

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

<b>In the Matter of:</b>	)	<b>Case No.</b> 07-RD-1-SAL
	)	(34 ALRB No. 6)
GALLO VINEYARDS, INC.,	)	
	)	
<b>Employer,</b>	)	ORDER DENYING CERTIFIED
	)	BARGAINING REPRESENTATIVE'S
<b>and</b>	)	MOTION FOR RECONSIDERATION
	)	
ROBERTO PARRA,	)	
	)	
<b>Petitioner,</b>	)	Admin. Order 2009-01
	)	
<b>and</b>	)	
	)	
UNITED FARM WORKERS OF	)	
AMERICA,	)	
	)	
<b>Certified Bargaining</b>	)	
<b>Representative.</b>	)	

BACKGROUND

On November 12, 2008, certified bargaining representative, the United Farm Workers of America (UFW), timely filed and served a Request for Reconsideration of this Agricultural Labor Relations Board's (ALRB or Board) Decision and Order in 34 ALRB No. 6 (November 7, 2008) pursuant to California Code of Regulations, title 8, section 20393 (c). The Executive Secretary, by direction of the Board, issued an Order Setting Time for Responses to Certified Bargaining

Representative's Motion for Reconsideration on November 19, 2008, allowing responses to be filed by December 1, 2008.

On December 1, 2008, the General Counsel timely filed a Motion to Intervene in this matter and included a Response to Certified Bargaining Representative's Motion for Reconsideration. The General Counsel's motion was granted. Gallo Vineyards, Inc. (Employer) and Roberto Parra (Petitioner) timely filed responses to Certified Bargaining Representative's Motion for Reconsideration.

We have reviewed the Certified Bargaining Representative's Motion for Reconsideration, the General Counsel's Response and declaration attached thereto, and the responses filed by Employer and Petitioner, and, as explained below, we deny the Certified Bargaining Agent's Motion for Reconsideration.

#### DISCUSSION

Title 8, section 20393 (c) of the California Code of Regulations states that a party to a representation proceeding may, because of extraordinary circumstances, move for reconsideration or reopening of the record after the Board issues a decision or order in a case. (Cal. Code Regs., tit. 8, § 20393, subd. (c).) A motion for reconsideration will be denied when there has been no showing of extraordinary circumstances that would warrant reconsideration of the Board's decision, no new issues raised, or no new evidence previously unavailable or newly discovered. (See *Arie De Jong dba Milky Way Dairy* (2003) 29 ALRB No. 4, pg. 4, fn. 8.)

The UFW argues that the Board mistakenly believed that a charging party

could withdraw unfair labor practice charges at any time so as to avoid dismissal of the charges and the resultant possibility that election objections based on the same set of facts would in turn be dismissed. Withdrawn unfair labor practice charges, as noted in 34 ALRB No. 6, would not prohibit the Board from adjudicating election objections based on the same set of facts as those in the withdrawn unfair labor practice charges. Presumably the UFW believes either the reasoning or the holding in 34 ALRB No. 6 would have been different had the Board considered that, under the General Counsel's policy, unfair labor practice charges may not be withdrawn after investigation.

In support of its argument, the UFW brings to our attention correspondence between it and ALRB General Counsel Michael Lee in which it requested Mr. Lee adopt a policy similar to that of section 101.5 of the National Labor Relations Board's (NLRB) Statement of Procedures, which requires the Regional Director to afford the charging party an opportunity to withdraw charges if an investigation reveals that there has been no violation of the National Labor Relations Act or the evidence is insufficient to substantiate the charge.<sup>1</sup> Mr. Lee declined.

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<sup>1</sup> Section 101.5 of the NLRB's Statement of Procedures states:

**Sec. 101.5 *Withdrawal of charges.***—If an investigation reveals that there has been no violation of the National Labor Relations Act or the evidence is insufficient to substantiate the charge, the Regional Director recommends withdrawal of the charge by the person who filed. Withdrawal may also be requested on the initiative of the complainant. If the complainant accepts the recommendation of the Regional Director or requests withdrawal, the respondent is immediately notified of the withdrawal of the charge.

National Labor Relations Board, Rules and Regulations and Statement of Procedures, sec. 101.5, p. 121 (April, 2002).

Employer Gallo Vineyards, Inc. argues in its Response to the UFW's Request for Reconsideration that the UFW has not demonstrated extraordinary circumstances warranting review. Employer argues that the UFW was well aware of the General Counsel's policy as evidenced by *Richard's Grove and Saralee's Vineyard* (2007) 33 ALRB No. 7, wherein the UFW requested the ALRB to reconsider *Mann Packing* (1989) 15 ALRB 11.<sup>2</sup> Employer further argues that the General Counsel's policy was not "new" to the UFW, as evidenced by the UFW's request that the General Counsel adopt the policy of the NLRB, and that there is no evidence that the UFW sought withdrawal of the unfair labor practice charges in this matter.

Petitioner Roberto Parra argues in his Opposition that the UFW's Request for Reconsideration is untimely, as the UFW should have sought review of the General Counsel's October 1, 2008 decision not to change the policy of prohibiting the withdrawal of unfair labor practice charges after investigation.

We conclude the UFW's motion presents neither extraordinary circumstances, evidence previously unavailable to it, nor evidence that would result in a different analysis or outcome in our decision in 34 ALRB No. 6. Our broad reference to the option of withdrawing unfair labor practice charges, an option available to the

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<sup>2</sup> The UFW filed its election objections in this matter on July 2, 2007. On August 2, 2007, it filed election objections in *Richard's Grove*. It also filed parallel unfair labor practice charges in *Richard's Grove*. *Richard's Grove* was decided on December 28, 2007.

UFW<sup>3</sup>, albeit not unconditionally or without time limitations, was not exclusively or significantly the basis for our decision in 34 ALRB No. 6. Therefore, the UFW's argument is not persuasive.

The Board has consistently stated that the reason for dismissing election objections based on the same facts as dismissed unfair labor practice charges is chiefly the General Counsel's sole authority under section 1149 to investigate charges and issue complaints (*Gallo Vineyards* (2008) 34 ALRB No. 6 at p. 6) which, when combined with factual or legal circumstances making it impossible for the Board to adjudicate such election objections on an independent legal basis (Cf. 34 ALRB No. 6 at p. 19 ["[I]f the Board can find the conduct objectionable on an independent basis, without determining the conduct is a ULP, then the Board will proceed with adjudicating the election objection."]), leaves the Board without the jurisdiction to adjudicate such election objections because of the potential to interfere with the sole authority of the General Counsel.

The option of filing either election objections or unfair labor practice charges, and the option of withdrawing unfair labor practice charges, were noted in 34 ALRB No. 6 as not unlike the doctrine of election of remedies. The existence or non-existence of options regarding withdrawing unfair labor practice charges did not change the fundamental reasoning of either *Gallo Vineyards* or *Richard's Grove*: The sole authority of the General Counsel to investigate unfair labor practice charges and

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<sup>3</sup> It was not evident in either the correspondence between the UFW and ALRB General Counsel Michael Lee or in the UFW's motion that the UFW attempted to withdraw its unfair labor practice charges at issue after investigation.

issues complaints pursuant to Labor Code section 1149. As the UFW has failed to show extraordinary circumstances for its request, the Certified Bargaining Representative's Motion for Reconsideration is DENIED.

By Direction of the Board

Dated: January 7, 2009

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J. ANTONIO BARBOSA  
Executive Secretary, ALRB