STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC., Employer, and SILVIA LOPEZ, Petitioner, and UNITED FARM WORKERS OF AMERICA, Certified Bargaining Representative.	)	Case No. 2013-RD-003-VIS (39 ALRB No. 20) (42 ALRB No. 1) ORDER DENYING PETITIONER SILVIA LOPEZ'S PETITION FOR RECONSIDERATION OF DECISION AND ORDER 42 ALRB No. 1 Admin. Order No. 2016-09
GERAWAN FARMING, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, Charging Party.	)	Case Nos. 2012-CE-041-VIS, et al.

On April 22, 2016, Decertification Petitioner Silvia Lopez (Petitioner) timely filed and served a Petition for Reconsideration of the Agricultural Labor Relations Board's (Board) Decision and Order in 42 ALRB No. 1 (April 15, 2016) pursuant to California Code of Regulations, title 8, section 20393, subdivision (c). Petitioner 's motion is without merit and is hereby DENIED.

Section 20393, subdivision (c), and section 20286, subdivision (c), of the Board's regulations allow parties to move for reconsideration of a Board decision in representation proceedings and unfair labor practice proceedings, respectively, because of extraordinary circumstances.[1] Petitioner fails to argue that there are "extraordinary circumstances," such as newly discovered evidence or a change in existing law, that merit reconsideration of this matter. To the extent that Petitioner "merely raise[s] arguments previously addressed by the Board," she fails to cite any extraordinary circumstances justifying reconsideration. (*Mario Saikhon, Inc.* (1991) 17 ALRB No. 6, pp. 4-5).

Petitioner also presents arguments not previously raised in this matter.[2] In *South Lakes Dairy Farms*, the Board clarified that "a motion for reconsideration before

---

[1] On April 27, 2016, the General Counsel filed a request for leave to oppose Petitioner's motion for reconsideration. The Board finds that such an opposition is not necessary and denies the request on that basis. On April 28, 2016, Gerawan Farming, Inc. (Gerawan) filed a request for leave to respond to Petitioner's motion for reconsideration, a motion for a stay of the Board's decision pending resolution of Petitioner's motion for reconsideration, and a motion for an order preserving the ballots pending judicial review. The Board hereby denies Gerawan's request for leave to respond to Petitioner's motion for reconsideration. Gerawan's motion for a stay is also denied as both section 20393, subdivision (c), and section 20286, subdivision (c) of the Board's regulations state that "a motion filed under this section shall not operate to stay the decision and order of the Board." With respect to Gerawan's motion for an order preserving the ballots, see footnote 3 below.

[2] Petitioner argues that Chairman Gould should be disqualified because of statements he made in an April 1, 2016 op-ed piece on the matter of *Friedrichs v. California Teachers Assoc., et al.* This argument is without merit. Petitioner has not established personal bias requiring Chairman Gould's recusal by citing to his comments on a matter that involves none of the parties in the instant case. (*Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal. 4th 731, 741 [presumption of impartiality by agency adjudicators "can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias"].) Chairman Gould notes that he has commented on the so-called "union security" issue

the Board is not the opportunity for parties to have the Board consider novel or additional arguments not fully developed … or issues either never raised or argued at all in briefing, without providing any reason constituting extraordinary circumstances justifying the failure to do so. Nor is a motion for reconsideration the proper avenue by which to attempt to preserve for judicial review issues never raised or litigated below." (*South Lakes Dairy Farms* (2013) 39 ALRB No. 2, p. 9, internal quotations omitted.)[3]

---

involving agreements which require some form of allegiance to the exclusive bargaining representative in a wide variety of contexts. See, e.g., William B. Gould IV, "The End of Public Unions?" Daily Journal, October 8, 2015; "Organized Labor, The Supreme Court, and *Harris v. Quinn*: Déjà vu All Over Again?" (2014) 2014 Sup. Ct. Rev. 133; "Solidarity Forever—Or Hardly Ever: Union Discipline, Taft-Hartley and the Right of Union Members to Resign" (1980) 66 Cornell L. Rev. 74; "Some Limitations Upon Union Discipline Under the NLRA: The Radiations of Allis-Chalmers" (1970) 1970 Duke L. J. 1067; "The Burger Court and Labor Law: The Beat Goes On- Marcato" (1987) 24 San Diego Law Rev. 51; "Taft-Hartley Revisited: The Contrariety of the Collective Bargaining Agreement and the Plight of the Unorganized" (1962) 13 Labor Law Journal 348, p. 349; *California Saw and Knife Works* (1995) 320 NLRB 224, FNs 47 and 64 (Chairman Gould concurring); *Paperworkers Local 1033* (1995) 320 NLRB 349, FNs 5 and 6 (Chairman Gould concurring); *Group Health, Inc*. (1998) 325 NLRB 342, 345 (Chairman Gould concurring); *Monson Trucking, Inc*. (1997) 324 NLRB 933, 939, (Chairman Gould, concurring [stating his belief that "a collective-bargaining agreement containing a union-security clause which compels 'membership' or 'membership in good standing' as a condition of employment is facially invalid under the NLRA. In order for such a clause to be valid, the collective-bargaining agreement must define membership as only the obligations to pay periodic dues and initiation fees related to representational costs."], referenced by Justice Kennedy in his concurring opinion in *Marquez v. Screen Actors Guild* (1998) 52 U.S. 33, 53); *Connecticut Limousine Service* (1997) 325 NLRB 633, 638 (Chairman Gould dissenting in part.) Chairman Gould also notes that he has written and spoken on this issue on numerous occasions and shall continue to do so. Finally, Chairman Gould notes that his concurring opinion in *Gerawan Farming, Inc.* (2016) 42 ALRB No. 1, speaks for itself.

[3] Petitioner argues on page 10 of the Petition that the Board cannot destroy the ballots from the November 2013 election. The Board did not order the destruction of the ballots, and according to established procedures they remain secured pending final resolution of this matter, including exhaustion of all available appellate review.

For the reasons set forth above, the Petitioner's Petition for Reconsideration is hereby DENIED.

Dated: May 3, 2016

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member