

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D'ARRIGO BROS. CO. OF	)	Case No.	2010-RD-004-SAL
CALIFORNIA, A California	)		(39 ALRB No. 4)
Corporation,)		
)		
Employer,)		
)		
and)		
)		
ALVARO SANTOS,)		
)		
Petitioner,)		
)		
and)		
)		
UNITED FARM WORKERS)		
OF AMERICA,)		
)		
<u>Certified Bargaining Representative.</u>)		
D'ARRIGO BROS. CO. OF	)	Case No.	2010-CE-050-SAL
CALIFORNIA, A California)		
Corporation,)		
)		
Respondent,	)	ORDER DENYING	
	)	RESPONDENT/EMPLOYER'S	
and	)	MOTION FOR	
	)	RECONSIDERATION /	
UNITED FARM WORKERS	)	REOPENING AND DENYING	
OF AMERICA,	)	MOTION FOR STAY	
)		
<u>Charging Party.</u>	)	Admin. Order No. 2013-22	

On April 23, 2013, the employer and respondent D'Arrigo Bros. of California (the "Employer") filed a motion with the Agricultural Labor Relations Board (the "ALRB" or "Board") pursuant to section 20286(c) of the Board's regulations seeking

reconsideration of the Board’s April 10, 2013 decision in *D’Arrigo Bros. of California* (2013) 39 ALRB No. 4 (Case Nos. 2010-RD-004-SAL & 2010-CE-050-SAL) or, in the alternative, reopening of the record, and further requesting a stay of the decision.¹ The Employer seeks reconsideration of the Board’s ruling in the *D’Arrigo* decision that, although the Administrative Law Judge (“ALJ”) had erroneously ruled that the content of certain conversations between worker-witnesses and counsel for the United Farm Workers of America (the “UFW”) were privileged, the Employer was not prejudiced by being prevented from cross-examining the witnesses concerning the content of those conversations. (*D’Arrigo, supra*, 39 ALRB No. 4, p. 25-26.) The UFW and General Counsel (“GC”) timely filed oppositions to the motion.

Under section 20286(c) of the Board’s regulations, a party to an unfair labor practice proceeding may move for reconsideration or reopening of the record after issuance of the Board’s final decision and order “because of extraordinary circumstances.” The motion must state the grounds for reconsideration or reopening with particularity. (Cal. Code Regs., tit. 8, § 20286(c).) The moving party must “show *extraordinary circumstances*, i.e., an intervening change in the law or evidence previously unavailable or newly discovered.” *South Lakes Dairy Farm* (2013) 39 ALRB No. 2, p. 2 (emphasis in original); See also *Mario Saikhon, Inc.* (1991) 17 ALRB No. 6, p. 5 (denying motion for reconsideration that “merely raised arguments previously addressed by the Board”).

¹ The Board’s regulations are codified at title 8, California Code of Regulations, section 20100, et seq.

The Employer's motion clearly does not meet the standard for reconsideration or reopening of the record.² The Employer fails to address the extraordinary circumstances standard in its motion. Moreover, the Employer fails to point to any intervening change in the law or evidence that was previously unavailable or newly discovered, merely making the same arguments that were previously presented to the Board in the Employer's brief in support of exceptions. (See Employer's Brief in Support of Exceptions, pp. 84-90.)³

Because the Employer has failed to demonstrate extraordinary circumstances justifying reconsideration of the Board's decision or reopening of

² Although the Employer has not met the requirements for reconsideration of the Board's decision, the Board notes that it is well-established under both California and federal law that errors, including erroneous limitations on the right of cross-examination, do not require reversal where, as here, those errors did not cause prejudice. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 682 ("the denial of the opportunity to cross-examine an adverse witness does not fit within the limited category of constitutional errors that are deemed prejudicial in every case."); *People ex rel. Department of Public Works v. Reardon* (1971) 4 Cal.3d 507, 514 (where cross examination was improperly limited, "[t]he remaining question is whether these errors were sufficiently prejudicial to require a reversal of the judgment."); *Consolidated Freightways Corp.* (1989) 294 NLRB 1142, 1142 fn. 3 (No denial of due process resulted from a witness's absence from hearing, which prevented cross-examination, because the "failure to testify at the hearing did not prejudice the Respondent."). See also Cal. Const., art VI, § 13 (judgments not to be set aside or new trials granted on the ground of the improper admission or rejection of evidence "unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."))

³ In its brief in support of exceptions, the Employer specifically requested "that the charges/allegations be set aside, and/or the hearing be reconvened to allow Employer its opportunity to cross-examine General Counsel/UFW witnesses", the same relief it seeks in its present motion. (Employer's Brief in Support of Exceptions, p. 90.)

the administrative record as required by the Board's regulations, the motion for reconsideration or reopening of the record is DENIED. The Employer's request for a stay is also DENIED.

By Direction of the Board.

Dated: May 7, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB