

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2013-RD-003-VIS
	)		(39 ALRB No. 20)
Employer,	)		(42 ALRB No. 1)
	)		(44 ALRB No. 10)
and,)		
)		
SILVIA LOPEZ,	)	ORDER DENYING UNITED FARM	
	)	WORKERS OF AMERICA’S	
Petitioner,	)	MOTION FOR REOPENING OF THE	
	)	RECORD OR RECONSIDERATION	
and,)		
)		
UNITED FARM WORKERS OF)		
AMERICA,	)	Admin. Order No. 2018-13	
)		
Certified Bargaining	)	(October 11, 2018)	
Representative.)		
)		
)		
)		

The Agricultural Labor Relations Board (ALRB or Board) in *Gerawan Farming, Inc.* (2018) 44 ALRB No. 10 certified that a majority of the valid ballots in the representation election conducted on November 5, 2013, among the agricultural employees of Gerawan Farming, Inc. (Gerawan) were cast for the “No Union” choice, and that the United Farm Workers of America (UFW) “thereby lost its prior status as the exclusive representative of the employees for the purpose of collective bargaining.” (See *Nish Noroian Farms* (1982) 8 ALRB No. 25, p. 14 [“Under the [Agricultural Labor Relations Act], the rule is as follows ... If a ‘no union’ vote prevails in a decertification election ... the certification of results dates back to the day of the election ...”].) On

October 5, 2013, the UFW filed a motion requesting we “address unresolved objections and ULPs^[1],” reopen the record, reconsider our decision in 44 ALRB No. 10, and vacate the certification of election results set forth in that decision pending reconsideration. For the following reasons, the UFW’s motion is DENIED.

The UFW fails to meet the standard for reconsideration or reopening of the record. A party moving for reconsideration or reopening of the record 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”].) In addition, the Board clearly has stated that a motion for reconsideration is not an opportunity for parties to have the Board consider novel or additional arguments raised for the first time absent a compelling reason. (*South Lakes Dairy Farm, supra*, 39 ALRB No. 2, p. 9.) The UFW’s motion does not present any intervening change in law or previously unavailable or newly discovered evidence that warrants the Board reconsidering its decision.

On several claims the UFW relies on arguments previously addressed by the Board, and no compelling circumstances exist to merit our reconsideration of them now.² (*Mario Saikhon, Inc., supra*, 17 ALRB No 6, pp. 4-5; see *Gerawan Farming, Inc.*

¹ Unfair labor practice charges.

² Cf. UFW Objections to Conduct of the Election and Misconduct Affecting the Results of the Election, filed Nov. 13, 2013, pp. 32-34, 70-73.

(2013) 39 ALRB No. 20, pp. 16-17 [dismissing UFW Objection no. 6]³, 26 [dismissing UFW Objection no. 27], 27 [dismissing UFW Objection no. 28]⁴.) With respect to two other objections (nos. 1 and 17) the UFW either misunderstands or misstates the scope of the Fifth District Court of Appeal's opinion in this matter. (*Gerawan Farming, Inc. v. ALRB* (2018) 23 Cal.App.5th 1129, 1210-1211 [reversing findings of direct dealing with the exception of flyers concerning the March 2013 wage increases], 1232 [rejecting presumption of dissemination adopted in *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2].)

Finally, the UFW's two remaining claims misstate the record. First, the UFW alleges the Board never ruled on its exception to the administrative law judge's (ALJ) finding that a June 2013 wage increase for farm labor contractor employees did not affect the election. The Board in its prior decision affirmed the ALJ's factual findings and legal conclusions except as modified in its decision. (*Gerawan Farming, Inc.* (2016) 42 ALRB No. 1, p. 5.) This includes the ALJ's finding that the June 2013 wage increase did not affect the election. The Board is not required to separately address each and every issue asserted by the parties in exceptions to an ALJ's decision where the Board finds them adequately addressed by the ALJ. (*Corralitos Farms, LLC* (2014) 40 ALRB No. 6, pp. 6-7; see *YMCA of Pikes Peak Region, Inc. v. NLRB* (10th Cir. 1990) 914 F.2d 1442, 1449, fn. 4.) Second, the UFW is incorrect in asserting the Board has not considered its objection no. 4 alleging employees were coerced in participating in anti-UFW protest activities. Those issues were fully litigated at the hearing before the ALJ.

³ See also *Gerawan Farming, Inc.* (Nov. 1, 2013) ALRB Admin. Order No. 2013-46.

⁴ See also *Gerawan Farming, Inc.* (Nov. 4, 2013) ALRB Admin. Order No. 2013-49.

They were addressed by the ALJ in his recommended decision and the Board in its prior decision in 42 ALRB No. 1. They further were addressed by the appellate court on review. (*Gerawan Farming, Inc., supra*, 23 Cal.App.5th at pp. 1183-1203.)

The appellate court remanded this matter to the Board with the specific instruction that it “reconsider its election decision in a manner consistent with the views set forth in [the court’s] opinion.” (*Gerawan Farming, Inc., supra*, 23 Cal.App.5th at p. 1141; see *id.* at p. 1241.) The Board is jurisdictionally bound by that direction. (*People v. Dutra* (2006) 145 Cal.App.4th 1359, 1367 [“Where a reviewing court reverses a judgment with directions ... the trial court is bound by the directions given and has no authority to retry any other issue or to make any other findings. Its authority is limited wholly and solely to following the directions of the reviewing court”], quoting *Rice v. Schmid* (1944) 25 Cal.2d 259, 263; *Gallenkamp v. Superior Court* (1990) 221 Cal.App.3d 1, 10.) The Board in its decision in 44 ALRB No. 10 reconsidered its earlier decision vacating the decertification petition and setting aside the election consistent with the court’s instructions. The UFW fails to demonstrate any extraordinary circumstances warranting our further reconsideration of the case.

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Accordingly, the UFW's motion for reconsideration or reopening of the record is DENIED.

Dated: October 11, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member