival union(s) in the period from 90 to 60 days before the expiration date of the contract. Leonard Wholesale Meats Co. (1962) 136 NLRB 1000 [49 LRRM 1901]. However, in seasonal operations a petition may be filed before this open period. The 60-day "insulation period" immediately preceding expiration of the contract, during which no petition may be filed, still applies. Cooperative Azucarera Los Canos (1958) 122 NLRB 817 [43 LRRM 1193].

Unlike the NLRA, the ALRA contains specific provisions for the timely filing of certification and decertification petitions. Labor Code sections 1156.4 - 1156.7. These sections incorporate NLRB concepts and reasoning as to petition filing, with variations made necessary by the unique nature of agricultural employment.

Section 1156.7 (b) of the ALRA codifies the NLRB's three-year contract bar to an election:

A collective bargaining agreement ... shall be a bar to a petition for an election ... for the term of the agreement, but in any event such bar shall not exceed three years....

The NLRB developed its contract bar policy in order to promote stability in ongoing bargaining relationships. It believed that a

three-year bar period would help such stability without causing undue injury to employees' freedom of choice in union representation. General Cable Corp., *supra*, 139 NLRB 1123.

At the same time, the NLRB developed the premature extension doctrine. The purpose of the doctrine is to give certainty to rival unions and to employees wishing to change or decertify representatives, as to the proper time for filing petitions. In an early decision, the NLRB discussed the consequences of holding that an extension of an existing agreement could prevent the filing of a petition:

[T]he right of the employees to seek a change of representatives after the lapse of a reasonable time might be defeated. So to hold would require of employees, desiring to change representatives, acceleration of organizational activities so that they would be ready to assert a claim of majority representation at any time the contracting parties might elect to discuss modification of the existing agreement, thus leading to disaffection and unrest under the existing agreement instead of stabilized labor relations. Wichita Union Stockyards Co. (1942) 40 NLRB 369 [10 LRRM 65, 66].

Since 1942, the NLRB has refined its policies on timely filing, including extending the contract bar from two to three years. However, its premature extension doctrine has remained the same. New England Telephone & Telegraph Co. (1969) 179 NLRB 527 [72 LRRM 1392].

The IUAW argues that the absence of any reference to the premature extension doctrine in the ALRA reveals a legislative intent to reject that doctrine, and that NLRA precedent is therefore inapplicable. We find no merit in this argument. The ALRA provides a framework for determining the timeliness of petitions filed during the duration of an existing agreement, based on NLRB

case law. Section 1156.7(b) tracks the NLRB's three-year contract bar. The inclusion of this contract bar in the ALRA in no way undercuts the rationale of the premature extension doctrine set forth in Wichita Union Stockyards. In agriculture, as well as in NLRB-covered industries, the doctrine, by establishing definite provisions for appropriate periods for petition filing, ensures that organizational activities by rival unions and employees seeking a change in representatives will not be frustrated by the actions of the contracting parties.

Until now, this Board has not been directly confronted with the issue of the applicability of the premature extension doctrine in a case involving a representation petition. However, in M. Caratan (Sept. 29, 1978) 4 ALRB No. 68, rev'd on other grounds, Cadiz v. Agricultural Labor Relations Board (1979) 92 Cal.App.3d 365, the Board noted the applicability of the doctrine to decertification petitions:

A renewal of the existing contract or the execution of a new contract prior to the filing of such a [decertification] petition will not act as a bar to the petition. M. Caratan, supra, at p. 11 of slip opinion.

We find that the premature extension doctrine constitutes applicable NLRA precedent and applies also to the filing of certification petitions.^{3/} Labor Code section 1148.

^{3/} To support its argument that NLRA precedent is inapplicable, the IUAW cites to Cadiz v. Agricultural Labor Relations Board (1979) 92 Cal.App.3d 365, where the court, reversing the Board, held that a decertification petition may be filed at any time during the life of a one-year collective bargaining agreement, since section 1156.7 (c) states that such a petition is timely if

[fn. 3 cont. on p. 7]

Applying the premature extension doctrine to the facts of this case, we find that the UFW's certification petition was timely, since it was filed on August 26, 1980, during the last 12 months of the collective bargaining agreement which originally would have expired on July 15, 1981. Labor Code section 1156.7(d)(3). The IUAW's argument, that by extending the contract for an additional year and thus creating a three-year contract bar, the parties merely did later what they had a right to do at the outset of negotiations, is without merit. While three years is the maximum period during which a contract can bar a petition, if the duration of the original agreement is less than three years, as in the instant case, any extension beyond the original expiration date will be considered premature and will not bar an otherwise timely filed petition. Buckeye Village Market, Inc. (1968) 175 NLRB 271 [70 LRRM 1529]; Metropolitan Life Insurance Co. (1968) 172 NLRB 1257 [68 LRRM 1438]; Lord Baltimore Press, Inc. (1963) 144 NLRB 1376 [54 LRRM 1241]; Auburn Rubber Co., Inc. (1963) 140 NLRB 919 [52 LRRM 1137]. Parties to collective bargaining agreements have the right to extend those agreements. The premature extension doctrine merely establishes that such extensions may not bar rival-union or decertification petitions.

[fn.3 cont.]

filed "during the year preceding the expiration of a collective bargaining agreement." The premature extension doctrine was not at issue. Rather, the court was concerned exclusively with the Board's interpretation of section 1156.7(c). The court found that NLRA precedent establishing the appropriate petition-filing period as between 90 and 60 days before the expiration of a collective bargaining agreement was inapplicable, since the clear language of section 1156.7 (c) was contrary to such precedent. The Cadiz decision therefore lends no support to the IUAW's argument.

The IUAW also argues that if this Board adopts the NLRB's premature extension doctrine, it should also adopt the NLRB's rules on the appropriate "window" period in which to file petitions. Under NLRB case law, petitions must be filed not less than 60 days and not more than 90 days before the expiration date of the collective bargaining agreement. Leonard Wholesale Meats Co., supra, 136 NLRB 1000. Under the NLRB rules, the UFW's petition would be untimely, since it was not filed between April 15, 1981, and May 15, 1981, the 30-day open period which ends 60 days before the expiration date of the original agreement.

We reject the IUAW's "all or nothing" approach to applying NLRA precedent; instead, we shall follow those portions of NLRA precedent on timely filing which are consistent with the provisions of our Act. We find that the NLRB's rule as set forth in Leonard Wholesale Meats Co., supra, 136 NLRB 1000, is contrary to specific provisions in the ALRA which permit the filing of certification and decertification petitions at any time within the last year of a collective bargaining agreement. Section 1156.7(d)(3) requires that a rival union's representation petition allege that "a labor organization ... has a collective-bargaining agreement with the employer which would otherwise bar the holding of an election and that this agreement will expire within the next 12 months." Section 1156.7 (c) states that a decertification petition "shall not be deemed timely unless it is filed during the year preceding the expiration of a collective bargaining agreement."

In Cadiz v. Agricultural Labor Relations Board, supra,

92 Cal.App.3d 365, the court reversed a Board decision which would have barred the filing of a decertification petition within the first 11 months of a one-year collective bargaining agreement. The court found that the Act clearly permitted such a filing at any time during the last year of the agreement:

The NLRB precedents fixing the 30-day open period [between 90 to 60 days before expiration of the contract] conflicts with the 1-year open period contained in section 1156.7, subdivision (c). The one-year open period like many other provisions in section 1156.7 ... [is] adapted to the peculiar conditions of agriculture.... "It was felt that, given the seasonal nature of agricultural employment, the one-year period was necessary to insure that a union could file at peak season, when the required complement of employees would be present." [Citation]. *Cadiz v. Agricultural Labor Relations Board*, supra, 92 Cal.App.3d at 374, 375.

In response to an argument that one-year contracts should be insulated from challenges in order to promote stability in collective bargaining relationships, regardless of the impact on employees' freedom of choice, the court stated:

Essentially this argument, like the other policy arguments offered in support and in opposition to a contract bar during a one-year contract, has been resolved by the Legislature and any change should come from that body. *Id.*, at 377.

The Cadiz case involved the filing of a decertification petition pursuant to section 1156.7(c), while the instant case involves the filing of a representation petition pursuant to section 1156.7(d) (3). We find, however, that the reasoning in Cadiz set forth above is equally applicable to timely filing of representation petitions, since section 1156.7 (d) (3) also clearly permits filing at any time during the last 12 months of an agreement. Therefore, we conclude that the UFW's petition was

timely filed.

We hereby dismiss the IUAW's objections and uphold the election and shall certify the UFW as the bargaining representative.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all the agricultural employees of Phelan & Taylor Produce Co. in the counties of San Luis Obispo and Santa Barbara, California, for the purpose of collective bargaining, as defined in Labor Code section 1155.2 (a), concerning employees' wages, working hours, and other terms and conditions of employment.

Dated: April 3, 1981

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Phelan & Taylor Produce Co.
(UFW)

7 ALRB No. 8
Case No. 80-RC-12-OX(SM)

BOARD DECISION

Following a representation election and a run-off election, the official Tally of Ballots showed that the United Farm Workers of America, AFL-CIO (UFW) received a majority of the votes cast. The incumbent union, the International Union of Agricultural Workers (IUAW), filed post-election objections, contending that the UFW's representation petition was not timely filed. The Executive Secretary transferred the case to the Board since the petition raised a novel legal issue not previously decided by the Board: whether the Board should adopt the NLRB's premature extension doctrine. Under that doctrine, a collective bargaining agreement whose expiration date has been extended during the term of the original agreement does not bar a representation petition filed by a rival union, if the petition has been timely filed with regard to the expiration date of the original agreement.

The Board noted that the purpose of the NLRB's premature extension doctrine was to give certainty to rival unions and to employees wishing to change representatives, as to the proper time for filing petitions. The Board concluded that the doctrine constitutes applicable NLRA precedent and extends to the filing of rival union petitions as well as decertification petitions. Applying the doctrine to the facts of the case, the Board found that the UFW's certification petition was timely filed. It therefore certified the UFW as the exclusive representative of all the agricultural employees of Phelan & Taylor.

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