STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARMWORKERS OF AMERICA, Petitioner Labor Organization, and **DMB PACKING CORP. dba THE DIMARE COMPANY,** Employer.	Case Nos.: 2023-RM-001-VIS **DECISION AND RECOMMENDED ORDER**

Appearances:

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DECISION AND ORDER

Hermine Honarvar Rule, Administrative Law Judge: This case was heard pursuant to the direction of the Agricultural Labor Relations Board (ALRB or Board) in *DMB Packing Corp. dba The DiMare Company* (Nov. 3, 2023) Admin. Order No. 2023-11 (Admin. Order). The hearing was held on November 28, 2023, November 30, 2023, and December 1, 2023, in Fresno, California at the Hugh Burns State Building. The parties had a full opportunity to examine and cross-examine the sole witness and present documentary evidence. The parties submitted post-hearing briefs and reply briefs which have been reviewed. A motion was filed on behalf of the Regional Director seeking Leave to File a Post-Hearing Brief Addressing Evidentiary Issues which was denied. I have made the following findings of fact and conclusions of law based on the entire record.

FINDINGS OF FACT

A. Procedural History

The United Farm Workers of America (UFW) filed a majority support petition (MSP) under the recently enacted *Labor* Code §1156.37 seeking certification to become the bargaining representative of a unit of agricultural employees employed by DMB Packing Corp dba the DiMare Company (DiMare or Employer) on September 12, 2023.

The ALRB, Visalia Regional Office Interim Regional Director (IRD) initiated an investigation of the MSP and proof of majority support under Labor Code §1156.37(e)(1). The IRD issued a letter on September 19, 2023, notifying DiMare and the UFW that the UFW had *failed* to provide proof of majority support. In accordance with Labor Code §1156.37(e)(4), the UFW was given 30 days to submit additional support (cure period).

The IRD issued a Regional Director's Tally (Tally) on October 20, 2023, after the conclusion of the cure period. The Tally reflected that during the cure period, the UFW contended that there were additional eligible employees who were not included on the initial September *19*, 2023, eligibility list. The IRD lead an investigation into the eligibility of these individuals and determined that thirty-one additional eligible employees should be added to the eligibility list. Ultimately, the IRD concluded that the Region received 151 authorization cards in favor of the majority support petition out of a total of 297 eligible employees; proof of majority support was established.

The ALRB Executive Secretary issued the Certification of Investigation of Validity of Majority Support Petition and Proof of Majority Support (Certification) on October 24, 2023. DiMare *filed* an Interim Appeal of Regional Director's Tally and Request for Stay of Certification Pending Board Review of Challenged Authorization Cards (Interim Appeal) prior to the issuance of the Certification alleging that the IRD exceeded her authority by adding names to the eligibility list and requested the Board stay the Certification pending Board review of the contested authorization cards. On the same day, the UFW filed an objection to the Interim Appeal.

DiMare filed objections to the Certification under Labor Code §1156.37(f)(1) on October 30, 2023. The UFW filed conditional objections pending the outcome of DiMare's objections.

The Board issued the *Administrative* Order denying DiMare's Interim Appeal and request for stay; the Board set DiMare's Objections 1, 2, 5, 6, and 8 for hearing and dismissed the remaining nine Objections.

The Board held that the "Regional Director does have authority under section 1156.37 to add to an eligibility list *employees* demonstrated to have been improperly omitted from an employer's list." (Admin. Order at 6)

The Board noted in footnote 4 of its Admin. Order as follows:

> "[t]he Board recognizes that the Regional Director and regional staff were required to apply this new statutory process without the benefit of established precedents to guide them. In setting these objections for hearing, the Board has deemed it appropriate, particularly in light of the fact that these are matters of first impression, to allow the parties to develop the record and be heard on the factual and legal issues." (Admin. Order at 6)

B. Objections Set for Hearing

The Board identified the 5 Employer Objections set for hearing in its Administrative Order as follows:

Employer Objection 1:

> This objection alleges that the Regional Director "failed to follow proper procedure for challenged ballots." DiMare argues that the Regional Director improperly failed to treat the additional employees the UFW sought to add as challenged ballots subject to the challenged ballot process set forth in the Board's regulations governing in-person secret ballot elections (Board regulations 20355 and 20363). Here, the Regional Director was required to apply a newly enacted statute that lacks explicit guidance on how to handle the type of situation this case presented. Given that this objection raises issues of first impression, the Board has concluded that this objection should be set for hearing. (Admin. Order at 7)

Employer Objection 2:

> This objection asserts that the Regional Director "violated DiMare's due process rights by not providing adequate time for DiMare to present evidence disputing eligibility and the UFW's proffered evidence." DiMare argues that it was not afforded the opportunity to see the evidence relied upon by the Regional Director to determine that there were additional eligible employees that should have been added to the eligibility list, and further that it was not afforded a "reasonable and fair opportunity" to present its own "indisputable

evidence" that the employee list produced by DiMare was accurate and no eligible employees were left off the list or paid in cash. As stated with respect to Employer Objection 1, given that this issue raises issues of first impression under this statute, the Board has concluded that this objection should be set for hearing. (Admin. Order at 7 and 8)

Employer Objection 5:

This objection asserts that the Regional Director "exceeded her authority under the Act by unilaterally expanding the eligibility list in direct contravention of DiMare's right to due process." DiMare argues that the Regional Director had no authority to add any additional employees to the eligibility list and that she failed to resolve issues of eligibility in a manner that afforded all parties due process. To the extent that this objection raises issues concerning whether the Regional Director's handling of claims that eligible employees were omitted from the eligibility list was inconsistent with the requirements of the statute or otherwise erroneous, the Board has determined that this objection should be set for hearing. (Admin. Order at 8)

Employer Objection 6:

This objection asserts that the Regional Director "exceeded her authority under the Act by unilaterally accepting additional names for the eligibility list proffered by the UFW after the initial tally had taken place." This objection is set for hearing for the same reasons stated with respect to Employer Objection 5 and subject to the limitation discussed therein concerning DiMare's contention that the Regional Director lacked authority to consider claims that eligible but excluded employees should be added to the eligibility list. (Admin. Order at 8)

Employer Objection 8:

This objection asserts that the Regional Director "acted improperly when she deprived DiMare of the opportunity to review alleged evidence of additional employees that allegedly belonged on the eligibility list." DiMare argues that it was not provided with any information concerning the eligibility issues raised by the UFW until October 18-20. DiMare asserts that it was deprived of the opportunity to review the additional evidence used to determine the issues of eligibility and was not given an opportunity to present its own information countering the UFW's proffered evidence regarding the eligibility of employees not included on the employer's list. The issues raised by this objection largely mirror those raised by Employer Objection 2 and

the Boad has determined that this objection should be set for hearing. (Admin. Order at 8 and 9)

C. The Facts

1. Employer's Witness

a. Yessenia De Luna, Interim Regional Director

The sole witness for this hearing was the IRD. The IRD testified that the initial list provided by the employer consisted of 271 names. (Transcript at 11: 14). She indicated that the Employer's counsel informed her office that the list contained the name of a foreman, two individuals who did not work for the employer and one individual who was listed twice; as a result four names were removed from the list. (Transcript at 11: 24; 12: 1-3) The IRD further indicated that the UFW alleged that four individuals were excluded from the list (Transcript at 15: 17-18) and that two out of those four alleged individuals were added to the list; she explained that the reason the other two were not added to the list because "[t]here was no evidence that they should be added to the list." (Transcript at 21: 14, 19) The IRD confirmed that only one of the added individuals was interviewed and opined that the most likely reason that the other added individual was not interviewed was because he could not be reached. (Transcript at 25: 16, 19) She stated that there was sufficient information and documentary evidence to add those two individuals to the list. (Transcript at 25: 24-25; 26: 1)

The IRD further elaborated that the document used to evaluate the un-interviewed individual's eligibility was the "quick-pick logs for the unit harvested during the eligibility period". (Transcript at 26: 5-6) The IRD noted that a copy of the quick-pick log was

provided to the employer's counsel on October 20, 2023, which was Employer's Exhibit 8 (Exhibit I to the declaration). (Transcript at 42: 25; 43: 2-6)

The IRD indicated that while she did not ask the Employer for specific documentation for the worker who was not interviewed, the Employer was notified that names were added to the list and that names were disclosed to the Employer; she confirmed that the Employer objected to the addition of the names to the list. (Transcript at 44: 6-12)

The IRD also confirmed that she sent a letter to the Employer's counsel and the UFW counsel on October 18, 2023, informing them names were being added to the eligibility list. (Transcript at 44: 21-25) (DiMare Exhibit 4)

The IRD indicated that her office interviewed the workers that they were able to interview, who the UFW had alleged were not included on the eligibility list during the cure period, and, concluded that some workers had been left off of the list. (Transcript at 49: 2-9, 15-19) The IRD noted that the UFW had alleged that 49 workers had been left off of the eligibility list. (Transcript at 50: 20) The IRD explained that all 49 workers were not interviewed because her office was unable to reach them. (Transcript at 51: 18-19) The IRD also stated that many telephone numbers were missing from the Employer provided list but that they attempted to contact the workers whose numbers were on the list. (Transcript at 52: 16-19)

The IRD declared that there "was an allegation that foremen informed workers that they did not have to provide their contact information, and [they] attempted to investigate that allegation . . . [they] also asked about the allegation that there were cash workers." (Transcript at 53: 2-6)

The IRD indicated that in trying to confirm the eligibility of the 49 individuals, they interviewed workers identified on the Employer's eligibility list either via telephone or through home visits. (Transcript at 53: 15-16, 19-20) The IRD expressed that the interviewed individuals were identified by asking their name and that it was not their practice to ask for any other information. (Transcript at 54: 21)

The IRD confirmed that she developed a questionnaire which was used to interview the workers. (Transcript at 57: 3, 5) (UFW Exhibit 1) The IRD testified that the questionnaire sought information such as "[e]mployment, employment dates, employer names … foreman, supervisor names, other coworker names, commodities, locations, …how production is tracked, and how payment -- how they're paid." (Transcript at 58: 13-17)

The IRD confirmed that during the interviews, some workers disclosed the names of their coworkers and that her staff tried to confirm that the coworkers worked for the Employer "[b]y trying to contact them and asking, and then interviewing them, looking for their names on the eligibility list, corroborating with other interviewees' response to that same question", but denied disclosing the names of the coworkers to the Employer. (Transcript at 60: 16-20; 61: 1-2)

The IRD testified that "[i]nvestigators will sometimes ask follow-up questions or clarify if a . . . question isn't being understood, rephrasing the question, but, since this was such a -- the time constraint to get this done -- we had a pretty clear questionnaire that I drafted, sent out for them to follow and do this as efficiently as possible." (Transcript at 61: 12-17)

The IRD explained that for telephone interviews, one investigator would conduct the interview, however, for home interviews, two investigators would conduct the interview.

(Transcript at 62: 1-2) The IRD elaborated "[f]or the home visits, we had teams of two people. When we do home visits, we generally, in all of our investigations, try to have two people present, especially … when we're doing them late hours in the evening." (Transcript at 66: 23-25; 67: 1)

The IRD testified that she "conducted one follow-up. It was after hours. There were no field examiners available, and with time constraints, I needed to get a quick follow-up question answered, and I conducted that quick call to a worker." (Transcript at 62: 7-10) The IRD further testified that she identified the individual by dialing the telephone number and asking for the individual. (Transcript at 64: 8)

The IRD noted that she was responsible for making the determination as to the sufficiency of the evidence to add individuals to the eligibility list and that she looked at all the available evidence which also included the investigators' interview notes to make that determination. (Transcript at 67: 11, 14-15, 19)

The IRD clarified "[i]t is our policy that everybody that takes notes review their notes and . . . clean them up, and make sure that the information is legible and
there as it was stated." (Transcript at 68: 17-20)

The IRD denied that the interviewees were paid for the interviews. (Transcript at 70: 3-4) She clarified that the policy for confirming the identity of the interviewees is to "either call the phone number and ask for the person, or . . . go to the address and ask to speak to the person." (Transcript at 70: 22-24) She noted "that [it] has never been our policy, to ask workers for identification." (Transcript at 71: 2-3)

The IRD testified that out of the 31 workers added to the eligibility list, there was only one individual who was not interviewed because they were unable to reach him. (Transcript at 71: 12) With regards to credibility determination, the IRD stated "I don't recall specifically giving [field examiners] instructions. [I]t's their practice to assess credibility to the best of their ability and, insert their assessment into their interview notes." (Transcript at 71: 21-24)

The IRD explained that field examiners receive credibility determination trainings through their supervisors, more experienced field examiners and potentially Regional Directors but she denied that she had personally provided such trainings to the field examiners. (Transcript at 73: 13-16) The IRD further explained that she had received credibility determination training when she first joined the ALRB. (Transcript at 73: 24)

The IRD denied that the questionnaire included questions that would gauge the interviewees' motives, biases, whether they had family members who worked for the UFW, whether they were UFW employees or potential conflict of interest. (Transcript at 74: 15, 18, 21; 75: 7)

The IRD stated "I had all the evidence before me, and looked at all of it, and made my determination based on that . . . I was looking for evidence that supported that the worker in question had worked for DiMare during the eligibility period." (Transcript at 76: 9-11)

The IRD further elaborated "I looked for evidence that supported that the worker worked for DiMare during the statutory period . . . If there was evidence, whether it was testimony or whether it was documents, or both, that supported a finding that they worked during the statutory period, that's what I used to make my determination . . . Some workers

had both documentary evidence and testimony. Some workers only had one." (Transcript at 77: 14-16; 78: 8-12; 79: 4-5)

With regards to whether the IRD discussed the evidence she was going to use to add individuals to the list with the Employer, the IRD stated "[i]t's not our practice to divulge information that we receive from workers during interviews with them. The statute also does not -- did not direct me to present that or to consult with DiMare." (Transcript at 78: 23-25; 79: 1)

With regards to whether the IRD contacted the Employer to request records to validate the interviewees claims that they worked for the Employer during the statutory period, the IRD stated "It is not our practice to divulge information that we get in interviews." (Transcript at 80: 16-17)

The IRD noted that if there was documentary evidence, it was likely that there was contact with the individual and/or there was testimony. (Transcript at 82: 6-8) She indicated that the same criteria was used in evaluating the claim that the individuals worked for the Employer during the statutory period. (Transcript at 82: 20-23)

The IRD conceded that some but not all of the interview notes contained credibility determinations. (Transcript at 83: 3)

The IRD explained that she understood the statute to require her to make the majority support determination at the end of the 30-day cure period and that she did so as soon as she was able to do so. (Transcript at 86: 10-11; 87: 1-2)

The IRD further explained:

> "I made the determination once I was ready to. I gave notice to [the employer's counsel and to the employer] after [the employer's counsel] presented allegations that [they] have in evidence that workers added should not be added, and I asked for [employer's counsel] to provide that evidence twice, gave [employer's counsel] until -- I believe the last time was 4:00 o'clock on October 20th. It became clear with [employer's counsel's] response that [they] were not going to provide any evidence, and so I made the determination at that point. Had [employer's counsel] said [they] needed more time, then maybe I would have -- then I would have gone back to the statute, and like [employer's counsel is] trying to, I think, state here, you know, there's nothing there saying that I had to do it on the 20th, but at that point, when it was clear to me that there was no more evidence coming my way for me to look at to make this determination, I made the determination, and filed the final tally." (Transcript at 90: 20-25; 91: 1-12)

The IRD expanded that she did not "find it necessary" to ask the ALRB Board for an extension of time to make the majority support decision because she "didn't find it necessary . . . it was clear to [her] from [employer's counsel's] response that there was no other evidence coming. [She] had everything [she] needed to make the determination at that time, and so [she] did, and . . . there was no need for [her] to seek an extension or anything like that from the Board." (Transcript at 92: 18-23)

The IRD testified that the list was sent to the parties at 12:14 p.m. on October 20, 2023, and that it was re-sent once a typographical error was corrected at 12:46 p.m. and that the employer was given until 4:00 p.m. that day to respond to the addition of 3 more individuals. (Transcript at 93: 22-25; 94: 1) (DiMare Exhibit 16)

The IRD confirmed that the UFW had submitted fourteen declarations to her office. She confirmed that the format of the declarations consisted of a top portion of the page where an individual stated that they worked for the Employer during the eligibility period

and the bottom of the page was for another individual to confirm that they saw the individual who completed the top portion of the declaration work for the Employer during the eligibility period. (Transcript at 101: 14) (DiMare Exhibit 8, Bates number 003080 – 003093)

The IRD noted that someone in her office compared the fourteen declarations against the Employer's eligibility list. (Transcript at 105: 8-9)

The IRD verified that for each of the thirty-one workers who were added to the eligibility list, there was supporting documentation that was used to determine they worked during the eligibility time period. (Transcript at 113: 22) The IRD indicated that to verify the information on the fourteen declarations, her office attempted to contact the individuals for whom they had contact information either via telephone or home visits. (Transcript at 114: 14-16)

The IRD testified that as she "gathered evidence, and [she] was able to look at it and make determinations, [the list] was being built, was growing, and on October 18th, … we exhausted our investigation of the … home visits and the phone calls, and that is when … the list of the 24 was produced." (Transcript at 122: 8-14) She further clarified that the list was "built over a few days". (Transcript at 122: 18)

When questioned by the Employer's counsel if the Employer had presented additional evidence was the IRD willing to withdraw her decision to add the workers on the list, the IRD stated "I would have looked at the evidence and made a determination based on that." (Transcript at 125: 11-12)

The IRD testified that when Labor Code §1156.37 was enacted, the statute was discussed in a staff meeting but she could not recall whether an internal memorandum or other documents were circulated within the ALRB about how to facilitate the process. (Transcript at 131: 1-4, 17)

The IRD explained that after the Majority Support Petition was filed, she discussed the filing with the other Regional Director at the ALRB. She stated "[w]e didn't have regulations to follow. We had the statute to follow, and it was the first ever being filed. So, of course I sought the guidance of my colleagues, of the regional director, Jessica Arciniega. We talked about it. We discussed it." (Transcript at 133: 19-24) She also stated "[w]e discussed the situation, and . . . went to the statute to try and find a way to process this all." (Transcript at 135: 5-6) The IRD denied that she spoke about the specifics of this Majority Support Petition with her colleague. (Transcript at 135: 3)

The IRD also explained that she also reviewed the secret ballot process. (Transcript at 135: 21-24)

The IRD described that she did not use the challenged ballot election process in the Majority Support Petition:

> "Because the statute does not call for the challenged ballot, and a challenged ballot is used in a secret ballot prior to a worker voting, and in a secret -- once they do vote, it's a secret ballot. You don't know how they're voting. There's declarations taken. They get called to be witnesses at hearings like this, and that is not what the purpose of the act that it is my duty to enforce, to make workers give declarations, when we know how they're voting, and then potentially having them come to trial and defend their vote. So, it did not -- you know, I didn't see – the statute was silent on that, and I did not see it as an option, and, taking into account the purpose of the act and my duty, I decided not to do the challenged ballot option." (Transcript at 139: 12-25)

The IRD stated that to the best of her knowledge, the Employer had not seen any authorization cards. (Transcript at 141: 4-5)

The IRD explained that she verified that accuracy of documents presented to her "[b]y comparing them to other documents, reading what's on there, names, badge numbers, . . . Employer names, FLC names, any of the above, dates." (Transcript at 143: 14-17)

The IRD testified that she spoke with the General Counsel in relation to the Majority Support Petition only on the issue of staffing, however, she did speak to the Deputy General Counsel and the other Regional Director when considering whether to add the 31 workers to the list. (Transcript at 5: 14, 16, 18)

The IRD stated that she sought guidance from the Deputy General Counsel and the other Regional Director and other staff in disclosing the fourteen declarations as part of the tally and that she weighed the pros and cons of the disclosure. (Transcript at 7: 12-15, 22-23; 8: 1-4) She further stated "there was no regulations for this majority support petition process, weighing everything to the best of my ability at the time, I decided to include them. Were, I to do this again, I would -- I may do differently." (Transcript at 9: 11-16)

The IRD testified that there were 9 field examiners who conducted the interviews and that they "were working long hours and on the weekends, and having meetings prior to gathering the group that was going to work either that weekend or that evening, not all the times, but specifically . . . on weekends having a quick check-in, just to advise them . . . that they were going to conduct these interviews, where the questions were . . . or email them the questions, so that they had them." (Transcript at 10: 9-16)

With regards to an e-mail sent on September 17, 2023, regarding an allegation that some workers were left off the list (DiMare Exhibit 1), the IRD testified that there was an allegation of cash payments. (Transcript at 48: 24-25)

The IRD confirmed that she had not communicated separately with the UFW prior to sending the list to the UFW's counsel and the Employer's counsel on October 18, 2023. (Transcript at 49: 14) (DiMare Exhibit 4)

The IRD denied that the Employer provided any proof that the 26 individuals listed on the October 18, 2023, e-mailed letter either did not work or did not work during the eligibility period for the employer. She stated that the twenty-six "individuals remained on the list. If proof had been provided that they were not working for DiMare during the statutory period, they would have been removed." (Transcript at 51: 12-15) (DiMare Exhibit 13)

When questioned regarding providing additional time to the Employer's counsel to review the list sent out on October 20, 2023 (DiMare Exhibit 19), the IRD responded:

> "I would have discussed and sought guidance and conferred with my colleagues on that. Exactly how much time I can't say, but, as it was pointed out yesterday, the statute is silent on giving a deadline to submit to file the final tally. Yes. I don't know how much time, exactly, but again, it would just -- you know, I can't speculate on how much time I would have granted." (Transcript at 56: 10-16)

The IRD testified that in making the determination to add the 31 workers to the list, she generally "considered testimony, documents, the few documents, the documents that were available to me from the Employer, Employer's-side documents, the very few provided for the workers." (Transcript at 57: 8-12) She also testified that there were

individuals who were interviewed by her staff that were not added to the list. (Transcript at 57: 23-24)

The IRD described that after the field examiners interviewed workers, they saved their notes in a folder and that she read those notes. (Transcript at 66: 19-21) The IRD explained that sometimes some field examiners "forget to insert their assessment of credibility as they interview." (Transcript at 67: 6-9)

The IRD indicated that based on her review of the field examiner reports, she did not have concerns that the workers interviewed posed as someone else and denied that any UFW workers or attorneys were present during those interviews. (Transcript at 68: 5, 9)

The IRD testified that she developed the questionnaire prior to when the interviews were conducted. (Transcript at 80: 22-23) (UFW Exhibit 1)

The Regional Director's Tally notes the following:

> Nothing in Labor Code § 1156.37 nor the subcommittee's draft regulations contemplate the situation that has arisen here – an allegation that numerous workers who worked during the statutory period were left off of the employer-provided eligibility list. Looking to the ALRB's regulations regarding secret ballot elections, I recognize that in that context when workers' names are not found on the eligibility list to vote, they vote as challenged pursuant to Cal. Code Regs., tit. 8, § 20355(a)(8). However, neither the Act nor the proposed regulations as currently drafted provide for nor contemplate the use of the challenge procedure in majority support petitions. In addition, I find majority support petitions dissimilar from secret ballot elections in one important way – when a party chooses to challenge a voter in a secret ballot election, it must be done prior to the person casting their vote so as to preserve their right to vote secretly. Neither a union, nor an employer will know how that person will vote in the voting booth. If we implemented the challenge procedure in this context, both the employer and the labor organization know that the proof of support being challenged is a vote in favor of the union. Allowing parties to challenge voters only after they know how they voted would be contrary to the spirit and policies of the Act.

After determining that the Act and regulations do not contemplate the use of challenge procedures to workers' votes here, and in order to preserve workers' rights to vote, I opted to investigate the claims made by the union and make determinations based on the evidence available to me. The main inquiry for those workers who signed cards and whose names did not appear on the eligibility list was whether the evidence showed that they worked between September 4, 2023, and September 10, 2023. Based on this investigation, I determined sufficient evidence existed that 31 agricultural workers who did not appear on the employer-provided list, worked during the relevant period and added those agricultural workers to the eligibility list. (DiMare Exhibit 8, Bates number 003041-003042)

D. Analysis

1. Labor Code §1156.37

Labor Code §1156.37 reads as follows:

> (a) A labor organization may become the exclusive representative for the agricultural employees of an appropriate bargaining unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment by filing a Non-Labor Peace Election Petition with the board alleging that a majority of the employees in the bargaining unit wish to be represented by that organization. The petition shall describe the geographical area that constitutes the unit claimed to be appropriate and shall be accompanied by proof of majority support, through authorization cards, petitions, or other appropriate proof of majority support. Only labor organizations that have filed LM-2 forms for the preceding two years with the federal government may petition for a non-labor peace election.
>
> (b) A labor organization that wishes to represent a particular bargaining unit, as described in Section 1156.2, may be certified through a non-labor peace election as that unit's bargaining representative by submitting to the board a petition for non-labor peace election. The petition shall allege all of the following:
>
> (1) That the number of agricultural employees currently employed by the employer named in the petition for non-labor peace election, as determined from the employer's payroll immediately preceding the filing of the petition for non-labor peace election, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(2) That no valid election has been conducted among the agricultural employees of the employer named in the petition for non-labor peace election within the 12 months immediately preceding the filing of the petition.

(3) That the petition is not barred by an existing collective bargaining agreement.

(c) The petition for non-labor peace election described in subdivision (b) shall be supported by a proof of majority support, through authorization cards, petitions, or other appropriate proof of majority support of the currently employed employees, as determined from the employer's payroll immediately preceding the filing of the petition for non-labor peace election. The showing of support shall be submitted together with the petition for non-labor peace election.

(d) A labor organization submitting a petition for a non-labor peace election shall personally serve the petition on the employer on the same day that the petition is filed with the board. Within 48 hours after the petition is served, the employer shall file with the board, and personally serve upon the labor organization that filed the petition, its response to the petition. As part of the response, the employer shall provide a complete and accurate list of the full names, current street addresses, telephone numbers, job classifications, and crew or department of all currently employed employees in the bargaining unit employed as of the payroll period immediately preceding the filing of the petition. The employer shall organize the employees' names and addresses and other information by crew or department and shall provide the list to the board and petitioning labor organization in hard copy and electronic format. The employee's first name, middle name or initial, last name, address, city, state, ZIP Code, telephone number, classification, and crew or department shall be organized into separate columns. Immediately upon receiving the employer response and employee list, the board shall provide the response and employee list by hardcopy and electronic copy to the labor organization that filed the non-labor peace election petition.

(e) (1) Upon receipt of a petition for non-labor peace election, the board shall immediately commence an investigation regarding the validity of the petition and the proof of support submitted. Within five days of receipt of the petition, the board shall make an administrative determination as to whether the requirements set forth in subdivision (b) are met by the petition and whether the labor organization submitting the petition has provided proof of majority support. In making this determination, the board shall compare the names on the proof of support submitted by the labor organization to the names on the list of currently employed employees provided by the employer. The board

shall ignore discrepancies between the employee's name listed on the proof of support and the employee's name on the employer's list if the preponderance of the evidence, such as the employee's address, the name of the employee's foreman or forewoman, or evidence submitted by the labor organization or employee shows that the employee who signed the proof of support is the same person as the employee on the employer's list.

(2) The board shall return proof of majority support that it finds invalid to the labor organization that filed the petition for non-labor peace election, with an explanation as to why each proof of support was found to be invalid. To protect the confidentiality of the employees whose names are on authorization cards or a petition, the board's determination of whether a particular proof of support is valid shall be final and not subject to appeal or review.

(3) If the board determines that the labor organization has submitted proof of majority support and met the requirements set forth in this section, it shall immediately certify the labor organization as the exclusive bargaining representative of the employees in the bargaining unit. An employer's duty to bargain with the labor organization commences immediately after the labor organization is certified.

(4) If the board determines that the labor organization has not submitted the requisite proof of majority support, the board shall notify the labor organization of the deficiency and grant the labor organization 30 days from the date it is notified to submit additional support.

(f) (1) Within five days after the board certifies a labor organization through a non-labor peace election, any person may file with the board a petition objecting to the certification on one or more of the following grounds:

(A) Allegations in the non-labor peace election petition were false.

(B) The board improperly determined the geographical scope of the bargaining unit.

(C) The non-labor peace election was conducted improperly.

(D) Improper conduct affected the results of the non-labor peace election.

(2) Upon receipt of a petition objecting to certification, the board may administratively rule on the petitioner's objections or may choose to conduct a hearing to rule on the petitioner's objections. If the board decides to conduct

a hearing on the objections, it shall mail a notice of the time and place of the hearing to the petitioner and the labor organization whose certification is being challenged. The board shall conduct the hearing within 14 days of the filing of an objection, unless an extension is agreed to by the labor organization. If the board finds at the hearing that any of the allegations in the petition of the grounds set forth in paragraph (1) are true, the board shall revoke the certification issued under subdivision (e).

(3) The filing of a petition objecting to a non-labor peace election certification shall not diminish the duty to bargain or delay the running of the 90-day period set forth in subdivision (a) of Section 1164.

(g) The board shall not permit the filing of any other election petition once a non-labor peace petition is filed until the board determines whether the labor organization filing the non-labor peace election petition should be certified.

(h) Once a labor organization has filed a non-labor peace election petition, no other non-labor peace election petition shall be considered by the board with the same agricultural employer until the board determines whether the labor organization that filed the pending non-labor peace election petition should be certified. However, the board may consider a second non-labor peace election petition if the second petition alleges that the first petition was filed because of the employer's unlawful assistance, support, creation, or domination of the labor organization that filed the first petition. In those cases, the board shall expedite its investigation of the matter and render a decision on certification within three months of the filing of the first petition. If the board finds that a labor organization was unlawfully assisted, supported, created, or dominated by an employer, that labor organization's petition shall be dismissed and the second petition shall be considered. A labor peace agreement shall not be deemed unlawful by virtue of the fact that it was entered into pursuant to Section 26051.5 of the Business and Professions Code. Any labor organization that has been unlawfully assisted, supported, or dominated by an employer shall be disqualified from filing any further petitions with the board for a period of one year. That labor organization's representatives, agents, or officers shall similarly be disqualified from filing any further petitions with the board for a period of one year. A labor organization assisted, supported, created, or dominated by an employer, along with its representatives, agents, or officers, shall be permanently barred from filing any further petitions.

(i) In any case where two or more labor organizations are seeking to represent the same bargaining unit through a non-labor peace election petition, the most recent proof of support shall prevail.

(j) If an employer commits an unfair labor practice or misconduct, including vote suppression, during a labor organization's non-labor peace election campaign, and the employer's unfair labor practice or misconduct would render slight the chances of a new non-labor peace election campaign reflecting the free and fair choice of employees, the labor organization shall be certified by the board as the exclusive bargaining representative for the bargaining unit. For purposes of a finding of an unfair labor practice or misconduct under this part and under this section, a misrepresentation of fact or law by an employer, an employer's representative, or agent is an unfair labor practice or misconduct whether or not a labor organization has had an opportunity to respond to or correct the misrepresentation.

(k) If an employer disciplines, suspends, demotes, lays off, terminates, or otherwise takes adverse action against a worker during a labor organization's non-labor peace election campaign, there shall be a presumption that the adverse action was retaliatory and illegal, and the employer shall escape liability for the illegal action only if the employer provides clear, convincing, and overwhelming evidence that the adverse action would have been taken in the absence of the non-labor peace election campaign.

(l) For purposes of Section 1156.5, a non-labor peace election is a valid election.

(m) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

2. Parties' Position

Employer:

In the post-hearing brief, DiMare argued the IRD's unwritten, unstated, and unvetted process was erroneous which led to ineligible individuals being allowed to vote, which altered election outcome. More specifically, DiMare argued that the IRD failed to ensure her staff was appropriately trained to implement the Majority Support Petition process; the IRD allowed the UFW to direct the IRD's eligibility investigation; the IRD had no process for confirming the identities of the voters; the IRD's questionnaire was one-sided and failed to elicit sufficient evidence to rely upon in making eligibility determinations; the IRD's process did not include a process for evaluating the credibility of interviewees; the IRD's eligibility determinations relied almost exclusively on her investigators' reports; the IRD did not adopt a clear standard for determining whether her investigation had resulted in sufficient evidence that workers were eligible; and that the IRD prematurely closed the investigation.

As presented above, the IRD provided lengthy testimony regarding the steps that she took in processing this Majority Support Petition. In footnote 4 of the Admin. Order, the Board acknowledged that the IRD and her staff "were required to apply this new statutory process without the benefit of established precedents" (Admin. Order at 6) It is noted that at the time of the issuance of this decision, there are no adopted regulations regarding Majority Support Petitions.

The IRD provided testimony that when Labor Code §1156.37 was enacted, there were staff meetings regarding the MSP (Transcript at 131: 1-4, 17), she discussed the filing

of this MSP with her colleague (Transcript at 133: 19-24) and that she had meetings with the field examiners as they were working on the MSP (Transcript at 10: 9-16). As this is a newly enacted statute, it is reasonable that the MSP trainings consisted of discussions and meetings as there was no opportunity to review or study previously gained knowledge and experience.

It is undisputed that the UFW alleged that 49 individuals were left off of the eligibility list and communicated that information to the IRD, however, no evidence was presented that the IRD allowed the UFW to direct this investigation.

The IRD testified that the process for verifying the identity of individuals was to ask for an individual's name (Transcript at 70: 22-24) and that it was policy to not demand workers for identification. (Transcript at 71: 2-3) While the Employer may desire that identification cards should have been checked for each interviewee, nothing suggests that the IRD or her staff violated any agency processes or policies regarding verification of individuals' identities.

The IRD explained that she developed a clear questionnaire which asked for information including the workers employment, where they worked, who they worked with and the names of their supervisors. (Transcript at 57: 3, 5) (Transcript at 61: 12-17) (Transcript at 58: 13-17) The questionnaire did not seek any information that would gauge interviewee biases or involvement with the UFW. (Transcript at 74: 15, 18, 21; 75: 7) Without the benefit of regulations and under the tight time constraints as outlined by the statute, it is reasonable that the IRD would develop a questionnaire as a tool to aid in

making her determination. No evidence was presented that the IRD violated the statute or agency policy in developing this questionnaire.

The IRD offered that she had received training regarding credibility determination (Transcript at 73: 24) and that while she had not personally trained her staff, they had received the credibility determination training through their supervisors or more experienced field examiners. (Transcript at 73: 13-16) She further offered that it is the field examiners process to make credibility determinations during the interviews. (Transcript at 71: 21-24) Nothing in the evidence presented suggests that either the IRD or her staff disregarded credibility determinations throughout this investigation.

In the post-hearing brief, DiMare stressed that the IRD spoke with one interviewee and "only received documentary evidence for two individuals". As the IRD had an investigative staff consisting of field examiners, it is not unreasonable that she did not personally speak to each individual to make her determination regarding their eligibility to be on the list.

The IRD stated "I was looking for evidence that supported that the worker in question had worked for DiMare during the eligibility period." (Transcript at 76: 9-11) She did not identify any particular legal standard that she used to apply to the evidence before her. As the statute does not require the utilization of a specific legal standard for the IRD to use to make findings and as there are currently no regulations is place, the IRD's methodology is reasonable and acceptable.

The IRD made her majority support determination as soon as she was able to do so. (Transcript at 86: 10-11; 87: 1-2) She acknowledged that the statute is "silent on giving a

deadline to submit to file the final tally" (Transcript at 56: 10-16) As the statute does not specify a deadline to submit the final tally and as there are currently no regulations is place, the IRD's action to make her determination as soon as she was able to do so is reasonable and acceptable.

DiMare further argued the IRD's erroneous process and mishandling of the UFW's allegations violated the Act by altering the outcome of the Majority Support Petition election. In its post-hearing brief, DiMare contends "If just five of the 31 individuals were not added to the eligibility list, then the UFW would have failed to achieve majority support. Stated another way, the UFW could not achieve majority support without the IRD adding at least 27 individuals to the eligibility list."

The IRD carefully explained the steps that she took during her investigation as outlined above. While the UFW purported that 49 individuals should have been included in the eligibility list, the IRD added 31 of those individuals to the list at the conclusion of her investigation thereby rejecting 18 individuals. While DiMare would have benefited had the IRD rejected at least 22 individuals from the eligibility list, the IRD's process does not equate to an erroneous process and/or mishandling of the UFW's allegations which would violate the Act.

DiMare also argued the IRD exceeded her authority under the Act by unilaterally expanding the eligibility list in direct contravention of DiMare's right to due process emphasizing that adding workers to the eligibility list is an extreme remedy that was not justified under a totality of the circumstances.

The Board determined that the "Regional Director does have authority under section 1156.37 to add to an eligibility list employees demonstrated to have been improperly omitted from an employer's list." (Admin. Order at 6) Testimony was presented during the hearing that the IRD gave DiMare time, albeit brief, to provide evidence regarding the eligibility of the 31 individuals. No evidence was offered that DiMare sought an extension of time to provide information to the IRD that any of the 31 individuals were ineligible to be placed on the list. The IRD testified that she would have considered giving additional time to DiMare if a request had been made. Based on the totality of circumstances in this instant, it is determined that DiMare's due process rights were not violated.

DiMare additionally argued that prior to unilaterally deciding to add individuals to the eligibility list, the IRD was required to do something more than simply conclude her investigation and issue a final determination. DiMare noted in its post-hearing brief that "[w]ith secret ballot elections, the parties have a right to appoint election observers that can raise challenges to voters' eligibility" and that "While these same procedural safeguards are not included in the text of the MSP statute, it does not follow that no such safeguards exist."

Again, the Board has determined that the Regional Director has authority under the statute to add individuals to an eligibility list. While secret ballot elections provide certain procedural "safeguards", those particular "safeguards" are not enumerated in the MSP statute. As such without regulations or other similar guidance, neither the IRD nor anyone else similarly situated can simply use procedures from ballot elections for the MSP statute.

Finally, DiMare argued the IRD should have implemented a challenged-ballot-like process because it could have cured many of the deficiencies in her investigation and related eligibility determinations.

As Labor Code §1156.37 does not reference the implementation of a challenged-ballot-like procedure, without regulations or other similar guidance, neither the IRD nor anyone else similarly situated can simply use procedures from ballot elections for the MSP statute.

DiMare's reply to the UFW's post-hearing brief:

DiMare submitted the following in its reply to the UFW's post-hearing brief:

> The UFW's arguments rely on the flawed viewpoint that voter "eligibility" and "proof of support" are one and the same By arguing that the IRD's process was proper, and that the underlying eligibility evidence should not be reviewed, the UFW is in effect arguing that it was proper for the IRD to make eligibility determinations as part of her investigation into the UFW's "proof of support," and that it was proper for her to do so in an unreviewable vacuum.
>
> Regional Directors cannot and should not be making eligibility determinations in an unreviewable vacuum. It is absurd to suggest that regional directors are now empowered to make these determinations without the possibility or opportunity for any kind of review. Regional directors should not be permitted to make these determinations outside of the reach of potential testing by the parties and potential review by the Board. Moreover, and most importantly, the regional directors' eligibility determinations should be reviewable by the Board—as they always have been—where appropriate.
>
> The UFW's argument that the Objections Hearing did not include the evidence related to the IRD's actions is based on a deliberate misreading of the Board's AO. Ultimately, in addition to effectively re-writing the Board's AO, the problem with the UFW's misreading of the AO is that it completely prohibits DiMare from developing the record and being heard on the factual and legal issues presented by this case. As is explained in DiMare's Post-

hearing Brief, reading the AO in this way resulted in a violation of DiMare's right to due process.

The UFW does very little to argue that the IRD's process was proper. UFW's arguments are insufficient to justify or defend the shoddy investigative process that the IRD adopted. IRD: (1) failed to ensure her staff was sufficiently trained to implement the MSP process; (2) allowed the UFW to direct the IRD's eligibility investigation; (3) failed to implement a process for confirming the identities of the voters; (4) utilized a one-sided questionnaire that amplified her confirmation bias; (5) failed to reliably evaluate the credibility of interviewees; (6) failed to adopt a clear evidentiary standards; and (7) prematurely closed her investigation and jumped to conclusions about eligibility before hearing from DiMare. The IRD's eligibility determinations were the product of an investigation that lacked any safeguards that were necessary to ensure that the IRD's determinations were supported by sufficient evidence.

The UFW's argument that DiMare was already given a reasonable opportunity to provide rebuttal evidence is not supported by the facts. Without knowing the names of the individuals allegedly left off the payroll records, DiMare had no way of looking into whether and to what extent these individuals might have worked for the company at any point. This is important because DiMare now knows that many of the 31 individuals—who the UFW alleges were paid in cash—did, in fact, work at DiMare before and/or after the eligibility period. the IRD immediately drew DiMare's focus away from that inquiry when the IRD added 24 individuals to the eligibility list on October 19. However, this argue is misplaced because DiMare was never provided a legitimate opportunity to present rebuttal evidence in the first place. Again, this is particularly true when the IRD was not giving any indication that she was willing to reconsider her "decision" to add the 29 individuals to the eligibility list.

The UFW's argument that the nothing in the MSP statute required a challenged ballot process is misleading and misses the point. Furthermore, the while the MSP statute is silent on the issue of challenged ballots, the IRD's interpretation must still be "based on a permissible construction of the statute." the important point is not that the MSP statute does not require a challenged ballot process, but that the MSP does not prohibit it. while Labor Code section 1156.37 does not contain a formal challenged ballot process built into the text of the statute, the Act nonetheless requires the Board to ensure the integrity of representational elections. While a strict adherence to the challenged ballot procedures built into the secret ballot election process might not have been appropriate in the MSP election setting, some kind of

> challenged-ballot-like process is needed to ensure the integrity of the MSP election process. the IRD could have implemented a process that better balanced the competing interests in play in order to ensure that all parties were afforded a full and fair opportunity to present their case and test the eligibility of the persons believed to be ineligible to vote in the first place.

Petitioner Labor Organization:

In the post-hearing brief, the UFW argued that DiMare's Objection Number 1 must be dismissed because it was not improper for the IRD to add 31 individuals to the eligibility list as the IRD followed regulatory, statutory, and decisional authority given to her. The UFW additionally argued that there is nothing in the statute, regulations or Board law which require that the individuals in this instant be treated as "challenge" ballots.

As previously stated, the Board determined that the "Regional Director does have authority under section 1156.37 to add to an eligibility list employees demonstrated to have been improperly omitted from an employer's list." (Admin. Order at 6) Labor Code §1156.37 is silent as to the implementation of a challenge-ballot process for MSP. Furthermore, there are no regulations in place, at this time regarding MSP. As such, without any statutory or regulatory guidance in place which would permit a challenge-ballot process for MSP, that process is improper in this instant.

The UFW further argued that DiMare's Objection Number 2 must be dismissed because although DiMare maintained that there was proof that the employees did not work during the eligibility period, no evidence was provided to the IRD and that DiMare did not ask for any extension of time to provide the evidence; therefore, DiMare should not argue that its due process rights are being violated.

As previously noted, testimony was presented during the hearing that the IRD gave DiMare time, albeit brief, to provide evidence regarding the eligibility of the 31 individuals. No evidence was offered that DiMare sought an extension of time to provide information to the IRD that any of the 31 individuals were ineligible to be placed on the list. The IRD testified that she would have considered giving additional time to DiMare if a request had been made. Based on the totality of circumstances in this instant, it is determined that DiMare's due process rights were not violated.

The UFW also argued that DiMare's Objection Number 5 must be dismissed because "the Board very clearly held in its order that Regional Directors have the authority to add excluded employees to an eligibility list" and that existing Board law supports this position[1].

The Board's determination that under Labor Code §1156.37, the Regional Director has authority to add to employees demonstrated to have been improperly omitted from an employer's list to an eligibility list (Admin. Order at 6) coupled with the determination that

[1] "[N]othing in Labor Code § 1156.37 nor the subcommittee's draft regulations contemplate the specific situation that arose in this case, but existing law, as confirmed by the Board's order, permits Regional Directors to add excluded employees to an eligibility list. See, e.g., 8 Cal. Code Regs. § 20310(f); Order at 6; Harry Singh & Sons (1975) 4 ALRB No. 63 (Regional Director did not abuse discretion by invoking presumption in Board Regulation 20310(d)(2) that employees are eligible to vote where Employer had inadequate payroll records and did not submit complete data in timely manner to verify employee status and voter eligibility); Valdora Produce Co., (1977) 3 ALRB No. 8 (Employees who are paid, or who are entitled to be paid for work during the pre-petition payroll period are eligible to vote even though their names may not appear on the payroll list); South Lakes Dairy Farms, (2010) 36 ALRB No. 5 (The fact that a challenged voter was not on the regular payroll and is paid in cash creates no presumption of ineligibility, citing Henry Garcia Dairy (2007) 33 ALRB No. 4, pp. 10-11; Artesia Dairy (2006) 32 ALRB No. 2, at 5 (agricultural workers who are not on the regular payroll can still be eligible to vote if they worked during the eligibility period). (UFW Post-Hearing Brief p. 7)

DiMare's due process rights were not violated as discussed above, negates DiMare's argument.

The UFW additionally argued that DiMare's Objection Number 6 must be dismissed because "[g]iven the Board's finding that a rule precluding adding names after the 5-day administrative determination period is not stated anywhere in the statute, DiMare's claim that the RD was precluded from adding names after this 5 day period is completely without merit."

Labor Code §1156.37(e)(1) states upon receipt of a Majority Support Petition, the board shall immediately commence an investigation regarding the validity of the petition and the proof of support submitted. Within five days of receipt of the petition, the board shall make an administrative determination as to whether the requirements set forth in subdivision (b) are met by the petition and whether the labor organization submitting the petition has provided proof of majority support. In making this determination, the board shall compare the names on the proof of support submitted by the labor organization to the names on the list of currently employed employees provided by the employer. The board shall ignore discrepancies between the employee's name listed on the proof of support and the employee's name on the employer's list if the preponderance of the evidence, such as the employee's address, the name of the employee's foreman or forewoman, or evidence submitted by the labor organization or employee shows that the employee who signed the proof of support is the same person as the employee on the employer's list.

Labor Code §1156.37(e)(4) states if the board determines that the labor organization has not submitted the requisite proof of majority support, the board shall notify the labor

organization of the deficiency and grant the labor organization 30 days from the date it is notified to submit additional support.

The statute is silent as to any timeline prohibitions that the Regional Director has to add individuals to the eligibility list. As such, the Regional Director is able to add individuals after the "initial tally".

The UFW finally argued that DiMare's Objection Number 8 must be dismissed because "no Board law or regulation requires DiMare be provided with evidence submitted by the Union." (UFW Post-Hearing Brief p. 10)

The statute does not contemplate that the Employer must be given access to evidence which supports the addition of individuals to the eligibility list during the cure period. As such, it is determined that the IRD did not act improperly when she did not provide DiMare the evidence submitted by the UFW in support of the addition of individuals to the eligibility list.

The UFW reply to DiMare's post-hearing brief:

The UFW submitted the following in its reply to DiMare's post-hearing brief:

> DiMare maintains that it should have been permitted to review and challenge the specific evidence relied on by the Regional Director ("RD") in adding 31 employees to the eligibility list. nothing in the Board's order supports DiMare's claim that the hearing was intended to be a full-blown challenge ballot hearing.
>
> DiMare's underlying argument concerning the eligibility list relates to the RD's authority to modify the eligibility list. it is up to the RD's independent judgement and discretion to determine eligibility based on the evidence presented. DiMare can point to nothing in the record or law showing the RD's decision was erroneous.

DiMare claims that it was not provided sufficient time to dispute the evidence of eligibility provided to the RD by the UFW. DiMare's claims are without merit, because although the RD was working on a compressed time schedule, DiMare failed to provide any evidence it claims it had, and therefore waived any claim that it was denied due process rights. DiMare had an obligation to maintain and provide accurate employment records, including a correct list of all employees that worked during the eligibility period, UFW's position is that DiMare cannot complain about the foreseeable consequences of such failure. Nevertheless, DiMare was provided sufficient opportunity to present evidence disputing the addition of workers proffered by the UFW but failed to present any evidence contesting the addition of those workers.

DiMare argues that the RD improperly failed to implement a challenged-ballot-like process and treat the additional employees the UFW sought to add as challenged ballots. There is nothing in the Labor Code or existing Board regulations that required the Regional Director to treat employees not on the employer-provided list as challenged ballots and the Employer's evidence at hearing did not demonstrate anything to the contrary. Given the regulatory, statutory, and decisional authority granted to Regional Directors in this situation, it was not improper for Regional Director Luna to add 31 employees to the eligibility list who were left off due to the employer's poor recordkeeping. Nor is there anything in the existing statute, regulations or Board law that requires she have treated the disputed workers as "challenge" ballots.

CONCLUSIONS OF LAW

Based on the testimony and documentary evidence presented in this instant, it is concluded that:

The IRD followed proper process in reaching the Majority Support Petition determination;

The IRD did not violate DiMare's due process rights to dispute the evidence regarding the individuals added to the eligibility list;

The IRD did not exceed her authority under the Act by expanding the eligibility list and did not violate DiMare's due process rights;

The IRD did not exceed her authority under the Act by accepting additional names for the eligibility list after the initial tally had taken place; and

The IRD acted properly by not providing DiMare the evidence submitted by the UFW in support of the addition of individuals to the eligibility list.

ORDER

It is ORDERED that DiMare's Objection 1 is DISMISSED.

It is ORDERED that DiMare's Objection 2 is DISMISSED.

It is ORDERED that DiMare's Objection 5 is DISMISSED.

It is ORDERED that DiMare's Objection 6 is DISMISSED.

It is ORDERED that DiMare's Objection 8 is DISMISSED.

DATED: March 15, 2024

Hermine Honarvar-Rule

Hermine Honarvar-Rule
Administrative Law Judge
Agricultural Labor Relations Board

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE
(Code Civ. Proc., §§ 1013a, 1013b, 2015.5)

Case Name: UNITED FARM WORKERS OF AMERICA, Petitioner and
DMB PACKING CORP. DBA THE DIMARE COMPANY, Employer

Case No.: Case No. 2023-RM-001-VIS

I am over the age of 18 years and not a party to this action. I am employed in the County of Sacramento. My business address is 1325 J Street, Suite 1900-B, Sacramento, California 95814.

I served **1) DECISION OF THE ADMINISTRATIVE LAW JUDGE; and NOTICE OF TRANSFER** on the parties in this action as follows:

- **By Email** to the parties pursuant to Board regulation 20164 & 20169 (Cal. Code Regs., tit. 8, §§ 20164 & 20169) from my business email address lori.miller@alrb.ca.gov:

  Ronald H. Barsamian, Esq. ronbarsamian@aol.com
  Patrick S. Moody, Esq. pmoody@theemployerslawfirm.com
  Barsamian & Moody
  Counsel for DMB Packing Corp. DBA The Dimare Company

  Mario Martinez, Esq. mmartinez@farmworkerlaw.com
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  Martinez Aguilasocho Law, Inc.
  Counsel for United Farm Workers of America

Executed on March 18, 2024, at Sacramento, California. I certify under penalty of perjury that the foregoing is true and correct.

Lori A. Miller
Legal Secretary

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE
(Code Civ. Proc., §§ 1013a, 1013b, 2015.5)

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- **By Email** to the parties pursuant to Board regulation 20164 & 20169 (Cal. Code Regs., tit. 8, §§ 20164 & 20169) from my business email address lori.miller@alrb.ca.gov:

  Ronald H. Barsamian, Esq. ronbarsamian@aol.com
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  Martinez Aguilasocho Law, Inc.
  Counsel for United Farm Workers of America

Executed on March 18, 2024, at Sacramento, California. I certify under penalty of perjury that the foregoing is true and correct.

Lori A. Miller
Legal Secretary