

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

NURSERYMEN’S EXCHANGE, INC.,))	Case No. 2010-RC-003-SAL
Employer,))	
and))	ORDER DENYING MOTION TO
UNITED FARM WORKERS OF))	DISMISS PETITION FOR
AMERICA,))	CERTIFICATION AND MOTION TO
Petitioner.))	CONTINUE INVESTIGATIVE
_____))	HEARING
)	Admin. Order 2011-19

On Friday September 9, 2011, Nurserymen’s Exchange, Inc.¹ (Employer) filed a Motion to Dismiss Petition for Certification or, in the alternative, a Motion to Continue the Investigative Hearing now scheduled for September 21 and 22, 2011. On September 14, 2011, the United Farm Workers of America (UFW) filed a response opposing the motion to dismiss but supporting the motion for a continuance.

PLEASE TAKE NOTICE that the Motion to Dismiss Petition for Certification is hereby DENIED. Employer argues that its bankruptcy filing and subsequent sale of operating assets leave any potential certification unenforceable. However, should a certification issue, the bankruptcy proceedings do not preclude the possibility of successorship to the bargaining obligation. Accordingly, dismissal of the petition for certification would be improper.

¹ In its motion, the Employer indicates that its name has been changed to Tally One, Inc. and, as such, has replaced the entity formerly known as Nurserymen’s Exchange, Inc. as the Debtor-in-Possession in the ongoing bankruptcy proceedings.

PLEASE TAKE FURTHER NOTICE that the Motion to Continue the Investigative Hearing is hereby DENIED. This motion is based largely on the assertion that counsel's court-approved role as Special Labor Counsel for the purposes of this proceeding will cease should the bankruptcy court approve a motion filed by unsecured creditors, set for hearing on September 23, 2011, to convert the bankruptcy case from a Chapter 11 (reorganization) to a Chapter 7 (liquidation) case. Whatever issues this may pose as to counsel's ongoing role after that date, nothing presented would prevent counsel from providing full and adequate representation to the Employer at the investigative hearing scheduled for September 21 and 22, 2011. Moreover, according to the exhibits filed with the motion, the Asset Purchase Agreement between the Employer and Floramoda, Inc. requires the Employer to use its best efforts to continue to prosecute the election objections in the present case, and further provides that Floramoda, Inc. shall reimburse the Employer for all attorneys' fees and other legal costs associated with this case.²

By Direction of the Board.

DATED: September 14, 2011

J. ANTONIO BARBOSA
Executive Secretary, ALRB

² The UFW's support of the motion for a continuance is based on the assumption that the scheduled hearing would address the issue of successorship. The proper forum for the resolution of that issue is an unfair labor practice proceeding in which it is alleged that a successor employer has refused to bargain.