

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,)	Case No. 2023-RM-001-VIS
)	
Petitioner Labor Organization,)	
)	ORDER GRANTING, IN PART, AND
and)	DENYING, IN PART, REGIONAL
)	DIRECTOR'S MOTION TO SEAL
DMB PACKING CORP. dba THE DIMARE COMPANY,)	
)	Admin. Order No. 2024-26
)	
Employer.)	(August 9, 2024)
_____)	

On July 18, 2024, the Regional Director of Region 2 (Region) filed with the Agricultural Labor Relations Board (ALRB or Board) a motion to seal hearing exhibits and other records in this majority support case involving petitioner United Farm Workers of America (UFW) and employer DMB Packing Corp., dba The DiMare Company (DiMare). The Board has considered the Region's motion and grants the motion, in part, and denies it, in part.

Background

The UFW filed the majority support petition in this matter on September 12, 2023. The Region conducted an investigation of the petition and the showing of majority support pursuant to Labor Code section 1156.37, subdivision (e)(1). In the course of that investigation, the Region added a total of 31 individuals found to be eligible employees (the 31 Workers) to the eligibility list. On October 20, 2024, the Region issued a Regional Director's Tally (Tally) reporting that the UFW had established majority support. The Region attached to the Tally declarations signed by some of the 31

Workers along with corroborating declarations by other workers.

After the UFW was certified pursuant to the result of the Tally, DiMare filed objections to the certification, some of which were set for hearing before Investigative Hearing Examiner Hermine Honavar-Rule (IHE). Prior to the hearing, DiMare issued a subpoena and the UFW issued a notice in lieu of subpoena to the Region. The Region petitioned to revoke both the subpoena and notice, in part. The Region's petitions to revoke were supported by privilege logs, which were attached to the petitions. Those privilege logs listed the names of workers interviewed and/or contacted by the Region. Some of these names belonged to the 31 Workers while others belonged to other workers who were not added to the eligibility list.

The hearing commenced on November 28, 2023. In the course of the hearing, the IHE stated that the exhibits that were submitted at the hearing were confidential and/or under seal. However, this ruling was not supported by an order setting forth the findings required in the Board's precedential order in *Premiere Raspberries, LLC* (Nov, 9, 2020) ALRB Admin. Order No. 2020-18-P.¹ (See also Cal. Rules of Court, rules 2.550-2.551.)

On April 8, 2024, the IHE issued a recommended decision and order.

¹ The Region attaches to its motion a stipulated protective order executed by the parties and signed by the IHE. The protective order defines documents identifying the names and contact information of farmworkers as confidential information and places limitations on the parties' disclosure of such information. It does not, however, constitute an order sealing records in this case, nor could an order to seal records be based solely on the stipulation of the parties. (*Premiere Raspberries, LLC, supra*, ALRB Admin. Order No. 2020-18-P, p. 5.) Indeed, the protective order states that the parties are to follow applicable procedures should they seek to file documents under seal.

DiMare filed exceptions to the IHE's decision and the matter was transferred to the Board. On July 12, 2024, the Board issued an order directing that the hearing exhibits would be unsealed unless a motion to seal the exhibits, or parts of them, was filed. (*DMB Packing Corp.* (July 12, 2024) ALRB Admin Order No. 2024-24.) On July 18, 2024, the Region filed the underlying motion to seal now before the Board. Neither the UFW nor DiMare filed a motion to seal, nor did they respond to the Region's motion.

The Region's Arguments

The Region argues that the Board should order sealed "those portions of hearing exhibits that contain the names of non-supervisory agricultural employees." The Region identifies three specific exhibits, Employer's Exhibit 8, which comprises the Tally and Employer's Exhibits 9 and 10, which comprise two privilege logs produced by the Region in response to subpoenas issued in this case. The Region asserts that exhibits and declarations attached to the Tally contain the names of workers who participated in the majority support process. The Region asserts that the privilege logs contain the names of workers who were interviewed by the Region, including workers whose eligibility was not at issue. The Region also states in a footnote to its motion that there are "several pre-hearing filings, including the Regional Director's Tally" that contain farmworker names and that "[t]hese names, too, should be ordered sealed or redacted."

The Region argues that there is an overriding interest in maintaining the identities of farmworkers who vote and participate in ALRB processes and, in this case, that interest outweighs any interest of the public in knowing the names and addresses of those farmworkers, particularly because they never testified at the hearing. Disclosing the

workers' names only because they exercised their right to participate in the majority support process would harm the majority support process itself insofar as the process was enacted in response to employer interference and worker intimidation in elections. The Region argues that if farmworkers know that participating in the majority support process will result in their names being disclosed to the public they will be hesitant to participate and the ALRB's ability to administer the Act will be impeded.

The Region argues that confidentiality is central to farmworker participation in the majority support process. It argues that several Board regulations require confidentiality of the identity of farmworkers. It cites Labor Code section 1156.37, subdivision (e)(2) (determination of whether a proof of support is valid is not subject to appeal or review to "protect the confidentiality of the employees whose names are on authorization cards or a petition") and Board regulation 20236 (limitations on disclosure of farmworker names in pre-hearing discovery).

The Region concedes that the information to be sealed has already been disclosed to both the UFW and DiMare but argues farmworker names were included in the documents "erroneously" and that an order protecting the information from disclosure to the public is still necessary. Public access to farmworker identities, argues the Region, will result in decreased farmworker participation in ALRB processes and lead to very serious injuries to farmworkers. The Region cites the fact that farmworkers are at high risk to living in poverty, lack health insurance, experience high rates of workplace injury, and typically lack the resources necessary to change their situations. Their lack of resources, combined with language barriers, make farmworkers reliant on others for the enforcement of their labor rights. The diminished

farmworker participation that public disclosure would cause would thus lead to a worsening of their working conditions.

Finally, the Region argues that the sealing request is narrowly tailored to only the names and addresses of non-supervisory agricultural employees and this can be accomplished through the redaction of this information. The Region argues that this is the only way to protect the confidentiality rights of farmworkers and there is no means less restrictive of public access rights to accomplish this end.

Legal Standards Applicable to Motions to Seal Records in ALRB Cases

Article 1, section 3(b)(1) of the California Constitution states that “[t]he people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” The California Public Records Act provides that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code, § 7921.000.)

Nevertheless, the Board has recognized that, notwithstanding the general rule of public access to agency records, there are circumstances where it is appropriate for records in ALRB cases to remain confidential and shielded from public disclosure. In a precedential order issued in November 2020, the Board discussed the procedures for filing documents under seal in ALRB cases. (*Premiere Raspberries, LLC, supra*, ALRB Admin. Order No. 2020-18-P.) When considering a request to file under seal, the interest favoring confidentiality must be balanced against the constitutional right to access public records. The Board adopted the standard established in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th

1178, 1217-1218 and codified as California Rules of Court, rule 2.550. Under that standard, records are presumed to be open to the public unless confidentiality is required by law. A record may be filed under seal only if it is established that:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(See *Premiere Raspberries, LLC, supra*, ALRB Admin. Order No. 2020-18-P, p. 5.)

An order sealing records must state the facts supporting it and direct the sealing of only those documents or portions of documents that contain the material that need to be placed under seal. All other portions must be included in the public file. An order sealing a record may not be based solely on a stipulation or agreement between the parties. (*Ibid.*)

Employer's Exhibit 8 (Tally)

Employer's Exhibit 8 consists of the Tally and its supporting declarations and exhibits and contains the names of a number of farmworkers. Most of the farmworker names contained in the Tally belong to the 31 Workers. However, exhibits E and G to the Declaration of Veronica Cervantes contain names of other workers. Exhibit E is a letter from the UFW to the Region listing the names of 9 workers from the employee list provided by DiMare in response to the petition and claiming that DiMare

supplied incorrect or invalid addresses for the workers in question. Exhibit G contains declarations signed by workers. Most of the declarations were signed by individuals amongst the 31 Workers. However, there were some corroborating declarations that were signed by workers who were not among the 31 Workers.

The Board finds that it is appropriate to seal the names of workers who were not among the 31 Workers and who participated in the Region's investigation by providing declarations corroborating the claims of workers alleged to be eligible. Under the principles stated in *Giumarra Vineyards Corp.* (1977) 3 ALRB No. 21 and codified in Board regulations 20235, 20236, and 20363, the names and statements of farmworkers who are potential witnesses in ALRB hearings are protected from disclosure prior to their testimony. The Board agrees with the Region that these names should not have been disclosed in the Tally. Although the names were, in fact, disclosed, the Board finds that the overriding interest in shielding the names of farmworkers who participate in ALRB investigations from disclosure justifies mitigating the effect of the disclosure by ordering those names sealed. The Board has previously held that "[t]he names and statements of workers who are complainants, proposed witnesses, or who give information to the ALRB is information which respondents may not receive in advance of trial." (*Giumarra Vineyards Corp.*, *supra*, 3 ALRB No. 21, p. 2-3.) The deleterious effect of premature disclosure on the ability of the Board to secure the cooperation of farmworker witnesses, and, consequently, to effectively conduct investigations, has been recognized as "strong reason" to maintain the confidentiality of witness names and statements. (*Id.* at p. 7.)

In contrast, the Board finds that the disclosure of the names of the 31

Workers who were found to be eligible through the Region’s investigation was appropriate in this case, if not required. (*Cf. Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB Admin. Order No. 2024-04, p. 14, fn. 8.) The Region has not made a showing that, in this context, the privacy interest in the names of the 31 workers overcomes the right of public access to the hearing exhibit in question. The Board reaches a similar conclusion with respect to the worker names disclosed in Exhibit E. Unlike the names of the corroborating witnesses, those names are not connected to any participation in the Region’s investigation or any other protected activity.²

Employer’s Exhibits 9 and 10 (Privilege Logs)

The Board’s conclusions concerning the farmworker names identified in Employer Exhibits 9 and 10, which consist of the Region’s privilege logs, follow the rationale stated above with respect to Exhibit 8. The privilege logs identify farmworkers who were interviewed, or in some cases, contacted, by the Region as part of its investigation of the majority support petition. Most of the names belong to members of

² The Board does not hold that the names of farmworkers included in an eligibility list may not be sealed or otherwise protected from disclosure under other circumstances. (See, e.g., *Planned Parenthood Golden Gate v. Superior Court*, (2000) 83 Cal.App.4th 347, 359, 362-363 [court prohibited discovery of the names and addresses of the staff of an abortion clinic due to the “emotionally charged and often violent” abortion debate and evidence that the party seeking discovery had engaged in protests at the homes of clinic workers]; overruled in part in *Williams v. Superior Court* (2017) 3 Cal.5th 531.) However, in this case, the lack of a connection between the names and any protected activity and the prior disclosure of the names through the filing of the Tally undermines the argument for shielding the names from the public. (*Savaglio v. Wal-Mart Stores, Inc.* (2007) 149 Cal.App.4th 588, 598-601 [motion to seal records denied where party publicly filed them and only sought to seal the records after they were sought by a media organization].)

the 31 Workers. However, there are some names of farmworkers who were not among the 31 Workers who were interviewed and/or contacted by the Region. For the reasons stated above, the Board finds that the sealing of these names is warranted.³

Pre-Hearing Filings

As stated above, the Region asserts that there are “several” pre-hearing filings that disclose the names of farmworkers and that these filings should be sealed or redacted. The Region identifies the Tally as one of these filings and cites several other filings but does not supply an exhaustive list of the filings it contends contain farmworker names. With the exception of the Tally, the Region does not identify where within any of the documents it does identify the farmworker names appear or state the basis for ordering the records sealed. This kind of vague and unsupported allegation is insufficient to support a motion to seal records. (*H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 894 [party seeking to seal documents must “at a minimum . . . come forward with a specific enumeration of the facts sought to be withheld and specific reasons for withholding them”].)

Nevertheless, the Board recognizes that protection of the identities of farmworker witnesses disclosed in Employer Exhibits 8-10 would be undermined if the same documents comprising those exhibits were freely available in the public files of this case. Accordingly, the Board orders that copies of the Tally and the Region’s privilege

³ The number of names that will need to be sealed under the Board’s order is relatively modest and only the names themselves would be redacted within the documents. The Board’s review of the records indicates that, between the tally and the privilege logs there are only 19 unique names that would be sealed.

logs that have been filed in this matter shall be sealed to the same extent as the exhibits.

ORDER

PLEASE TAKE NOTICE that the Region's motion to seal is GRANTED, IN PART. The portions of Employer Exhibits 8-10 containing the names of non-supervisory agricultural workers who participated in the Region's investigation in this matter but who were not added to the eligibility list shall be sealed. Additionally, farmworker names appearing in copies of the Regional Director's Tally and the Region's privilege logs that have been filed in this case shall be sealed to the same extent as the exhibits. The Region shall prepare copies of the exhibits and filings redacted as described herein and lodge said copies with the Board's Executive Secretary with copies served on the parties. Provided that the redactions are consistent with this order, the Executive Secretary shall place the redacted copies in the public file for this case and maintain the original un-redacted versions under seal.

IT IS SO ORDERED.

DATED: August 9, 2024

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member