STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BUD ANTLE, INC., Respondent, and TEAMSTERS UNION, LOCAL 890, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Charging Party.	)	Case No. 2012-CE-007-SAL (39 ALRB No. 12) ORDER DENYING GENERAL COUNSEL'S MOTION FOR RECONSIDERATION Admin. Order No. 2013-30

On July 29, 2013, the Agricultural Labor Relations Board (Board or ALRB) issued a decision and order in the matter of *Bud Antle, Inc*. (2013) 39 ALRB No. 12. In that decision, the Board upheld the Administrative Law Judge (ALJ)'s finding that Bud Antle, Inc. (Employer or Respondent) violated sections 1153(e) and 1153(a) of the Agricultural Labor Relations Act (ALRA or Act) by failing to supply the Teamsters Union, Local 890, International Brotherhood of Teamsters (Union or Charging Party) with information necessary for it to process several grievances. However, the Board rejected the ALJ's finding that Employer and its parent company, Dole Fresh Vegetables, Inc. (Dole) functioned as a single integrated enterprise, because the Board concluded that the issue of whether the entities were a single integrated employer was not fully litigated. This issue was never alleged in the Complaint, it was not identified as an issue in the pre-hearing

conference order, no direct evidence regarding this issue was produced at the hearing by either the General Counsel or the Respondent, and the single integrated enterprise theory was not advanced in the General Counsel's post-hearing brief.

On August 8, 2013, the General Counsel filed a motion requesting that the Board reconsider its rejection of the ALJ's conclusion that Employer and Dole operate as a single integrated enterprise. On August 14, 2013, the Union filed a Joinder of Charging Party in Request for Reconsideration.

PLEASE TAKE NOTICE that the General Counsel's Motion for Reconsideration is DENIED for the reasons discussed below.

The standard for hearing a motion for reconsideration of a Board decision is that the moving party show extraordinary circumstances, i.e., an intervening change in the law or evidence previously unavailable or newly discovered. (*South Lakes Dairy Farms* (2013) 39 ALRB No. 2 at pp. 2-3, citing *Arie de Jong dba Milky Way Dairy* (2003) 29 ALRB No. 4 at p. 4, n. 8; *Mario Saikhon, Inc.* (1991) 17 ALRB No. 6 at pp. 4-5.)

The General Counsel argues that the Board's decision "represents a dramatic departure from the standard of review for factual findings, creating the extraordinary circumstances justifying reconsideration." This is simply not true. Instead, the General Counsel's motion shows a fundamental misunderstanding of the standard of Board review upon the filing of exceptions to an ALJ's decision.

The General Counsel argues that in reviewing an ALJ's factual findings the Board is supposed to determine whether a preponderance of the

evidence supports the findings, and is essentially precluded from disturbing those findings if supported by the record. General Counsel argues that the Board "dramatically departed" from this standard in reviewing the ALJ's conclusion that the Employer and Dole functioned as a single integrated enterprise.

The argument that the Board dramatically departed from its own precedent and applied the wrong standard of review appears to be based on a misunderstanding of relevant case law. The cases General Counsel cites in support of her argument that the Board must apply the same evidentiary analysis used by the ALJ to make his factual findings are cases that articulate the substantial evidence standard used by **courts** in reviewing factual determinations by the Board. (see General Counsel's Motion for Reconsideration at p. 2 citing *NLRB v. Lantz* (9th Cir. 1979) 607 F.2d 290, 295; *J.M. Tanaka v. NLRB* (1982) 675 F.2d 1029, 1033.) Substantial evidence is the proper standard of review of the findings and conclusions of the ALRB by a **court**. (*Tex-Cal Land Management, Inc. v. ALRB* (1979) 24 Cal.3d 335 (emphasis added.) Under the substantial evidence test, the reviewing court is precluded from reweighing the evidence or substituting its judgment for that of the Board. (*Universal Camera Corp. v. NLRB* (1951) 340 U.S. 474, 488; *Rivcom Corp. v. ALRB* (1983) 34 Cal.3d 743, 756-757; *Montebello Rose Co., Inc. v. ALRB* (1981) 119 Cal.App.3d 1.) These cases are not applicable to the Board's review of an ALJ's findings and conclusions.

The General Counsel points out that Board regulation section 20286, subsection (b) states that in ULP matters, "where one or more parties take

exception to the decision of the administrative law judge, the Board shall review the applicable law and the evidence and determine whether the factual findings are supported by a preponderance of the evidence taken." However, nowhere in the Board's regulations or in the ALRA itself, is there a requirement that the Board be bound by the ALJ's factual findings. Indeed, it is well-settled that the Board, not the ALJ is the ultimate fact-finder under the ALRA. (see Cal. Lab. Code § 1160.3.) The Board conducts a *de novo* review of the record, and is free to draw its own inferences from the evidence available to it in the record. (*Royal Packing Co. v. ALRB* (1980) 101 Cal.App.3d 826, 835-836.)

The General Counsel argues that the issue of whether Bud Antle and Dole functioned as a single integrated enterprise was fully litigated; however, this argument is not relevant in determining whether the standard for a motion for reconsideration of a Board decision has been met. As discussed above, the standard for hearing a motion for reconsideration of a Board decision is that the moving party show extraordinary circumstances. (*South Lakes Dairy Farms, supra*, 39 ALRB No. 2). The General Counsel merely disagrees with the Board's analysis and conclusion, and that is not a basis for granting a motion for reconsideration.[1]

[1] In any event, under the circumstances presented in this case, we do not believe that Employer was afforded the right to know "what conduct was at issue" and to have "a fair opportunity to present [its] defense." (*NLRB v. Quality C.A.T.V., Inc.* (7th Cir. 1987) 824 F.2d 542 at p. 546, citing *NLRB v. Complas Industries* (7th Cir. 1983) 714 F.2d 729.)

As the General Counsel has failed to demonstrate extraordinary circumstances warranting reconsideration, her motion is DENIED.

By Direction of the Board

Dated: August 22, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB