

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DOLE BERRY NORTH,	)	Case Nos. 2013-RD-001-SAL
	)	(39 ALRB No. 18)
Employer,)	
)	
and	)	ORDER DENYING UFW'S
	)	MOTION FOR
JOSÉ AGUILAR	)	RECONSIDERATION AND
	)	DIRECTING THE
Petitioner,	)	OPENING AND COUNTING OF
	)	BALLOTS; ORDER SETTING
and	)	INVESTIGATIVE HEARING
)	
UNITED FARM WORKERS OF	)	Admin. Order No. 2014-10
AMERICA,)	
)	
<u>Certified Bargaining Representative.</u>)	

On May 15, 2014, the Agricultural Labor Relations Board (ALRB or Board) issued Administrative Order No. 2014-08 (Admin. Order No. 2014-08) with respect to this case, ordering that the ballots be opened and counted, and that a hearing be set on the three remaining election objections. On that same day, Salinas Regional Director Alegría De La Cruz (Regional Director) contacted all parties and informed them that she had scheduled the ballot tally for 3:00 PM on May 19, 2014, at the Salinas Regional Office of the Board. Also on that same day, the United Farm Workers of America (UFW) contacted the Board and moved,

pursuant to section 20393 (c) of the Board's regulations¹ for reconsideration of Admin. Order 2014-08².

On May 16, 2014, Dole Berry North (DBN or Employer) submitted a letter (incorrectly dated April 25, 2014) expressing its opposition to the UFW's motion. Later on May 16, the Board issued Admin. Order No. 2014-09, instructing the Regional Director not to open the ballots, staying the tally thereof until after Petitioner José Aguilar (Petitioner) was provided an opportunity for response to the UFW's request for reconsideration, and after the resolution of the UFW's motion. On May 20, the Board received the Petitioner's response, which opposed the UFW's motion.

Board regulation section 20393(c) provides that a party to a representation proceeding (as both the UFW and DBN are in the instant matter) may, because of extraordinary circumstances, move for reconsideration or reopening of the record within five days after Board issuance of a decision or order in the case. The Board held, in *South Lakes Dairy Farms* (2013) 39 ALRB No.13, that the extraordinary circumstances contemplated by the regulation would be an intervening change in the law, or evidence previously unavailable or newly discovered. The Board further held, at page 4, that "[t]he standard does not

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

² The UFW's motion incorporated by reference arguments presented in a letter that the UFW sent to the Board's Executive secretary and served on all parties on May 14, 2014.

contemplate hearing on reconsideration issues argued for the first time absent a compelling reason as to why they were not raised and/or fully argued previously.” The UFW’s motion for reconsideration in this case fails to meet the extraordinary circumstances standard, and is therefore DENIED.

The UFW’s motion cites the Board’s original November 22, 2013, order in this matter (39 ALRB No. 18); *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2; and *Gerawan Farming, Inc.* (2013) 39 ALRB No. 20, to argue that the Board is required to maintain the impoundment of the ballots until after the election objections hearing is completed. These cases are incorrectly interpreted, not applicable, or inapposite to this matter.

The plain language of the Board’s November 22, 2013 decision and order on the UFW’s election objections in this case (*Dole Berry North* (2013) 39 ALRB No. 18) does not limit the Board’s authority to litigate objections where the underlying ULP complaint or charge was withdrawn, as there is no potential to interfere with the General Counsel’s authority in such situations. (*Mann Packing Company, Inc.* (1989) 15 ALRB No. 11; *Bayou Vista Dairy* (2006) 32 ALRB No. 6; *Richard’s Grove & Saralee’s Vineyard, Inc.* (2007) 33 ALRB No. 7.) The *Gallo Vineyards, Inc.* and *Gerawan* decisions cited by the UFW are not applicable to this case, as they concern ULP violations affecting the validity of election petitions. Here, the ULPs that were the basis for impounding the ballots were withdrawn by the UFW.

The UFW further cited several cases in support of its point, inapposite to the current matter, that a union is certified until it is decertified. (*Nish Noroian Farms* (1982) 8 ALRB No. 25; *Montebello Rose Co., Inc., v. ALRB* (1981) 119 Cal.App.3d 1; *F & P Growers Assn. v. ALRB* (1985) 168 Cal.App.3d 667; and *Adamek & Dessert, Inc.* (1986) 178 Cal.App.3d 970.) This point is not at issue.

The UFW has not provided extraordinary circumstances to justify the Board overturning its original order. Therefore, the UFW's motion for reconsideration in this matter is hereby DENIED. Accordingly, the Board ORDERS the Regional Director to open and count the ballots and provide advance notice to all parties of the date, time, and place of the ballot counting, in accordance with section 20360(a) of the Board's regulations. The Board further DIRECTS the Executive Secretary to schedule an investigative hearing on Objections One, Two, and Three at an appropriate time and place after the tally of ballots is completed.

Dated: May 21, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member