

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SILVIA LOPEZ,)	Case No. 2013-RD-002-VIS
)	
Petitioner,)	
)	
and)	
)	ORDER DENYING
GERAWAN FARMING, INC.,)	PETITIONER'S REQUEST FOR
)	REVIEW
Employer,)	
)	Admin. Order No. 2013-36
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

Petitioner Silvia Lopez (Petitioner) filed a Request for Expedited Review pursuant to Title 8, California Code of Regulations Section 20393 of Agricultural Labor Relations Board (ALRB or Board) Regional Director Silas Shawver's decision to delay the period for an election in the above-captioned matter for one day.¹ The Regional Director delayed the period for the election in order to investigate allegations in a recently filed unfair labor practice charge. Petitioner argues that the language in Labor Code section 1156.3(b)² directing an election within seven days of the filing of a

¹ Petitioner was given an additional day to gather signatures in order to perfect the petition, amounting to a one-day extension instead of a two-day extension of which Petitioner complains.

² All statutory references are to the California Labor Code.

petition is mandatory. Respondent Gerawan Farming, Inc. has joined in Petitioner's request.

Petitioner's Request for Review is DENIED.

Petitioner fails to cite which subsection of Board Regulation section 20393 is authority for filing this Request for Review. Neither subsection 20393 (a) nor subsection 20393 (b) applies under the circumstances, and review is inappropriate at this time. To avoid continued litigation of this issue, the Board will address the merits nonetheless. Neither of the law firms representing Petitioner in this matter and listed as counsel on the Request for Review cite any authority other than the statute on the issue of whether an election can be held outside of the seven-day period provided in Labor Code section 1156.3(b). A review of the Board's case digest and decisions, available on the Board's website (<http://www.alrb.ca.gov>), would have demonstrated that the Board has not overturned elections held outside of Labor Code section 1156.3(b)'s seven-day period but for circumstances where prejudice to the parties results, such as disenfranchisement of a substantial number of employees. (See, e.g., *Ron Nunn Farms* (1978) 4 ALRB No. 31, pp. 2-5; *TMY Farms* (1976) 2 ALRB No. 58 at p. 6; *J.J. Crosetti Co., Inc.* (1976) 2 ALRB No. 1 at p. 4; *Klein Ranch* (1975) 1 ALRB No. 18, pp. 3-6.) In *Klein Ranch*, the Board's seminal case on the seven-day election period under 1156.3(b), the Board noted that the intention of the seven-day period is to maximize voter participation. (*Klein Ranch, supra*, 1 ALRB No. 18 at p. 5.)

Moreover, the California Court of Appeals has held that a Board's decision upholding an election held nine days after the filing of a petition in the absence of prejudice to the parties did not support appellate review of a certification under the narrow *Leedom v. Kyne* standard. (*Radovich v. Agricultural Labor Relations Board* (1977) 72 Cal.App.3d 36, 47 (holding that the seven-day period under Lab. Code § 1156.3 is directory, not jurisdictional).)

The election has not yet occurred. We appreciate the urgency of the situation but also defer to the Regional Director to ensure with all deliberate speed that all requirements for the petition have been met and whether an election will take place.

By Direction of the Board.

Dated: September 25, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB