

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO)	Case No.	93-CE-38-VI
GROWERS, INC., A California)		(20 ALRB No. 13)
Corporation,)		(38 ALRB No. 4)
)		
Respondent,)		
)		
and)		
)	ORDER DENYING MOTIONS	
)	FOR RECONSIDERATION	
UNITED FARM WORKERS OF)		
AMERICA,)		
)		
)	Admin. Order No. 2012-08	
Charging Party.)		
_____)		

On June 14, 2012, both the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) and the United Farm Workers of America (UFW) filed Motions for Reconsideration of the decision of the Board in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 4. On June 27, 2012, San Joaquin Tomato Growers, Inc. filed oppositions to both motions. For the reasons set forth below, the Motions for Reconsideration are hereby DENIED.¹

¹ On June 28, 2012, the UFW filed in the Third District Court of Appeal a Petition for Review of the Board's decision. Nevertheless, until the record of the case is filed with the court, the Board retains jurisdiction to consider whether to modify its decision. (See *Nish Norian v. ALRB* (1984) 35 Cal.3d 726, 742, fn. 7.)

Section 20286 of the regulations of the Board² allows parties to move, because of extraordinary circumstances, for reconsideration of a Board decision in an unfair labor practice proceeding. Subdivision (c) of Regulation 20286 provides that such a motion must be filed “within 10 days after service of the Board’s final decision and order.” However, in this case the Board’s order, by its express terms, was not a final Board order, and the matter was remanded to the regional office for further proceedings. Subdivision (d) of Regulation 20286 provides that motions for reconsideration “of any Board action other than a final decision and order” must be filed “within five days after service of the non-final Board action.” Accordingly, both motions are untimely and are denied on that basis.

In any event, both the General Counsel and the UFW fail to argue that there are “extraordinary circumstances,” such as newly discovered evidence or an intervening change in law, that merit reconsideration of this matter. Rather, they simply disagree with the Board's judgment, in the exercise of its broad remedial authority, that the unique circumstances of this case warrant ordering interest contingent upon employees being located. Accordingly, both motions “merely raise arguments previously addressed by the Board and have failed to cite any extraordinary

² The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

circumstances justifying reconsideration.” (*Mario Saikhon, Inc.* (1991) 17 ALRB No. 6 at pp. 4-5).³

By Direction of the Board.

Dated: July 6, 2012

J. ANTONIO BARBOSA
Executive Secretary, ALRB

³ Compliance proceedings are remedial rather than prosecutorial, with the General Counsel executing compliance pursuant to a delegation from the Board, rather than as an independent prosecutor. (*McFarland Rose Production* (1985) 11 ALRB No. 34, p. 9; *Ace Beverage Co.* (1980) 250 NLRB 646, 648.) Therefore, the filing of a motion for reconsideration in which the General Counsel merely disagrees with a ruling of the Board not only fails to meet the standard for such motions generally, but also is outside the General Counsel’s appropriate role in a compliance proceeding.