

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,)	Case Nos. 2013-RD-003-VIS
)	
Employer,)	
)	
and)	
)	ORDER DENYING UNITED
SILVIA LOPEZ,)	FARM WORKERS OF
)	AMERICA’S MOTION TO
Petitioner,)	VACATE DECISION OR, IN THE
)	ALTERNATIVE, RECONSIDER
and)	DECISION
)	
UNITED FARM WORKERS OF)	Admin. Order No. 2013-49
AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

On November 4, 2013 the United Farm Workers of America (the “UFW”) filed with the Agricultural Labor Relations Board (the “ALRB” or “Board”) a “Motion for Board to Vacate Its Decision, or in the Alternative, for Reconsideration.”¹ The Motion seeks an order vacating or reconsidering the Board’s November 1, 2013 order which vacated the decision of Regional Director Silas Shawver (the “Regional Director”) to block the decertification petition in the above-captioned case.

¹ The UFW previously filed a motion requesting the Board to vacate or reconsider its decision. The petitioner, Sylvia Lopez (“Petitioner”), and employer, Gerawan Farming, Inc. (“Gerawan”), filed oppositions. That earlier motion was denied because it was not accompanied by proof of service as required by the Board’s regulations. (See Admin. Order 2013-47.) The present motion was accompanied by a proof of service.

As there is no statutory or regulatory authority for a motion to vacate a Board order, UFW's motion is, in essence, one for reconsideration. In order for such a motion to be granted, 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.) The UFW's motion does not meet this standard. Accordingly, the UFW's motion must be dismissed.

Even were we to consider the UFW's arguments, we would find them unavailing. The UFW argues that the Board was without authority to vacate the Regional Director's blocking decision because the Board did not await the filing of a request for review. Contrary to the UFW's argument, Labor Code section 1142 subdivision (b) does not preclude the Board from acting sua sponte to review a regional director's decision blocking an election. (See *Sam & Carmen Knevelbaard dba Bayou Vista Dairy* (2006) 32 ALRB No. 6 (Board reviewed dismissal of decertification petition sua sponte).) Had the Legislature intended to deny the Board this power, it could have expressly done so, but did not.² The UFW also argues that the Board erred by not making the record available to the parties before issuing its decision, again citing

² We also note that the Regional Director in issuing his blocking decision indicated that he was doing so in order to allow the petitioner and/or the employer to expeditiously have the matter reviewed by the Board and there is little doubt as a practical matter that one or both of these parties would have sought review. Given that a delay could have resulted in the loss of peak employment, which would have precluded the holding of an election, the Board was not required to await the filing of a request for review before determining the appropriateness of the Regional Director's blocking decision.

Labor Code section 1142 subdivision (b). We note that the language cited by the UFW applies when a request for review has been filed, not when the Board acts sua sponte. In any event, the blocking letter, unfair labor practice complaints, and other evidence discussed by the Board were all formally served upon, and therefore were available to the UFW and the UFW suffered no prejudice.

With respect to the merits of the Board's order, the UFW argues, in essence, that, where there is an outstanding unfair labor practice complaint that alleges a refusal to bargain, the Board is *compelled* to block a petitioned-for election. The Board's *Cattle Valley Farms* decision, however, clearly indicates otherwise. That decision states that the Board must exercise "its independent judgment" in determining whether to block an election and that the regional directors, and by extension the Board may "determine whether the pendency of the unfair-labor practice case would reasonably tend to affect employee choice and, if so, whether blocking the election would be warranted." (*Cattle Valley Farms* (1982) 8 ALRB No. 24 p. 14-15.) The UFW cites the Fifth Circuit's decision in *Bishop v. National Labor Relations Board* (5th Cir. 1974) 502 F.2d 1024. However, in that case, the court found that the National Labor Relations Board's ("NLRB") application of its blocking rule was not subject to mandamus challenge in part because the NLRB had not acted arbitrarily by applying its blocking policy in a mechanical fashion. Yet, the UFW urges the Board to do just that.

By its November 1, 2013 decision, the Board has not absolved Gerawan of any of the unlawful acts alleged in any of the three outstanding unfair labor practice complaints and those complaints will be litigated. Nor does the Board's order preclude

the UFW from contending that actions by Gerawan or others were sufficient to invalidate any election. The Board's order simply represents the Board's judgment that, under the circumstances of this case, the policies underlying the Agricultural Labor Relations Act are best served by holding the election, impounding the ballots, and allowing these issues to be resolved through election objections and litigation of the complaints.

The United Farm Workers of America's motion is DENIED.

Dated: November 4, 2013

GENEVIEVE A. SHIROMA, Chair

CAHTRYN RIVERA-HERNANDEZ, Member

HERBERT O. MASON, Member