

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,)	Case No. 2024-RM-002
)	
)	
Petitioner Labor Organization,)	ORDER:
)	
and,)	(1) DENYING WONDERFUL NURSERIES, LLC'S RENEWED MOTION TO STAY CERTIFICATION;
WONDERFUL NURSERIES, LLC,)	
)	
Employer.)	(2) SETTING FOR HEARING OBJECTION NOS. 1, 2, 3, 7, 8, AND 13; AND
)	
)	(3) DISMISSING OBJECTION NOS. 4, 5, 6, 9, 10, 11, 12, 14, 15, AND 16
)	
)	Administrative Order No. 2024-04 (March 18, 2024)
)	
)	

On February 23, 2024, petitioner United Farm Workers of America (UFW) filed a majority support petition in the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB or Board) under section 1156.37 of the Agricultural Labor Relations Act (ALRA or Act)¹ seeking to be certified as the exclusive collective bargaining representative of the agricultural employees of employer Wonderful Nurseries, LLC (Wonderful). Following an investigation of the petition and proof of

¹ The Act is codified at Labor Code section 1140 et seq.

support submitted by the UFW, the regional director concluded the number of eligible agricultural employees in the bargaining unit to be 640 and that the UFW submitted 327 valid authorization cards, thereby establishing majority support. Wonderful promptly filed a motion with the Board requesting an immediate stay of certification, alleging the UFW engaged in unlawful and fraudulent conduct in obtaining employee signatures on authorization cards and that employees were seeking to revoke or withdraw their support of the union. After Wonderful's motion was filed, the executive secretary issued a certification designating the UFW as the exclusive collective bargaining representative of Wonderful's agricultural employees. (See Lab. Code, § 1156.37, subd. (e)(3).) The Board denied Wonderful's stay motion in *Wonderful Nurseries, LLC* (Mar. 6, 2024) ALRB Administrative Order No. 2024-02.

Wonderful now renews its motion to stay the certification and separately objects to the certification on various grounds. We deny Wonderful's renewed stay motion. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-02, p. 2; Lab. Code, § 1156.37, subd. (e)(3).) As discussed below, the Board sets for hearing objection nos. 1, 2, 3, 7, 8, and 13. The remaining objections (nos. 4, 5, 6, 9, 10, 11, 12, 14, 15, and 16) are hereby dismissed.²

² The UFW filed an opposition to Wonderful's stay motion and a motion to dismiss the objections on March 15. The UFW's dismissal motion is based on Wonderful's failure to produce the employee declarations to it. The UFW's motion is denied. We address the issue of the declarations, and the conduct of a hearing on the relevant objections, below. (See p. 6, fn. 5, and p. 14, fn. 8, *infra*.)

PROCEDURAL BACKGROUND

The UFW filed the underlying majority support petition in the Board's Visalia Regional Office on February 23, 2024. Wonderful filed a response to the petition on February 26 and submitted an employee list. The relevant pay period for eligibility purposes is February 12 through February 18. The original list produced by Wonderful contained 688 names. Wonderful subsequently advised the region nine individuals who did not work during the eligibility period were erroneously included in the list, while one individual who did work during the period inadvertently was omitted from the list. The region investigated and accepted these representations.

During the course of the region's investigation, the UFW alleged 38 individuals on the employer's list should be excluded as "crew bosses, crew leaders, administrative staff, and/or other management." The region investigated these allegations and removed 33 individuals from the list on grounds they were statutory supervisors and thus ineligible to participate. Of these 33 individuals, it appears 12 individuals were Wonderful direct hires and 21 worked for farm labor contractors providing labor to Wonderful (Guerrero Labor Contractor; O.F.R., Inc.; Kern Labor Contracting, Inc.; and Paragon Personnel).

The UFW also alleged during the investigation that Kern Labor Contracting, Inc. provided labor to Wonderful Orchards, LLC and not Wonderful Nurseries. The regional director does not expressly state how the region disposed of this allegation, but it appears workers provided by Kern Labor Contracting remained included in the bargaining unit (except those deemed statutory supervisors, per above). On the

issue of the scope of the appropriate bargaining unit, the region also investigated individuals listed as direct hires. The worksite for some of these workers was identified as “WOWANU – Orchards Wasco Nurseries” and for others as “WOSPFA – Orchards Spray Ops Farm.” The region removed seven employees from the eligibility list whose worksite was WOSPFA on the basis they did not share a community of interest with other workers in the unit.

Based on the above determinations, the regional director found the appropriate bargaining unit to include 640 eligible employees (i.e., $688 + 1 - 9 - 33 - 7 = 640$).

Regarding the UFW’s proof of support, the union submitted 423 authorization cards with its petition. Over the ensuing days while the petition remained pending with the region, the UFW submitted an additional 44 cards on February 27, 76 cards on February 28, 46 cards on February 29, and 15 cards on March 1, for a total of 604 submitted authorization cards (i.e., $423 + 44 + 76 + 46 + 15 = 604$). The region found 327 of the cards valid.

The regional director’s findings on the issues described above are set forth in a tally and accompanying declaration filed by the regional director on March 4.³ Based on the regional director’s determination the UFW submitted 327 valid authorization cards out of a total of 640 eligible employees in the appropriate bargaining unit, the regional

³ The regional director electronically filed her final tally late in the evening on Friday, March 1. The Board deemed the tally filed effective Monday, March 4. (Board reg. 20169, subd. (a)(2).) (The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.)

director found majority support to exist. Pursuant to Labor Code section 1156.37, subdivision (e)(3), the executive secretary issued a certification on March 4 designating the UFW as the exclusive collective bargaining representative of “[a]ll agricultural employees of WONDERFUL NURSERIES, LLC in the STATE OF CALIFORNIA.” The certification further provides notice that objections to the certification are due March 11. (Lab. Code, § 1156.37, subd. (f)(1).)

Before the executive secretary issued the certification, Wonderful filed a motion for an immediate stay of the certification.⁴ According to Wonderful, it submitted to the region—before the regional director filed her final tally—a total of 148 declarations from employees alleging their signatures on authorization cards for the UFW were procured by “fraud, deception, and misrepresentation.” Wonderful alleged the declarations describe that the employees did not understand what they were signing, believed their signatures on the cards were for the purpose of obtaining COVID-19-related financial aid, and that the employees wish to revoke their authorizations supporting the UFW. Wonderful states 139 of the declarations are from employees included in the eligibility list. The regional director’s tally does not acknowledge Wonderful’s allegations, the employee declarations submitted by Wonderful in support of them, or how many (if any) of the authorization cards found valid by the regional director were from employees whose declarations were produced by Wonderful.

⁴ Wonderful filed its motion and accompanying brief over the weekend of March 2-3. The Board deemed the motion and brief filed effective Monday, March 4. (Board reg. 20169, subd. (a)(2).)

On March 6, the Board issued an order denying the motion, but acknowledged the allegations described by Wonderful would form the basis for a cognizable objection under Labor Code section 1156.37, subdivision (f)(1)(d). (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-02, p. 3.) Wonderful timely filed objections to the UFW’s certification on March 11, accompanied by a renewed motion to stay the certification. Wonderful also filed the 148 employee declarations with the Board. Employee names in the declarations are redacted, but Wonderful provided a separate “key” listing the employee declarants.⁵

DISCUSSION

I. Wonderful’s Renewed Motion to Stay

Upon a finding of proof of majority support, the Board is required “to immediately certify the labor organization as the exclusive bargaining representative of the employees in the bargaining unit.” (Lab. Code, § 1156.37, subd. (e)(3).) The statute creates no process by which to stay the certification. Rather, revocation of a certification issued by the Board is subject to the objections procedure set forth in subdivision (f) of section 1156.37. We are unable to refuse to give effect to the process set forth in statute by the Legislature. (Cal. Const., art. III, § 3.5; *DMB Packing Corp. dba The DiMare Company* (Nov. 3, 2023) ALRB Admin. Order No. 2023-11, pp. 3-4; *Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-02.)

⁵ Wonderful acknowledges it did not serve the declarations or declarant key on the UFW, citing confidentiality concerns. (Cf. Board reg. 20365, subd. (c)(2)(D).) We address this issue below. (See Objection No. 1, p. 14, fn. 8, *infra*.)

The Legislature clearly has expressed its intent in the statute that majority support petitions be processed expeditiously, with a presumption of validity accorded a certification issued upon a finding of majority support. (See *Ruline Nursery Co. v. ALRB* (1985) 169 Cal.App.3d 247, 254, citing *California Lettuce Co.* (1979) 5 ALRB No. 24, p. 4.) Indeed, the purpose of this law is to “streamline the process for agricultural workers to choose a collective bargaining representative.” (Assem. Com. On Budget, Assem. Floor Analysis, conc. in Sen. Amends. of Assem. Bill No. 113 (2023-2024 reg. sess.) as amended Apr. 28, 2023, p. 2; Sen. Com. on Labor, Public Employment, and Retirement, analysis of Assem. Bill No. 2183 (2021-2022 reg. sess.) as amended Mar. 24, 2022, p. 7 [describing the need for amendments to the process by which labor organizations are certified under the ALRA, and finding “[t]he obvious culprit of declining union organizing is an agricultural industry that is openly and consistently hostile to organizing and a legal system only too willing to support this over the rights of workers”].)

Wonderful obviously disputes the policy determinations made by the Legislature in establishing the process it did in the majority support petition statute. However, the propriety or wisdom of legislative enactments must be directed to the Legislature and addressed by that body. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1219; see *Tufeld Corp. v. Beverly Hills Gateway, L.P.* (2022) 86 Cal.App.5th 12, 26 [“we do not pass judgment on the wisdom of the public policy the Legislature seeks to promote ... Our task is to interpret the statute to effectuate the law’s purpose and underlying policy”]; *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53; see also *Blythe v. Ayres* (1892) 96 Cal. 532, 588.)

We do not take lightly the seriousness of the allegations presented by Wonderful. However, the merit or validity of Wonderful’s allegations must be determined through the procedures adopted by the Legislature, and that is the objections process.⁶ Indeed, allegations of union misconduct in the context of a traditional secret ballot election conducted pursuant to Labor Code section 1156.3 similarly are reserved to the objections process. (Lab. Code, § 1156.3, subd. (e)(1); Board reg. 20365, subd. (c)(2).)

Accordingly, Wonderful’s renewed motion to stay the certification is

⁶ In this regard, and as set forth more fully in the following discussions, we set for hearing several of Wonderful’s objections (nos. 1, 2, 3) concerning the employee declarations Wonderful produced to the region, the allegations of union misconduct described in those declarations, and the employees’ purported requests to revoke or withdraw their names from the union’s proof of support. We also note both Wonderful and the UFW have filed unfair labor practice charges against each other concerning these allegations. (Unfair Labor Practice Charge No. 2024-CL-001, filed Mar. 1, 2024 [Wonderful alleging UFW mislead farmworkers into signing authorization cards]; Unfair Labor Practice Charge No. 2024-CE-013, filed Mar. 1, 2024 [UFW alleging Wonderful held unlawful “captive audience” meetings and urged employees to reject the UFW]; Unfair Labor Practice Charge No. 2024-CE-014, filed Mar. 1, 2024 [UFW alleging Wonderful circulated and coerced employees into signing an anti-union petition to revoke support for the UFW]; Unfair Labor Practice Charge No. 2024-CE-015, filed Mar. 1, 2024 [UFW alleging Wonderful interfered with employee rights by informing workers the UFW deducts \$200 from their paychecks]; and Unfair Labor Practice Charge No. 2024-CE-016, filed Mar. 4, 2024 [UFW alleging Wonderful circulated anti-union flyers to workers].) As set forth in these various charges, numerous issues are asserted regarding the conduct of the UFW in soliciting authorization cards from the workforce and Wonderful’s involvement in procuring statements and support-revocations from its employees. Such matters cannot be addressed on an incomplete record. The majority support petition statute sets forth a process for hearing objections to a labor organization’s certification on an expedited basis. We also urge the general counsel to make all reasonable efforts to ensure the prompt and expeditious investigation of the parties’ unfair labor practice charges, including the prosecution of any such charges the general counsel determines appropriate for issuance of complaints.

denied.

II. Wonderful's Objections

A. Applicable Legal Standards

Labor Code section 1156.37, subdivision (f)(1) states any person may file objections to a labor organization's certification after a determination of majority support based on the following grounds:

- (A) Allegations in the Majority Support Petition were false.
- (B) The board improperly determined the geographical scope of the bargaining unit.
- (C) The majority support election was conducted improperly.
- (D) Improper conduct affected the results of the majority support election.

If an objections petition is filed, "the board may administratively rule on the petitioner's objections or may choose to conduct a hearing to rule on the petitioner's objections." (Lab. Code, § 1156.37, subd. (f)(2).) Although the Board does not yet have regulations in place to implement the statutory majority support petition process, our review of objections in this context is guided by established principles.

At the outset, in the context of secret ballot elections the California Supreme Court has upheld the Board's conditioning of a full evidentiary hearing upon the presentation of objections and factual declarations that establish a prima facie case of a valid basis for objection. (*Premiere Raspberries, LLC* (2017) 43 ALRB No. 2, p. 2; *George Amaral Farms* (2012) 38 ALRB No. 5, p. 5, citing *Lindeleaf v. ALRB* (1986) 41 Cal.3d 861, 874-875; *J.R. Norton Company, Inc. v. ALRB* (1979) 26 Cal.3d 1, 17.) The majority support petition statute recognizes the Board's authority and discretion to

administratively dismiss objections without a full evidentiary hearing. (Lab. Code, § 1156.37, subd. (f)(2).)

The objecting party bears the burden of making a prima facie showing an error, impropriety, or misconduct occurred sufficient to warrant revocation of the labor organization's certification. (*Dessert Seed Co. v. Brown* (1979) 96 Cal.App.3d 69, 73; *Radovich v. ALRB* (1977) 72 Cal.App.3d 36, 45.) This burden is a heavy one and requires a showing not only that improprieties occurred but that they were "sufficiently material" to have affected the outcome of the process. (*Gerawan Farming, Inc.* (2018) 44 ALRB No. 10, p. 4; *Oceanview Produce Co.* (1994) 20 ALRB No. 16, p. 6.) Indeed, Labor Code section 1156.37, subdivisions (e)(3) and (f)(2), taken together, evince the Legislature's intent to establish "a presumption in favor of certification with the burden of proof resting with the objecting party to show why the election should not be certified." (*Ruline Nursery Co., supra*, 169 Cal.App.3d at p. 254 [discussing Labor Code section 1156.3, subdivisions (c) and (d)], citing *California Lettuce Co., supra*, 5 ALRB No. 24, p. 4 ["the legislature has in effect established a presumption in favor of certification and indicated that the burden of proof rests upon the party objecting thereto"].)

In determining whether to set objections for hearing, the Board does not endeavor to assess the merits of the party's allegations and supporting evidence. Such factfinding appropriately takes place following development of an evidentiary record. However, declarations submitted in support of objections alleging improper conduct in the processing of a majority support petition or by a party must meet basic requirements before the Board will order a hearing. Declarations must state facts sufficient to support

the objections (*George Amaral Farms, supra*, 38 ALRB No. 5, p. 5), and such facts must be within the personal knowledge of the declarant. (*Premiere Raspberries, LLC, supra*, 43 ALRB No. 2, p. 2; see *Gerawan Farming, Inc.* (June 9, 2017) ALRB Admin. Order No. 2017-06, pp. 6-7.) Declarations based on hearsay, facts not within the personal knowledge of the declarant, or speculation do not meet this standard. (*Coastal Berry Co., LLC* (2000) 26 ALRB No. 1, p. 98 [objection alleging Board agent misconduct dismissed where supporting declaration was “based entirely on hearsay”]; *GH&G Zysling Dairy* (1993) 19 ALRB No. 17, pp. 5-6 [objection based on hearsay declaration dismissed]; see also *South Lakes Dairy Farms* (2013) 39 ALRB No. 2, p. 10 [“motions filed before the Board in which facts not in the record are alleged should be accompanied by a declaration filed under penalty of perjury by a person with personal knowledge of those facts”]; *Gerawan Farming, Inc., supra*, ALRB Admin. Order No. 2017-06, pp. 6-7; *Gerawan Farming, Inc.* (May 18, 2017) ALRB Admin. Order No. 2017-03, p. 17 [disregarding anonymous declaration because it lacked indicia of reliability and trustworthiness]; *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761 [“Declarations must show the declarant’s personal knowledge and competency to testify, state facts and not just conclusions, and not include inadmissible hearsay or opinion”]; *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26 [“declarations that lack foundation or personal knowledge, or that are argumentative, speculative, impermissible opinion, hearsay, or conclusory are to be disregarded”].)

When it is alleged a party has engaged in misconduct, our precedent also has required the objecting party to establish such misconduct affected the outcome of the

election. (*Gerawan Farming, Inc., supra*, 44 ALRB No. 10, p. 4; *Premiere Raspberries, LLC, supra*, 43 ALRB No. 2, pp. 6-7.) This “outcome determinative” standard thus requires a showing that the alleged misconduct affected a sufficient number of employees or portion of the workforce to affect the outcome or result of the process. (*Gerawan Farming, Inc., supra*, 44 ALRB No. 10, p. 4; *Premiere Raspberries, LLC, supra*, 43 ALRB No. 2, pp. 10-12 [Board will not presume or infer that misconduct was so widespread or pervasive as to have affected the outcome of an election absent proper evidence].) Labor Code section 1156.37, subdivision (f)(1)(D) codifies this standard in the majority support petition context.

B. Objections Set for Hearing

For the reasons that follow, we set for hearing objection nos. 1, 2, 3, 7, 8, and 13.

Objection No. 1

Wonderful contends in this objection that employees informed the regional director they “rescinded” their authorization of the UFW to act as their bargaining representative. This objection is supported by the afore-mentioned employee declarations, in which the declarants state that they wished to withdraw their names from the UFW’s proof of support.

The question of whether employees have a right to revoke support previously given to a labor organization in an authorization card is a question of first impression under Labor Code section 1156.37. Wonderful requests we decide now whether these revocation requests are effective to defeat the finding of majority support

for the UFW. We do not, and cannot, make such determinations at this stage. Beyond the threshold legal question whether employee revocations are permitted in this process, fact-intensive inquiries are necessary to determine whether the revocation requests as expressed by the employees are valid and adequately convey the employees' free choice.⁷ (*Struthers-Dunn, Inc. v. NLRB* (3rd Cir. 1978) 574 F.2d 796, 800-801; *Blue Grass Industries, Inc.* (1987) 287 NLRB 274, 290-291; see also *Antelope Valley Health Care District* (2006) PERB Dec. No. 1816-M, p. 11 [recognizing "the right to revoke authorization cards or other proof of support so long as the employee clearly demonstrates the desire NOT to be represented by the employee organization for the purposes of meeting and conferring on wages, hours and other terms and conditions of employment"], but see *State of California (SEIU 1000/IT Bargaining Unit 22)* (Nov. 6, 2007) PERB Order No. Ad-367-S, p. 12 [signature revocations not permitted when not allowed by statute or regulation].) In this regard, inquiry is required into the nature of the employee requests, the manner in which they were collected by the employer, and the manner in which they were communicated to the regional director and the union. (See *TMT Trailer Ferry, Inc.* (1965) 152 NLRB 1495, 1507 ["It is well settled that union authorization cards may be revoked [fn. omitted] and, certainly, where, as here, the revocation has been communicated to the Union's agent ... the revocation is, clearly,

⁷ Members Lightstone and Broad emphasize their understanding that the Board does not decide in this order whether or under what circumstances revocations of authorization are permitted within the legal and policy environment unique to the ALRA and its majority support petition provisions. Development of a factual record on this issue may assist in the evaluation of this issue.

effective”]; cf. *R.L. White Company, Inc.* (1982) 262 NLRB 575, 576 [“An employer may lawfully inform employees of their right to revoke their authorization cards, even where employees have not solicited such information, as long as the employer makes no attempt to ascertain whether employees will avail themselves of this right nor offers any assistance, [fn. omitted] or otherwise creates a situation where employees would tend to feel peril in refraining from such revocation”].)

The development of a proper record is necessary to consider these issues. Accordingly, we set this objection for hearing.⁸

Objection No. 2

Wonderful asserts in this objection the UFW engaged in improper conduct

⁸ The conduct of an evidentiary hearing on this objection, like objection no. 2, necessarily must involve testimony and evidence, including from the individuals asserting allegations of misrepresentation, fraud, forgery, etc., or a request to withdraw or revoke any authorization previously given to the union, and potentially involve testimony or evidence that the employee declarations themselves were the product of misrepresentation, undue influence, or coercion by the employer. Although we always are mindful of employees’ concerns regarding anonymity, litigation of the allegations presented must allow the party against whom such allegations are made a fair opportunity to test the allegations and respond to them. The identification of individuals asserting claims against a party, including of this nature, has not previously been questioned before this Board. Similar allegations against the UFW were presented in *Premiere Raspberries, LLC, supra*, 43 ALRB No. 2, where the Board considered declarations from farmworkers alleging misconduct against the UFW and its organizers. The New York Public Employment Relations Board, charged with administering and enforcing New York’s Farm Laborers’ Fair Labor Practices Act, also has addressed claims of union misconduct and the accusing employees are identified in their decisions. (See *A & J Kirby, LLC* (Mar. 16, 2023) 56 PERB ¶ 4402, available at <<https://perb.ny.gov/wp-content/uploads/2023/11/FLFLPA-Decisions-in-PERB-Vol.-56-Decisions-2023.pdf>>.) Ultimately, both our own precedent and that under the National Labor Relations Act (NLRA) demonstrate that the identification of, and testimony from, workers alleging unlawful conduct against either employers or labor organizations—including allegations of the type presented in this case—is routine and established practice.

that tainted the entire majority support petition process by submitting at least 148 signatures obtained through “fraud, duress, trickery, and other unlawful conduct.” Wonderful has submitted sufficient evidence to support a prima facie showing of union misconduct which, if true, would affect the outcome of this process. (See, e.g., *Cemex Construction Materials Pacific, LLC* (2023) 372 NLRB No. 130, *27, fn. 148 [“Under Board law, if a union organizer misrepresents the nature or purpose of a union-authorization card, the card is invalid ... Further, in some circumstances, these misrepresentations can also violate Sec. 8(b)(1)(A)”]; see *NLRB v. Arrow Specialties, Inc.* (8th Cir. 1971) 437 F.2d 522, 525 [employee who signed an authorization card that otherwise is valid is “bound by the authorization card signed by him unless he was clearly misled by one acting on behalf of the Union as to the purpose of the card”]; but see *Bunker dba Photo Drive Up* (1983) 267 NLRB 329, 364 [“It is the Respondent who must show clear and convincing evidence of material misrepresentations to invalidate otherwise unambiguous authorization cards”]; *Levi Strauss & Co.* (1968) 172 NLRB 732, 733 [employee who signs authorization card that “clearly declares a purpose to designate the union as their bargaining agent” generally is bound by it].) In addition, evidence concerning the circumstances surrounding Wonderful’s collection of the employee declarations is relevant. (*Perdue Farms, Cookin’ Good Division v. NLRB* (D.C. Cir. 1998) 144 F.3d 830, 835 [employer unlawfully interrogated employees concerning whether union organizers had visited their homes]; *L’Eggs Products, Inc. v. NLRB* (9th Cir. 1980) 619 F.2d 1337, 1346 [“Although it is not an unfair labor practice for an employer to inform employees that they have a right to revoke their union support, it is

an unfair labor practice actively to solicit revocations in an otherwise coercive atmosphere ... It is also an unfair labor practice for an employer to directly aid employees in revoking their union authorization”].)

We set this objection for hearing. In conducting the hearing on this objection, inquiry into the content of the authorization cards used by the UFW is necessary. The regional director shall produce to the parties a blank or redacted authorization card (or, if the cards use different language, all such variations of such cards) as part of the record before the hearing.

Objection No. 3

Wonderful asserts in this objection the regional director improperly conducted the majority support petition investigation by failing to consider the employee declarations submitted by it to the region before determining majority support to exist. As stated above in the preceding objection (no. 2), the declarations produced by Wonderful, accepting the allegations as stated therein for purposes of our limited review at this stage, are sufficient to make a prima facie showing contesting the UFW’s proof of support. The record must be developed on this issue. We further note it is unclear how many (if any) authorization cards from the employee declarants were produced by the UFW to the region, and how many (if any) of those were included among the cards deemed valid to establish majority support.⁹

This objection must be set for hearing for development of a proper record.

⁹ According to the regional director’s tally, we understand 277 of the 604 cards submitted by the UFW were deemed invalid, but the bases for invalidity are not stated.

Objection No. 7

Wonderful alleges in this objection that the regional director improperly conducted its investigation of the majority support petition by failing to compare signatures on the authorization cards or petitions against signature exemplars provided by Wonderful. The regional director's tally filing does not state whether the regional director used or relied upon signature exemplars provided by Wonderful in any circumstance.

We dismissed a similar objection in *The DiMare Company, supra*, ALRB Administrative Order No. 2023-11, page 11. However, in that case the employer failed to support its objection concerning the use of signature exemplars with any evidence. We do not believe a regional director is required to use signature exemplars to determine the validity of authorization cards in every case or as a matter of required procedure. Indeed, signatures on authorization cards are presumed valid. (*Camvac International, Inc.* (1988) 288 NLRB 816, 860 [recognizing there is a “presumption is in favor of the validity” of authorization cards], citing *NLRB v. Gissel Packing Co.* (1969) 395 U.S. 575, 607; see *Perdue Farms, Inc.* (1999) 328 NLRB 909, 911; NLRB Casehandling Manual, Part II, Representation Proceedings, § 11027.1 [the validity of authorization cards “should be presumed unless called into question by the presentation of objective evidence”].) In this case, we acknowledge Wonderful produced at least several employee declarations alleging signatures on authorization cards obtained by the UFW were the product of forgery.

This objection is set for hearing. The regional director shall identify whether signature exemplars were used during her investigation of the UFW's proof of

support, and the reasoning therefor.

Objection No. 8

Wonderful claims in this objection the regional director exceeded her authority and violated Wonderful's due process rights by making eligibility determinations during the course of her investigation of the majority support petition. In *The DiMare Company, supra*, ALRB Administrative Order No. 2023-11, page 6, we held a regional director has authority to add individuals omitted from an employer's list, whether intentional or inadvertent, whom the regional director determines to be eligible. Likewise, we find the regional director has authority to remove individuals from an employer's list who are determined to be ineligible to be included in the process. However, the process by which such eligibility determinations are made in the context of investigating a majority support petition remains a pending question, including the nature of the parties' rights to be apprised of challenges to an employee's eligibility and ability to respond on such issues. (See, e.g., *Barclay Hollander Corp. v. Cal. Regional Water Quality Control Bd.* (2019) 38 Cal.App.5th 479, 514 ["the specific form which due process takes is flexible and may vary with the nature of the issue presented"].)

This objection is set for hearing.

Objection No. 13

Wonderful objects here to the regional director's removal of seven employees from the eligibility list on grounds they lacked a community of interest with other employees in the bargaining unit. According to Wonderful's detailed statement of facts in support of this objection:

The seven “Spray Ops” individuals are Wonderful direct hires that perform duties related to applying pesticides and other agricultural chemicals to Wonderful’s vines and trees. These individuals work at the same jobsites as the other employees in the bargaining unit.

Wonderful additionally alleges the regional director lacked authority to use community of interest factors in defining an appropriate bargaining unit of employees in this case because the employees are not part of a non-contiguous unit. (Citing *Coastal Berry, LLC* (2000) 26 ALRB No. 2, pp. 17-18.)

In addition to the factual and legal arguments presented by Wonderful, we note a determinative number of employees are subject to the region’s unit appropriateness determination here. This objection is set for hearing.

C. Objections Dismissed

For the reasons that follow, the Board dismisses objection nos. 4, 5, 6, 9, 10, 11, 12, 14, 15, and 16.

Objection No. 4

Wonderful alleges in this objection that the regional director was required to use a pre-certification “challenge-ballot-like process” for determining employee eligibility issues in the majority support petition context. The challenged ballot procedures described by Wonderful in this objection relate to challenges during a secret ballot election process conducted pursuant to Labor Code section 1156.3. The majority support petition procedure defined in section 1156.37 is materially different than a secret ballot election. The manner in which challenges are processed in the context of a secret ballot election simply cannot be transposed “as-is” into the majority support petition

process. That said, we acknowledge procedures must exist for resolving eligibility issues during a regional director's investigation of a majority support petition.

In a somewhat contradictory manner, Wonderful further argues a regional director lacks discretion to consider eligibility issues during its investigation of a majority support petition on grounds the statute requires the Board to consider only the employee list as produced by the employer with its response to the petition in determining the sufficiency of a labor organization's proof of support. (Lab. Code, § 1156.37, subd. (e)(1).) Wonderful's exceedingly narrow reading of this language cannot be accepted. In fact, Wonderful admits the original list it produced to the region in this case contained errors. While inadvertent, we cannot ignore the reality that mistakes happen, as here. Wonderful corrected its error, and we suggest no impropriety on its behalf. However, arbitrarily prohibiting the Board from resolving eligibility issues, including adding individuals to or removing individuals from the eligibility list, is a result that cannot be countenanced. (See *The DiMare Company, supra*, ALRB Admin. Order No. 2023-11, p. 6 ["to allow the arbitrary disenfranchisement of employees omitted either intentionally or inadvertently from an employer's list is a result that cannot be tolerated under our Act".])

Accordingly, the Board dismisses this objection. In doing so, we note issues concerning the process by which eligibility determinations are made by a regional director during its investigation of a majority support petition are encompassed in objection no. 8, which we have set for hearing.

Objection No. 5

Wonderful alleges in this objection that the regional director improperly

conducted her investigation of the majority support petition by not providing Wonderful an adequate opportunity to present evidence of employee eligibility and to dispute the UFW's proffered evidence. This objection appears duplicative of the allegations asserted in Wonderful's objection nos. 4 and 8. This objection is dismissed. Again, the scope of Wonderful's right to respond and dispute eligibility issues during the course of a regional director's investigation is set for hearing as encompassed in objection no. 8.

Objection No. 6

Wonderful asserts in this objection the UFW engaged in improper conduct that affected the results of the majority support process because the authorization cards submitted by it failed to include information sufficient to inform the workers what they were signing. We acknowledge Wonderful is not privy to the cards or language they contain. As previously noted, authorization cards are presumed to be valid. (NLRB Casehandling Manual, Part II, Representation Proceedings, § 11027.1; see also *Snyder Tank Corp. v. NLRB* (1970) 428 F.2d 1348, 1349.)

In its detailed statement of facts in support of this objection, Wonderful alleges:

There are numerous agricultural employees eligible to vote in the election that have contacted Wonderful with information clearly establishing that the UFW's Majority Support Petition is supported by authorization cards that do not contain information necessary to advise workers of the legal significance of signing an authorization card or petition. (Citation omitted.) Similarly, numerous agricultural employees eligible to vote in the election have contacted Wonderful to say that there were not advised as to what they are signing in the first place. (Citation omitted.)

The only evidence cited in support of this objection paragraph 6 of the declaration of Wonderful's counsel, Seth Mehrten. Nothing in this paragraph describes facts like those alleged in support of the objection. Rather, this paragraph of the declaration describes Wonderful's demand the region use signature exemplars in determining the UFW's proof of support, and further challenges the legal procedures used by the regional director to investigate the petition and proof of support.

Wonderful further relies on the Board's proposed regulation 20391, subdivision (a)(1) to support a contention the cards must contain language as reflected therein. This proposed regulation is part of a rulemaking process noticed by the Board on March 8, 2024. It currently is pending public comment (the 45-day public comment period closes April 22). It has not been adopted and has no legal force or effect.

In the absence of evidence to the contrary, we presume regional staff performed their obligations under the statute in accordance with law. (Lab. Code, § 1145; see Civ. Code, § 3548; Evid. Code, § 664.)

For the foregoing reasons, we dismiss this objection. In doing so, we note that allegations UFW organizers misrepresented or otherwise falsely represented to employees the purpose of cards being signed are encompassed within objection no. 2, which we have set for hearing.

Objection No. 9

After urging the Board to require authorization cards contain content found in an unadopted (underground) regulation, Wonderful objects here to the regional director's investigation of the majority support petition on grounds the regional director

improperly relied upon an underground regulation. (Cf. Cal. Code Regs., tit. 1, § 250, subd. (a)(1).) We dismiss this objection.

The regional director is vested with discretion in conducting the investigation required under Labor Code section 1156.37, subdivision (e). Wonderful challenges the regional director's authority to make eligibility determinations during this investigation. The Board has upheld the regional director's right to do so. (*The DiMare Company, supra*, ALRB Admin. Order No. 2023-11, p. 6; see page 20, *supra* [Objection No. 4]; see *California Coastal Farms v. ALRB* (1980) 111 Cal. App. 3d 734, 739-740.)

Objection No. 10

Wonderful asserts in this objection that Labor Code section 1156.37, subdivision (j) is unconstitutional on its face. We dismiss this objection.

Subdivision (j) of section 1156.37 is not before us at this time. Regardless, we may not declare a statute unconstitutional or refuse to enforce a statute based on a claim of unconstitutionality. (Cal. Const., art. III, § 3.5; *Premiere Raspberries, LLC* (2018) 44 ALRB No. 8, pp. 4-5, and cases cited therein.)

Objection No. 11

Wonderful objects here on grounds the majority support petition falsely alleged the petitioned-for bargaining unit contained only about 350 employees. Notwithstanding the UFW's miscalculation, which also stands in stark contrast to the 423 authorization cards submitted by the union with its petition, we do not find this error affected the processing or outcome of the majority support petition.

However, we caution parties that the allegations of a majority support

petition are made under penalty of perjury, as was the form used by the UFW in this case. While a petitioning labor organization can only estimate the number of employees in the bargaining unit it is petitioning to represent, care must be taken in making such estimates. That said, we understand the size of a workforce may fluctuate based on season or the number of farm labor contractors providing labor to the subject agricultural employer.

Ultimately, while the UFW's production of 423 cards appears dramatically inconsistent with the size of the unit alleged in its petition, we do not find this erroneous allegation to have affected the process or the outcome of it. Accordingly, this objection is dismissed.

Objection No. 12

Wonderful contends in this objection that the regional director improperly conducted the majority support petition process by removing 33 employees from the eligibility list on grounds they were statutory supervisors. (See Lab. Code, § 1140.4, subd. (j).)

An allegation regional staff improperly conducted the majority support petition process must be supported by proper evidence. (Cf. Board reg. 20365, subd. (c)(2).) Wonderful does not offer any declarations or other evidence in support of this objection.

In the context of a secret ballot election, eligibility disputes are processed pursuant to defined challenge procedures. (Lab. Code, § 1156.3, subd. (i)(1)(A); Board regs. 20355, 20363.) Labor Code section 1156.37 does not specifically reference or describe a separate "challenged ballot" process, but does dictate that allegations a

“majority support election was conducted improperly” be subject to an objections procedure. (Lab. Code, § 1156.37, subd. (f)(1)(C).) Under Board law, objections alleging improprieties in the manner in which an election procedure is conducted must be supported by evidence. Wonderful fails to do so, instead relying on conclusory assertions that the 33 individuals the region found to be supervisors actually are employees eligible to be included in the process.

The regional director’s tally states the region investigated claims of supervisory status during its processing of the petition, including review of materials produced by Wonderful. Based on the evidence reviewed by the region, a determination of supervisory status was made as to 33 individuals. Wonderful does not identify in its objection the 33 individuals subject to these findings or provide any evidence concerning them, such as declarations or duty statements describing their job duties.

Accordingly, while we recognize a determinative number of individuals are at issue here, Wonderful has failed to provide any evidence to support its objection that the removal of any of these individuals from the eligibility list based on supervisory status was incorrect. Therefore, we dismiss this objection.

Objection No. 14

Wonderful objects here to the UFW’s rolling production of authorization cards during the course of the region’s investigation of the majority support petition. Wonderful contends Labor Code section 1156.37, subdivision (c) requires a labor organization’s proof of support to be submitted “together with” the labor organization’s majority support petition, while any additional support may only be produced during a

subsequent cure period, if needed. (See Lab. Code, § 1156.37, subd. (e)(4).)

As noted above, the UFW submitted 423 cards with its petition on February 23 and proceeded to submit an additional 181 cards over the ensuing days while the region's investigation of the petition and proof of support remained pending. We find no prejudicial error, and Wonderful produces no evidence, demonstrating that the regional director's consideration of cards submitted after the initial filing of the UFW's petition affected the outcome of the proceeding. Valid cards expressing employee support for the union should be given effect, regardless of the timing of their submission in an initial production or a day or two later. To refuse to give effect to a valid authorization card produced in the days after a petition is filed but while the matter remains pending before the region would be to exalt form over substance.

Objection No. 15

Wonderful alleges in this objection that the regional director improperly conducted the majority support petition process based on a "clear bias that is deeply in favor of the UFW." This objection is not supported by declaratory evidence, but rather is framed in terms of conclusory assertions against the regional director. We dismiss the objection. (Lab. Code, § 1145; see *The DiMare Company, supra*, ALRB Admin. Order No. 2023-11, p. 17; Civ. Code, § 3548; Evid. Code, § 664.)

Insofar as Wonderful attacks the regional director's alleged failure to consider the employee declarations Wonderful produced to the region during the course of the petition investigation, including the stated allegations of misrepresentation and revocation requests, we note such issues are set for hearing as encompassed in objection

nos. 1 and 2.

Objection No. 16

Wonderful contends in this objection that Labor Code section 1156.37, subdivision (e) is unconstitutional, both on its face and as applied by the Board, by not providing a “pre-deprivation hearing.” As with objection no. 10, we have no authority to declare a statute unconstitutional or refuse to enforce a statute based on such a claim. (Cal. Const., art. III, § 3.5; *Premiere Raspberries, LLC*, *supra*, 44 ALRB No. 8, pp. 4-5.) We dismiss this objection.

ORDER

PLEASE TAKE NOTICE that employer Wonderful Nurseries, LLC’s motion for stay of certification is DENIED.

PLEASE TAKE FURTHER NOTICE that, pursuant to Labor Code section 1156.37, subdivision (f)(2), an investigative hearing in the above-captioned matter shall be conducted on a date and place and time to be determined. Pursuant to Labor Code section 1156.37, subdivision (f)(2), the investigative hearing shall be conducted within 14 days of March 11, 2024, the date Wonderful Nurseries, LLC filed its objections. The investigative hearing shall be held and the investigative hearing officer shall evaluate legal arguments and take evidence on Wonderful Nurseries, LLC’s objection nos. 1, 2, 3, 7, 8, and 13 consistent with the Board’s directions in this Order.

Wonderful Nurseries, LLC's objection nos. 4, 5, 6, 9, 10, 11, 12, 14, 15,
and 16 are DISMISSED.

IT IS SO ORDERED.

DATED: March 18, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member