

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF)	Case No. 2024-RM-004
AMERICA,)	
)	
Petitioner Labor)	ORDER DISMISSING EMPLOYER’S
Organization,)	OBJECTIONS TO CERTIFICATION
)	
and,)	
)	
VIEIRA AGRICULTURAL)	
ENTERPRISES, LLC,)	
)	
Employer.)	Administrative Order No. 2024-25
)	(July 15, 2024)
_____)	

On June 12, 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 Vieira Agricultural Enterprises, LLC (Vieira). Following an investigation of the petition and proof of support submitted by the UFW, the regional director issued her tally on June 20, 2024, in which she concluded the number of eligible agricultural employees in the bargaining unit to be 525 and that the UFW submitted 272 valid authorization cards, thereby establishing

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

majority support.² The executive secretary issued a certification that same day designating the UFW as the exclusive collective bargaining representative of Vieira’s agricultural employees.

On June 25, 2024, Vieira timely filed objections to the certification. (Lab. Code, § 1156.37, subd. (f)(1).) Vieira’s objections are as follows:³

1. The petition for an election is invalid because the employer is not at least at 50 percent of peak.
2. The ALRB made it impossible to comply with a dozen document and data requests.
3. The regional director did not exercise its independent duty to investigate issues in an election where there could be substantial disenfranchisement of agricultural employees.
4. There was misconduct by the UFW in securing any authorization card and the non-election was not held under laboratory type conditions.

For the reasons discussed below, the Board DISMISSES Vieira’s objections to the UFW’s certification.

I. PROCEDURAL BACKGROUND

A. The Majority Support Petition

The UFW filed the underlying majority support petition on June 12, 2024.

The UFW alleged that there were approximately 650 agricultural workers currently

² The regional director electronically filed the tally report after 5:00 p.m. on June 19, 2024, and it thus is deemed filed the next business day pursuant to Board regulation 20169, subdivision (a)(2). (Cal. Code Regs., tit. 8, § 20169, subd. (a)(2).)

³ The objections are copied verbatim from “Employers Objections to Certification Pursuant to Labor Code § 1156.37” filed June 25, 2024.

employed in the bargaining unit and that the number of agricultural employees was not less than 50 percent of Vieira's peak employment at the time of filing the petition. The relevant payroll period for purposes of the petition is June 3, 2024, through June 9, 2024.

B. The Employee List for the Relevant Period

Vieira filed a response to the petition on June 14, 2024, stating it employed 525 agricultural employees in the relevant time-period. The regional director states in her tally that Vieira submitted, along with its response, two employee lists containing the names of individuals purported to have been employed by Vieira as agricultural workers during the relevant payroll period. One list contained the names and contact information of 486 individuals and the other list contained names and contact information of 461. Also with the employer response, Vieira submitted payroll documents identifying 524 employees as having worked during the relevant period.⁴ Vieira did not submit contact information or job titles/classifications for all 524 agricultural employees identified in the accompanying payroll documents.

On June 14, 2024, the regional director made multiple requests for a complete and accurate list in accordance with Labor Code section 1156.37, subdivision (d).⁵ On June 17, 2024, Vieira submitted a third employee list and payroll, both containing

⁴ Vieira did not explain why its payroll records showed 524 rather than 525 employees.

⁵ Labor code section 1156.37, subdivision (d) requires an employer to provide with its response "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." Subdivision (d) further requires an employer to

the names of 495 individuals, without explanation regarding the change in numbers. According to the regional director's tally, the documents failed to include crew designations.

On June 18, 2024, Vieira submitted payroll information containing the names of over 600 individuals who allegedly worked during the relevant period. The regional director requested Vieira's position on five of the individuals on the payroll who either did not appear to have worked during the relevant period or appeared to be salaried management or supervisors. The regional director further requested the names, crew numbers and contact information for the remaining 595 individuals. According to the regional director, Vieira failed to provide any of the requested information.

Finally, in the middle of the day on June 19, 2024 – the day the tally was due – Vieira informed the regional director that an amended payroll and an amended employee list had been submitted. This fourth employee list contained names, employee number, position title, department, status, addresses and phone numbers for 548 employees. The payroll records similarly contained 548 employees. Vieira contended that this list removed leads and supervisors. The regional director provided this fourth employee list to the UFW, who objected to the list.

The regional director states in her tally that Vieira “created a moving target by providing four different eligibility lists and four different payroll lists,” the last of

“organize the employees’ names and addresses and other information by crew or department.”

which arrived midday on the day the regional director's tally report was due. The regional director further asserts her investigation of the petition was frustrated "every step of the way" by Vieira's delay in providing requested information and then producing "incomplete, inaccurate and untimely lists, which did not match payroll documents and omitted essential information," and without explaining the substantial discrepancies among the various lists. Accordingly, the regional director determined that because Vieira's employee lists and payroll lists were inconsistent and unreliable she would use the number that Vieira included in its response to the majority support petition (525), under penalty of perjury, as the number of eligible employees.

The regional director concluded that the UFW should be certified because the number of employees in Vieira's workforce was at least 50 percent of its prospective peak and the UFW had demonstrated majority support. Additionally, the regional director recommended the UFW should be certified in this instance pursuant to Labor Code section 1156.37, subdivision (j), due to the employer's misrepresentations of fact and its failure to comply with the strict timelines of the majority support petition process. She argues that not only does the failure to produce an accurate and complete employee list frustrate the regional staff's efforts to investigate and handicap any union attempt to respond to the list or allegations in the employer response, but also the failure to provide accurate information in this context may amount to voter suppression.⁶

⁶ Vieira does not object to the regional director's reliance on Labor Code section 1156.37, subdivision (j). While we agree with the regional director that Vieira should not benefit from withholding or delaying the production of information, or otherwise failing to maintain and produce accurate and complete payroll lists as required by law, we do not

C. The Peak Employment Issue

Under Labor Code section 1156.37, subdivision (b), certification via a majority support petition may occur only when the number of employees employed during the eligibility period is not less than 50 percent of the employer's peak agricultural employment for that calendar year. Vieira alleged in its response to the petition that the number of agricultural employees was less than 50 percent of Vieira's peak employment at the time of filing the petition. Vieira estimated that it will employ 1,125 agricultural employees during the week of October 20, 2024. Vieira submitted one week of payroll purporting to be for the peak season in 2023 with its response to the petition.

The regional director states that she attempted to investigate prospective peak and requested information from Vieira to aid in her analysis, including complete payroll for all agricultural employees during the 2021-2023 peak seasons. She states that Vieira did not provide all requested documents and did not make any argument or produce evidence in support of its assertion the 2024 peak season will require 1,125 workers—more than the 1,045 employees during the 2023 peak. According to the regional director, the documents produced by Vieira suggest it actually may need fewer workers in 2024 because its crop acreage will decrease, and it anticipates no change in harvesting methods. Based on a prospective peak analysis using information Vieira did

believe that certification pursuant to subdivision (j) is proper, or warranted, in the circumstances here, including because the UFW has been certified based upon the regional director's tally and, as discussed below, we are dismissing Vieira's objections. We reach no conclusions regarding the circumstances under which an employer's failure to comply with its obligation to provide timely, accurate, and complete information in response to a majority support petition justifies the subdivision (j) remedy.

provide, the regional director determined Vieira's peak employment should not be found to be more than 1,045 and that the petition be deemed to be timely.

The regional director's findings on the issues described above are set forth in her tally report and accompanying declaration filed on June 20, 2024.⁷ Based on the regional director's determination the UFW submitted 272 valid authorization cards out of a total of 525 eligible employees in the appropriate bargaining unit, the regional director found majority support to exist.

On June 20, 2024, the executive secretary issued a certification designating the UFW as the exclusive collective bargaining representative of Vieira's agricultural employees.

II. DISCUSSION AND ANALYSIS

On June 25, 2024, Vieira filed four objections to the certification pursuant to Labor Code section 1156.37, subdivision (f)(1). Vieira argues it employed 548 workers during the relevant payroll period. Vieira also maintains that it anticipates employing 1,125 workers at peak employment in October 2024.

A. Employee Lists

Before turning to the individual objections, we need to address the statutory requirements regarding an employer's obligation to maintain accurate and complete employee lists, the critical policy rationales underlying these requirements as relevant to the Act, and Vieira's egregious failure to comply with these requirements during the

⁷ The regional director filed an erratum to her declaration, also on June 20.

regional director's investigation. We cannot emphasize enough how central the duty to maintain accurate payroll records imposed by section 1157.3 is to the regional director's legal mandate to conduct a prompt investigation into the validity of a majority support petition.

Although Vieira does not object to the regional director's conclusion that that there were 525 workers employed during the applicable payroll period, we take this opportunity to state our conclusion the regional director acted appropriately in finding the number of employees in the bargaining unit during the eligibility period to be 525 based on the figure attested to by Vieira in its response to the petition. Labor Code section 1156.37, subdivision (d) requires that an employer provide a complete and accurate list of all workers employed during the relevant time-period within 48 hours of receiving service of the majority support petition. It is clear from the record that Vieira did not do that. Instead, Vieira provided multiple employee lists between June 14, 2024, and June 17, 2024, that did not match its payroll or the number of current employees that it represented under penalty of perjury were working during the relevant time-period in its employer response.

Vieira did not provide any explanation why the records it supplied at the "eleventh hour" on June 19, 2024, were not available on June 14. Vieira's failure to comply with the statute's production requirements and timelines clearly frustrated the investigation from the very beginning. The employer's response and payroll list serve critical purposes and a region's investigation of a representation petition is severely frustrated by noncompliance with these basic statutory requirements. (See Lab. Code, §§

1156.37, subd. (d), 1157.3.) In the context of a secret ballot election under Labor Code section 1156.3, we have recognized the authority of a regional director to adopt appropriate presumptions or inferences when faced with this type of employer noncompliance. (See *Yoder Brothers, Inc.* (1977) 2 ALRB No. 4, p. 4, fn. 2.) The failure to immediately provide, upon demand, an accurate, consistent list of employees can fundamentally undermine the regional director's investigation and will not be tolerated. Section 1157.3 has been part of the ALRA since its enactment and has always been critical to the secret ballot election process. It is no less critical—and perhaps more so—to the majority support petition method of certification at issue in this case. Failure to maintain accurate lists, slowness in producing those lists, poor communication with farm labor contractors, or alleged confusion are not defenses to compliance with the statute. This Board will not permit employers to undermine the rights afforded to employees under the majority support statute by failing to comply with their recordkeeping and disclosure obligations under the Act. In the circumstances before us, the regional director was well within the scope of authority and discretion to conclude the number of eligible employees in the bargaining unit to be 525.

B. Applicable Legal Standards for Review of Objections

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.

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. v. ALRB* (1985) 169 Cal.App.3d 247, 254 [discussing Labor Code section 1156.3, subdivisions (c) and (d)], citing *California Lettuce Co.* (1979) 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. (*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, and 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.

C. Vieira Has Not Established a Prima Facie Case of a Valid Basis for Its Objections.

For the reasons that follow, the Board dismisses all of Vieira’s objections to the certification.⁸

1. Objection 1: The Petition Is Untimely Because Vieira Is Not at 50 Percent of Peak.

Labor Code section 1156.37, subdivision (b) requires a majority support petition may be considered timely only if filed at a time when the employer’s payroll immediately preceding the filing of the petition is not less than 50 percent of the employer’s peak employment for the calendar year.⁹ (See Lab. Code, § 1156.4.) Courts have noted that the statutory “50 percent of peak” requirement is designed to ensure seasonal workers’ representational rights are not determined for them during the “off-season” by a “year-around worker minority.” (*Ruline Nursery Co.*, *supra*, 169 Cal. App. 3d, at p. 256.) The eligible electorate is representative so long as the number of eligible voters is within a narrow margin of 50 percent of the employer’s peak employment. (*Id.* at p. 256, fn. 5, citing *Bonita Packing Co., Inc.* (1978) 4 ALRB No. 96, pp. 10-11, and *Wine World, Inc. dba Beringer Vineyards* (1979) 5 ALRB No. 41, p. 8.)

⁸ On June 28, 2024, the regional director filed a motion asking the Board to consider her response to Vieira’s objections to the certification. Because we find Vieira’s objections do not state a basis for ordering a hearing, and therefore dismiss them, we do not consider the regional director’s motion.

⁹ This corresponds to the same requirement for representation petitions found in Labor Code section 1156.3, subdivision (a)(1).

Peak is to be determined for the current calendar year, so the Board may need to look backward if peak employment has already occurred (past peak) or forward by estimating the expected peak employment (prospective peak) depending upon when the certification petition is filed. (*Ruline Nursery Co.*, *supra*, 169 Cal.App.3d at p. 257, fn. 6.) The standard of review of a regional director's decision to hold an election in a prospective peak case is "whether the regional director's peak determination was a reasonable one in light of the information available at the time of the investigation." (*Id.* at p. 258, quoting *Charles Malovich* (1979) 5 ALRB No. 33, p. 4.) As the court in *Ruline Nursery Co.* pointed out, using postelection data produced by an employer to challenge the reasonableness of a regional director's determination in a prospective peak case would be contrary to the Act's policies necessitating speed and finality in representation proceedings and could encourage employers to file groundless objections "in order to preserve the possibility of ultimately showing the peak determination, although reasonably made, was incorrect in light of subsequent events." (*Ruline Nursery Co.* *supra*, 169 Cal.App.3d at p. 258, citing *Charles Malovich*, *supra*, 5 ALRB No. 33, pp. 6-7.)

The Board has cautioned that while it is proper to "require an employer to provide the necessary peak information most accessible to it ... the responsibility still rests with the Regional Director to determine whether the peak requirement has been met." (*Tepusquet Vineyards* (1984) 10 ALRB No. 29, p. 7.) When an employer fails to provide the necessary information to support a contention the peak requirement is not

met, and such failure obstructs or precludes the regional director's peak determination, the regional director properly may invoke appropriate presumptions or inferences. (See *ibid.*)

In *Charles Malovich, supra*, 5 ALRB No. 33, the Board held that it is reasonable for a Board agent to assume that the peak figure of the year preceding the year of the election is the most relevant to an estimate of peak, taking into consideration the crop and acreage statistics for the year of the election. (*Id.* at p. 10, fn. 5; see also *Kawano, Inc.* (1977) 3 ALRB No. 25, pp 2-3.)

While Vieira raised the peak issue from the beginning of the process in the employer response, it has not shown that it provided the regional director with adequate information—information accessible only to Vieira—during the investigation to substantiate the untimeliness claim. Regional staff asked repeatedly for documentation to aid in the determination of peak, and the regional director ultimately made her determination based on the 2023 direct-hire payroll and farm labor contractor (FLC) timesheets, the crop acreage for 2023 and 2024 (which showed a decrease from the prior year), and Vieira's representation they anticipated no change in harvesting methods for the 2024 season.

In support of this objection, Vieira attaches declarations by Carlos Vieira, Vieira's managing member, and Paul Bauer, counsel for Vieira, as well as records for 2021 and 2022 that Vieira says show peak employment in 2021 was 668 workers for 3,751 acres and peak in 2022 was 698 workers for 3,718 acres. Vieira did not provide the records for 2021 and 2022 during the investigation, despite providing them as

attachments to their objections to certification. Similarly, FLC contracts for the anticipated 2024 season were never provided to regional staff. Vieira further claims for the first time in its objections that even though the acreage that it will harvest in 2024 is smaller than the past three seasons, it needs to hire more workers due to the purchase of new machinery and to avoid paying overtime compensation due to the 2024 minimum wage increase. Vieira does not attach any documentation, such as FLC contracts for the anticipated 2024 season, to support its 1,125 peak worker estimate. Nor does Vieira include any supporting evidence demonstrating why the newly acquired machines will require more workers.¹⁰

None of this information produced with Vieira's objections was provided to the regional director during her investigation of the petition, and Vieira offers no explanation why it did not previously submit this information to regional staff. The Board concludes that the regional director's prospective peak determination of 1,045 workers was a reasonable one in light of the information available at the time of her investigation. Vieira has not met its burden of supplying prima facie evidence that the regional

¹⁰ We note the unusual nature of Vieira's assertion that this newly acquired machinery will require more workers. It is rare that new technology is billed as a job creator as opposed to the more frequent assertion that technology is developed to replace the workforce. (See *O.P. Murphy Produce Co., Inc. dba O.P. Murphy & Sons* (1981) 7 ALRB No. 37; *Bruce Church* (1991) 17 ALRB No.1, ALJ Decision p. 27, fn. 14 [referencing loss of work for ground crews as a result of naked palletized machine]; Baur and Iles, *Replacing Humans with Machines: A Historical Look at Technology Politics in California Agriculture* (Jul. 12, 2022) Agriculture and Human Values, available at < <https://link.springer.com/article/10.1007/s10460-022-10341-2#:~:text=Adapting%20the%20Social%20Construction%20of,beneficence%20of%20technoscience%20applications%20to> > [as of Jul. 2, 2024].)

director's peak analysis was not reasonable.

Accordingly, the Board dismisses objection 1.

2. Objection 2: The ALRB Made It Impossible To Comply With Document And Data Requests.

Vieira argues it was impossible to provide information, including employee lists, in the manner requested by the regional director, citing Civil Code section 3351 for the proposition it cannot be faulted for complying with the region's "impossible" demands. Other than complaining about the short timelines provided in the statute and the regional staff's requests for information, Vieira has not alleged why or how it was impossible for it to provide the requested information. In fact, as mentioned above, Vieira is under a statutory obligation, which has been in effect since the inception of the Act, to maintain an accurate payroll list that includes employee contact information even in the absence of a majority support petition. Labor Code section 1157.3 requires that employers subject to the ALRA maintain accurate and current payroll lists containing the names and addresses of their employees, and make them available to the Board upon request. Labor Code section 1174, subdivision (c) requires that "[e]very person employing labor in this state shall [k]eep a record showing the names and addresses of all employees employed," and section 1174, subdivision (d) requires employers to [k]eep, at a central location in the state... payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments." Labor Code sections 1695.5 and 1695.55 further require FLCs to maintain accurate employee payroll lists and to furnish those lists to growers with whom they contract to

supply services.

While Vieira states that its system did not sort employees by job classifications, crew, or department—despite the plain requirement in Labor Code section 1156.37, subdivision (d) that it do so—it has not shown that this could not have been done manually.¹¹ Vieira has failed to establish a prima facie case of a valid basis for its objection.

Accordingly, the Board dismisses objection 2.

3. Objection 3: The Regional Director Did Not Exercise Her Independent Duty To Investigate Issues Where There Could Be Substantial Disenfranchisement Of Agricultural Employees.

In support of this objection, Vieira’s brief includes arguments copied directly from a brief filed in the Ho Sai Gai Farms, Inc. majority support petition matter (Case No. 2024-RM-003). Vieira is represented by the same law firm as Ho Sai Gai Farms. The arguments relate to whether non-agricultural workers were included in the bargaining unit at Ho Sai Gai Farms. This is irrelevant to Vieira’s stated objection 3 in this matter.

Accordingly, the Board dismisses objection 3.

¹¹ The sorting of employees is a requirement of the statute, and Vieira’s continued refusal to perform the sorting as required is a violation. However, the Board underscores that the much more significant failure was Vieira’s overall obfuscation in providing multiple lists, with different numbers of employees, with no explanation. That failure was a violation of the ALRA as well as other Labor Code requirements applicable to every California employer. Thus, even if Vieira had sorted these multiple lists by crew as statutorily required its failure to provide the accurate number of employees still would have been in violation of multiple other requirements to maintain and provide accurate payroll records.

4. Objection 4: There Was Misconduct By The UFW In Securing Authorization Cards.

The only support provided for this objection was Carlos Vieira's declaration in which he states that a worker who speaks Punjabi (one of 22 Punjabi speaking workers) told him that the Punjabi speaking workers who do not speak English or Spanish did not understand when they were approached about signing union authorization cards. Vieira admits that he does not know whether any of these workers actually signed cards.

Vieira's declaration is insufficient to support objection no. 4 because it is based entirely on hearsay. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-04, pp. 10-11; *Ho Sai Gai, Farms, Inc.* (April 18, 2024) ALRB Admin. Order No. 2024-09, p 16.) Even more troubling, the objection makes a giant leap that recasts a hearsay declaration alleging that Punjabi speaking workers were approached to sign an authorization card into a misconduct allegation with absolutely no evidence to support such a serious claim. Such claims, without any evidence, will not be entertained.

Accordingly, objection 4 is dismissed.

ORDER

PLEASE TAKE NOTICE that employer Vieira Agricultural Enterprises, LLC's objection nos. 1, 2, 3, and 4 are DISMISSED.

IT IS SO ORDERED.

DATED: July 15, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member