

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,	)	Case No. 2024-RM-002
)	
	)	ORDER (1) GRANTING PETITIONER
Petitioner Labor	)	UNITED FARM WORKERS OF
Organization,	)	AMERICA’S APPLICATION FOR
	)	SPECIAL PERMISSION TO APPEAL
and,	)	INVESTIGATIVE HEARING
	)	EXAMINER’S ORDER RE:
WONDERFUL NURSERIES,	)	PRODUCTION OF AUTHORIZATION
LLC,	)	CARDS; (2) REVERSING, IN PART,
	)	INVESTIGATIVE HEARING
Employer.	)	EXAMINER’S ORDER
)	
	)	Administrative Order No. 2024-18-P
	)	(May 24, 2024)
)	

On February 23, 2024,¹ petitioner labor organization United Farm Workers of America (UFW) filed a majority support petition pursuant to section 1156.37 of the Agricultural Labor Relations Act (ALRA or Act).² Following a determination of majority support and the issuance of a certification by the executive secretary of the Agricultural Labor Relations Board (ALRB or Board), employer Wonderful Nurseries, LLC (Wonderful) timely filed objections to the certification pursuant to subdivision (f)(1) of section 1156.37. In *Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB Administrative Order No. 2024-04, we set for hearing Wonderful’s objection nos. 1, 2, 3, 7, 8, and 13,

¹ All dates are in 2024 unless otherwise indicated.

² The ALRA is codified at Labor Code section 1140 et seq. Subsequent statutory citations are to the Labor Code unless otherwise indicated.

and dismissed the remaining objections.

On April 18, Wonderful filed directly with the Board a request to review the “record of regional director’s determination of proof of majority status,” by which Wonderful expressly sought production of the authorization cards reviewed by the regional director. The Board denied that request as improperly directed to the Board without prejudice to Wonderful’s ability to raise the issue with the investigative hearing examiner (IHE). (*Wonderful Nurseries, LLC* (May 10, 2024) ALRB Admin. Order No. 15.) It does not appear Wonderful thereafter made its request to the IHE, but Wonderful did previously move the IHE to order the regional director to produce the authorization cards accompanied by an index. On May 6, the IHE issued an order denying that motion on grounds the regional director is not a party to the objections proceeding. However, in doing so the IHE concluded that the authorization cards constitute written statements subject to production under Board regulation 20274, thereby suggesting the UFW is obligated to produce an employee’s authorization card to Wonderful if an employee who testifies at hearing had signed an authorization card.³

The UFW timely filed this application for special permission to appeal the IHE’s ruling, and Wonderful filed an opposition to the application. For the following reasons, the Board grants the application and reverses, in part, the IHE’s order.⁴

³ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

⁴ The UFW’s application is not supported by declarations, evidence, or other record materials. The UFW, and all parties, are cautioned to include with applications under regulation 20242, subdivision (b) all evidence and materials they deem relevant to their

DISCUSSION

I. Propriety of Interlocutory Review

Under Board regulation 20242, subdivision (b), interlocutory appeals are not allowed except upon special permission from the Board. As a general rule, the Board will entertain an interlocutory appeal only when the issues raised cannot be addressed effectively through exceptions pursuant to regulations 20282 or 20370, subdivision (j). (Board reg. 20242, subd. (b); *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11, pp. 2-3; *King City Nursery, LLC* (Jan. 9, 2020) ALRB Admin. Order No. 2020-01-P, pp. 3-4.)

A party applying for special permission to appeal an interlocutory ruling must “set[] forth its position on the necessity for interim relief.” (Board reg. 20242, subd. (b).) The UFW contends the IHE’s order purporting to mandate the union’s production of cards during the hearing cannot be addressed effectively on exceptions at a later date. We agree. In light of the confidentiality protections applicable to authorization cards, we grant the UFW’s application.⁵

Accordingly, we now turn to the merits of the UFW’s appeal.

application. (*Wonderful Nurseries, LLC* (May 24, 2024) ALRB Admin. Order No. 2024-17, p. 3, fn. 4; *Tri-Fanucchi Farms* (Mar. 27, 2023) ALRB Admin. Order No. 2023-01, p. 2, fn. 2.)

⁵ We designate this order as precedential pursuant to Board regulation 20287 due to the importance of the issues involved.

II. Authorization Cards Are Not “Statements” Subject to Production Under Board Regulation 20274

Statements of agricultural employees are subject to disclosure in our proceedings in accordance with Board regulation 20274. (See Board reg. 20370, subd. (p).) Regulation 20274, subdivision (a) provides:

After direct examination of a witness, and upon motion of any party, the administrative law judge shall order the production of any statements of the witness in the possession of any other party that relate to the subject matter of the testimony.

A “statement” for purposes of this production rule is defined to mean “a written declaration by the witness, signed or otherwise adopted or approved by the witness, or a recording or transcription of a recording which is a verbatim recital of an oral statement that was recorded at the time the statement was made.” (Board reg. 20274, subd. (b).) The IHE concluded authorization cards signed by employees constitute written statements subject to disclosure under these provisions. The Board emphatically disagrees and rejects this interpretation of the regulation.

Never before in our proceedings has it been suggested employees’ signatures on petitions or cards supporting a representation petition constitute statements subject to disclosure under regulation 20274. Such an interpretation flies in the face of established principles protecting the privacy rights of employees who support a union from the prying eyes and scrutiny of their employer. The IHE’s interpretation of this regulation would have far-reaching consequences by compelling the disclosure of petitions or cards signed by employees in support of a union during an unfair labor practice hearing, including in cases where a union may be organizing but has not yet filed

a representation petition. Or, conversely, such an approach could require the production of cards or petitions used by employees seeking to decertify an incumbent union to the union they are seeking to remove. This is not, and never has been, the law. In either situation, the employees would be subjected to a threat of intimidation or retaliation that, simply put, is intolerable under our Act.

Section 1156.37, subdivision (e)(2) expressly states authorization cards are deemed confidential to protect the employees who sign them. This is consistent with the handling of authorization cards or petitions used to support a petition for certification under section 1156.3. Board regulation 20300, subdivision (i) also expressly states: “Authorization cards or other showing of interest shall be held confidential.” (See also Board reg. 20390, subd. (e) [rules governing handling and processing of certification petitions also applicable to decertification petitions].)

The confidentiality of union authorization cards has been rigorously protected by federal courts and the National Labor Relations Board (NLRB). “It is well recognized that employees would be coerced or ‘chilled’ in the exercise of their Section 7 [29 U.S.C. § 157] right to sign union authorization cards if they knew that the employer had the absolute right to see the cards.” (*Heck’s, Inc.* (1984) 273 NLRB 202, 206.) To require the disclosure of the cards, and the identities of the employees who have chosen to support a union, “would effectively do away with union cards as they are used now. We need only consider whether employees would be as likely to sign a prominently displayed notice at work, ‘Sign up for the union here. Organize for better working conditions and higher wages.’ Solicitation of authorization cards plays a vital role in

organizational campaigns, and we cannot envision a workable substitute.” (*Ibid.*, quoting *Committee on Masonic Homes v. NLRB* (3d Cir. 1977) 556 F.2d 214, 221.) “[E]mployees have a strong privacy interest in their personal sentiments regarding union representation, and ... this right to privacy is a right necessary to full and free exercise of the organizational rights guaranteed by the National Labor Relations Act.”⁶ (*Ibid.*, quoting *Pacific Molasses Co. v. NLRB* (5th Cir. 1978) 577 F.2d 1172, 1182.) “When an employee signs an authorization card during the initial phase of union organization, he expresses a personal decision to seek the support of a union in future dealings with his employer. Since the union organization of a company may take the form of a protracted and bitter struggle over employee loyalties, an employee may be amply justified in wishing to protect his pronoun declaration from employer scrutiny.” (*Ibid.*, quoting *Madeira Nursing Center, Inc. v. NLRB* (6th Cir. 1980) 615 F.2d 728, 730-731.)

In light of the foregoing observations, “it is impossible to minimize the seriousness of the threatened invasion. We would be naive to disregard the abuse which could potentially occur if employers and other employees were armed with this information. The inevitable result of the availability of this information would be to chill the right of employees to express their favorable union sentiments. Such a chilling effect would undermine the rights guaranteed by the [NLRA]” (*Pacific Molasses Co., supra*, 577 F.2d at p. 1182.) Consistent with these principles, the NLRB has found an employer violates the NLRA by statements to employees that they will lose their

⁶ The National Labor Relations Act (NLRA) is codified at 29 U.S.C. § 151 et seq.

anonymity if they sign authorization cards for a union that later seeks bargaining rights without going through a formal secret ballot election. (*Heck's, Inc., supra*, 273 NLRB 202, 207.) In fact, the NLRB has found an employer's efforts to demand production of employee authorization cards or union membership cards violates the NLRA. (*United Nurses Associations etc. v. NLRB* (9th Cir. 2017) 871 F.3d 767, 785-786; *Wright Elec., Inc. v. NLRB* (8th Cir. 2000) 200 F.3d 1162, 1167.)

To be abundantly clear, authorization cards or petitions do not constitute "written statements" of employees subject to production under Board regulation 20274. Authorization cards or petitions are entitled to special protection under our Act, and we must scrupulously defend the confidentiality protections afforded these materials as necessary to safeguard the fundamental free choice rights of employees under our Act.

In sum, the Board hereby reverses the IHE's order to the extent it holds authorization cards are statements subject to disclosure under Board regulation 20274.

ORDER

For the foregoing reasons, the Agricultural Labor Relations Board GRANTS petitioner United Farm Workers of America special permission to appeal the investigative hearing examiner's order regarding employer Wonderful's motion for production of the authorization cards, and REVERSE, in part, the IHE's order consistent with the foregoing discussion.

IT IS SO ORDERED.

DATED: May 24, 2024

Victoria Hassid, Chair

Barry Broad, Member

Ralph Lightstone, Member

Cynthia N. Flores, Member