

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

NURSERYMEN'S EXCHANGE, INC.,	)	Case Nos. 2010-RC-003-SAL
	)	(37 ALRB No. 1)
	)	
Employer,	)	ORDER DENYING
	)	EMPLOYER'S REQUEST FOR
and	)	RECONSIDERATION; ORDER
	)	DENYING REGIONAL
UNITED FARM WORKERS OF AMERICA,	)	DIRECTOR'S REQUEST FOR
	)	RECONSIDERATION AND/OR
	)	AMENDMENT
	)	
<u>Petitioner.</u>	)	Admin. Order No. 2011-12

On June 1, 2011, Employer Nurserymen's Exchange (Employer) filed its Request for Reconsideration of the Board's decision in 37 ALRB No. 1 overruling the Regional Director's post-election dismissal of the election petition in the above-captioned matter. Employer cites as extraordinary circumstances the Regional Director's admitted error in determining the peak employment prerequisite for an election petition as grounds for the Board to uphold the Regional Director's dismissal of the election petition pursuant to its authority under Labor Code section 1142(b)<sup>1</sup> to review *sua sponte* any action taken by personnel to whom the Board has delegated powers concerning representation matters.

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<sup>1</sup> All statutory references are to the California Labor Code unless otherwise stated.

Employer's citation to authority omits Labor Code section 1156.3(c), which, *by statutory mandate*, prohibits the Board from refusing to certify an election unless there are sufficient grounds to refuse to do so. At this juncture in the proceedings, there is nothing in the record before the Board that would provide the sufficient grounds required to, in effect, refuse to certify an election, which is the inevitable result of upholding the Regional Director's post-election dismissal of an election petition.

It does not escape the Board that a great deal of time, effort, and expense has been expended in furtherance of the Nurserymen's Exchange employees' right to choose or forego bargaining representation. That said, were we to allow a post-election dismissal of an election petition by the Regional Director, no matter how seemingly meritorious, without a finding of fact and/or conclusion of law on the record, the most important stakeholders in the representation election process – the employees – would not be heard and we would not have fully developed the sufficient grounds for setting aside an election.

Employer's request for reconsideration simply attempts to reargue the matter addressed in the Board's prior decision and has not cited newly discovered evidence, an intervening change in law, or any other recognized extraordinary circumstance warranting reconsideration. We therefore deny Employer's request.<sup>2</sup>

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<sup>2</sup> Employer's suggestion that the Board review the dismissal *sua sponte* is curious and unnecessary. Because review of the dismissal in the underlying decision  
(Footnote continued....)

Also on June 1, 2011, the Regional Director filed a Request for Reconsideration And/Or Amendment And/Or To Strike Certain Language From the Board's Order. We deny the Regional Director's request for lack of standing, as the Regional Director is not a party to these proceedings. Section 20370(c) of the Board's regulations<sup>3</sup> limits the necessary parties in an investigative hearing to the petitioner, the employer, and any other labor organization which has intervened pursuant to section 20325 of the regulations. The Regional Director or his designated representative may only participate "to the extent necessary to ensure that the evidentiary record is fully developed and that the basis for the Board's action is fully substantiated." (Cal. Code Regs., tit. 8, § 20370 (c).)<sup>4</sup>

In the interests of due process and judicial economy, we would suggest that, should the parties forego proceeding upon a stipulated record, the first order of business upon the commencement of the hearing in this matter be the Regional Director's testimony as to any error in determining the peak employment prerequisite for the election petition at issue.

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(Footnote continued)

was properly sought via a request for review, no *sua sponte* review was, or is, necessary.

<sup>3</sup> All regulatory references are to the Board's regulations at California Code of Regulations, title 8, section 20100 *et seq.*

<sup>4</sup> We note that the focus of the Regional Director's filing is a passage in the Board's decision that the Regional Director construes as an assertion, that in dismissing the petition, he acted as an advocate, intended to deny due process, or otherwise acted with improper intent. No such meaning or implication was intended.

ORDER

The Requests for Review are DENIED.

By Direction of the Board.

Dated: June 7, 2011

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JOSEPH A. WENDER, JR.  
Executive Secretary, ALRB