

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,)	Case No. 2013-RD-002-VIS
)	
Employer,)	
)	
and)	
)	
SILVIA LOPEZ,)	ORDER DENYING
)	PETITIONER'S REQUEST FOR
)	EXPEDITED REVIEW OF
)	REGIONAL DIRECTOR'S
Petitioner,)	DISMISSAL OF PETITION;
)	ORDER DENYING EMPLOYER'S
and)	REQUEST TO FILE RESPONSE
)	
UNITED FARM WORKERS OF)	Admin. Order No. 2013-38
AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

On September 30, 2013, Petitioner Silvia Lopez (Petitioner) filed a Request for Expedited Review of the September 25, 2013 Decision of the ALRB Regional Director to Dismiss Petition for Decertification. On October 1, 2013, Gerawan Farming, Inc. (Employer) filed a Request for Permission to File a Response to Petitioner's request. National Labor Relations Board (NLRB) and Agricultural Labor Relations Board (ALRB or Board) precedent, as well as the Board's regulations, make clear that a regional director's determination of the sufficiency of a showing of interest is not reviewable, and Petitioner provides no reason for departing from these lines of legal authority. For these reasons, we DENY Petitioner's request for review and deny Employer's request for permission to file a response.

California Code of Regulations, Title 8, Section 20300 (j) (5) clearly states: “The regional director’s determination of the adequacy of the showing of interest to warrant the conduct of an election shall not be reviewable.” There is a long line of ALRB authority upholding the non-reviewability of a showing of interest determination. (See generally *Ron Nunn Farms* (1980) 6 ALRB No. 41 at p. 6 and cases cited therein.) This regulation, in its various forms, has been upheld by the California courts as consistent with NLRB precedent, which the Board is bound to follow pursuant to Labor Code section 1148.¹ (See *Radovich v. Agricultural Labor Relations Board* (1977) 72 Cal.App.3d 36, 44; *Nishikawa Farms, Inc. v. Mahony* (1977) 66 Cal.App.3d 781, 791-792.) The *Nishikawa Farms* court went so far as to explain why no statutory purpose would be served by requiring proof of the substantiality of a showing of interest. Quoting *National Labor Relations Board v. J.I. Case Co.* (9th Cir. 1953) 201 F.2d 597, the *Nishikawa Farms* court stated that litigating the issue of a showing of interest would “bring about the disclosure of the individual employees’ desires with respect to representation and would violate the long-established policy of secrecy of the employees’ choice in such matters.” (*Nishikawa Farms*, supra, 66 Cal.App.3d at 791.)

Counsel for petitioner argue that the Board should review the Regional Director’s determination as to the adequacy of the showing of interest but they neither cite to any of the binding authority discussed above nor do they cite to any legal

¹ All statutory references are to the California Labor Code unless otherwise stated.

authority that would justify departure from the rule precluding review of a showing of interest determination.² Accordingly, Petitioner's argument must be rejected.

Petitioner challenges the Regional Director's conclusion that employer interference precludes finding a bona fide question of representation. However, as discussed above, the Regional Director's finding as to the showing of interest is dispositive and is not subject to review. Accordingly, we need not reach the issue of employer interference.

The law clearly states that a regional director's determination of the showing of interest is not reviewable. Petitioner's request for expedited review is DENIED. Employer's request to file a response is DENIED.

By Direction of the Board.

Dated: October 4, 2013

J. ANTONIO BARBOSA

² Petitioner claims that our decision in *Arnaudo Brothers, LP*. (2013) 39 ALRB No. 9 required the Regional Director to state how many signatures were filed, how many were needed, and how many the Regional Director found invalid. In fact, *Arnaudo Brothers, LP*. stood for the proposition that a Regional Director must first determine whether an election petition is valid before deciding whether it should be blocked. In this instance, that determination was made.