STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA, Petitioner Labor Organization, and, WONDERFUL NURSERIES, LLC, Employer.	)	Case No. 2024-RM-002 ORDER: (1) GRANTING EMPLOYER WONDERFUL NURSERIES, LLC SPECIAL PERMISSION TO APPEAL; (2) DENYING RENEWED REQUEST TO STAY CERTIFICATION; (3) REVERSING INDEPENDENT HEARING EXAMINER'S ORDER STAYING OBJECTIONS HEARING; AND (4) PLACING UNFAIR LABOR PRACTICE CHARGES IN ABEYANCE Administrative Order No. 2024-08 (April 12, 2024)

Following a determination of majority support for petitioner labor organization United Farm Workers of America (UFW) and the issuance of a certification by the executive secretary of the Agricultural Labor Relations Board (ALRB or Board), employer Wonderful Nurseries, LLC (Wonderful) timely filed objections to the certification pursuant to subdivision (f)(1) of section 1156.37 of the Agricultural Labor Relations Act (ALRA or Act).[1] In *Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB

[1] The ALRA is codified at Labor Code section 1140 et seq. Subsequent statutory citations are to the Labor Code unless otherwise indicated.

Administrative Order No. 2024-04, we set for hearing Wonderful's objection nos. 1, 2, 3, 7, 8, and 13, and dismissed the remaining objections.

The matter was assigned to an independent hearing examiner (IHE) and set for hearing on Monday, March 25. On March 22, the UFW filed a motion to stay the objections hearing based on related unfair labor practice charges filed by both Wonderful and the UFW pending investigation by the general counsel. On the morning the hearing was scheduled to commence, the general counsel filed a request to stay the hearing of objection nos. 1-3 for 30 days to allow it additional time to investigate unfair labor practice charges filed against both Wonderful and the UFW. The IHE issued an order on March 27 staying the hearing on all objections for 30 days to allow the general counsel additional time to conduct its investigation of "overlapping" charges.

Wonderful timely filed an "interim appeal" from the IHE's order. (See Board regs. 20242, subd. (b), 20370, subd. (s).)[2] Board regulation 20242, subdivision (b) allows parties 5 days to file a response or opposition to an application for special permission to appeal. (See Board reg. 20170, subd. (b).) Neither the general counsel nor UFW filed a response. For the reasons discussed below, we GRANT Wonderful special permission to appeal the IHE's ruling, and REVERSE the IHE's order staying the objections hearing. Accordingly, we hereby ORDER the objections hearing to recommence without delay. In addition, we further ORDER the following unfair labor practice charges be held in abeyance pending resolution of the objections we previously

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

set for hearing: nos. 2024-CL-001, 2024-CL-002, 2024-CL-003, 2024-CE-013, 2024-CE-014, and 2024-CE-015.

BACKGROUND[3]

The UFW filed the underlying majority support petition on February 23, 2024, seeking to be certified as the exclusive collective bargaining representative of Wonderful's agricultural employees. Following an investigation, on March 4 the regional director of Region 1 filed a tally report finding the UFW established proof of majority support. In this regard, the regional director determined the UFW submitted valid authorizations from 327 out of 640 eligible employees. The executive secretary issued a certification that same day designating the UFW as the exclusive collective bargaining representative of Wonderful's agricultural employees.

Prior to the tally, both Wonderful and the UFW filed unfair labor practice charges against each other. On March 1, Wonderful filed unfair labor practice charge no. 2024-CL-001 against the UFW, generally alleging the union misled farmworkers into signing authorization cards. On March 1, the UFW also filed several charges against Wonderful, including unfair labor practice charge no. 2024-CE-013 (alleging Wonderful unlawfully coerced employees to attend "captive audience" meetings on February 26 and 28 and urged employees to reject the UFW), unfair labor practice charge no. 2024-CE-014 (alleging Wonderful circulated and coerced employees into signing an anti-union petition to revoke support for the UFW at a captive audience meeting on February 26),

[3] The procedural history of this matter is more fully set forth in Administrative Order No. 2024-04.

and unfair labor practice charge no. 2024-CE-015 (alleging Wonderful held an unlawful captive audience meeting on February 29 and falsely represented to employees that the UFW will deduct $200 from their paychecks and there were no benefits to a union contract). On March 4, the UFW filed another charge, no. 2024-CE-016, alleging Wonderful circulated anti-union flyers to workers expressing disappointment in the regional director's determination of majority support in favor of the UFW and vowing to object to the union's certification.

On March 11, Wonderful timely filed objections to the certification. As relevant here, Wonderful's objections included allegations (1) the regional director improperly failed to consider or give effect to 148 employee declarations submitted by Wonderful in which the employees express their desire to revoke or rescind their authorizations supporting the UFW [obj. no. 1]; (2) the UFW committed misconduct by procuring authorizations from employees using fraudulent tactics and misrepresentations regarding the purpose of the cards [obj. no. 2]; and (3) the regional director improperly failed to consider the 148 employee declarations before determining the UFW established majority support [obj. no. 3]. While Wonderful's objections were pending before the Board, two agricultural employees of Wonderful filed additional charges against the UFW alleging they were misled into signing authorization cards supporting the union. (Unfair Labor Practice Charge No. 2024-CL-002, filed Mar. 13, 2024; Unfair Labor Practice Charge No. 2024-CL-003, filed Mar. 14, 2024.) On March 18, the Board issued an order setting several of Wonderful's objections for hearing, including those described above, and dismissing others. (*Wonderful Nurseries, LLC*, *supra*, ALRB Admin. Order

No. 2024-04.)

While Wonderful's objections were before us, the general counsel did not file any motion or request with the Board concerning the unfair labor practice charges or the status of its investigations into any of them. On March 22 -- the last business day before the objections hearing was scheduled to begin -- the UFW filed a motion with the IHE to stay the objections hearing based on the various charges filed with the general counsel. On March 25, the morning of the first day of the objections hearing, the general counsel filed a request to stay the hearing of objection nos. 1, 2, and 3 for 30 days to allow it additional time to investigate the charges. On March 27, the IHE issued an order staying the entire objections hearing, including as it relates to Wonderful's objection nos. 7, 8, and 13, until April 26.

DISCUSSION

I. Propriety of Interlocutory Review

Under Board regulation 20242, subdivision (b), interlocutory appeals are not allowed except upon special permission from the Board. As a general rule, the Board will entertain an interlocutory appeal only when the issues raised cannot be addressed effectively through exceptions pursuant to regulations 20282 or 20370, subdivision (j). (Board reg. 20242, subd. (b); *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11, pp. 2-3; *King City Nursery, LLC* (Jan. 9, 2020) ALRB Admin. Order No. 2020-01-P, pp. 3-4.)

A party applying for special permission to appeal an interlocutory ruling must "set[] forth its position on the necessity for interim relief." (Board reg. 20242, subd. (b).) Wonderful contends in its appeal section 1156.37 requires a hearing be conducted

within 14 days after objections are filed (§ 1156.37, subd. (f)(2)), neither the IHE nor Board have authority to stay an objections hearing under the statute, and further that the IHE misapplied *Mann Packing Co., Inc*. (1989) 15 ALRB No. 11 (*Mann Packing*) in staying the objections hearing, including those objections beyond the scope of the general counsel's stay request. Wonderful asserts it is prejudiced by delays in the processing of its objections based on the duty to bargain imposed upon it by virtue of the union's certification, including the prospect of the union's ability to avail itself of the mandatory mediation and conciliation (MMC) process to obtain a first collective bargaining agreement. (See §§ 1156.37, subd. (f)(3), 1164; but see *Premiere Raspberries, LLC* (2018) 44 ALRB No. 8, p. 5.)[4]

The issues raised in Wonderful's appeal involve questions of first impression under section 1156.37 and the majority support process. Those questions implicate the IHE's authority to stay the hearing and the relationship between objections to the certification and concurrent unfair labor practice charges within the context of the majority support process. We conclude that these issues cannot be remedied on exceptions at a later date, and we GRANT Wonderful special permission to appeal the IHE's order.

Accordingly, we turn to the merits of Wonderful's appeal.

[4] Pursuant to section 1164, subdivision (a), the UFW may file with the Board a request for referral to MMC any time 90 days after its initial request to bargain. Whether or when the UFW made a request to bargain to Wonderful sufficient to trigger the availability of MMC is not stated in the record before us.

II. Wonderful's Appeal from the IHE's Stay Order

A. Wonderful's Renewed Request to Stay the Certification

We have stated in several recent orders, including twice already in this case, that section 1156.37 does not authorize the Board to stay a certification issued after a determination of majority support. (*Wonderful Nurseries, LLC*, *supra*, ALRB Admin. Order No. 2024-04, p. 6; *Wonderful Nurseries, LLC* (Mar. 6, 2024) ALRB Admin. Order No. 2024-02, p. 2; see *DMB Packing Corp.* (Nov. 3, 2023) ALRB Admin. Order No. 2023-11, pp. 3-4.) The Board's lack of authority to grant Wonderful's request to stay the certification is not based merely on the absence of specific statutory language authorizing such an action. Rather, the relevant statutory provisions demonstrate a clear legislative intent that the certification is to remain in effect despite the pendency of post-certification objections proceedings. Thus, the statute clearly commands:

> If the board determines that the labor organization has submitted proof of majority support and met the requirements set forth in this section, it shall immediately certify the labor organization as the exclusive bargaining representative of the employees in the bargaining unit. An employer's duty to bargain with the labor organization commences immediately after the labor organization is certified.

(§ 1156.37, subd. (e)(3).)

The filing of objections to a certification, and the processing of any objections set for hearing, has no bearing on the certification already issued. Again, the statute plainly directs:

> The filing of a petition objecting to a majority support election certification shall not diminish the duty to bargain or delay the running of the 90-day period or 60-day period set forth in subdivision (a) of Section 1164 [for requesting referral to MMC].

(§ 1156.37, subd. (f)(3).)

Accordingly, not only does section 1156.37 provide no authority for the Board to stay a certification, but to do so would be contrary to the statutory scheme and the clear legislative intent that the processing of objections not interfere with a labor organization's certified status unless and until an objection thereto is sustained after hearing. (§ 1156.37, subd. (f)(2).) Notwithstanding this, Wonderful cites *Premiere Raspberries, LLC* (Oct. 27, 2017) ALRB Administrative Order No. 2017-15 as support for the proposition the Board may stay a certification even when not authorized by statute or regulation. That (nonprecedential) administrative order does not support Wonderful's contention. In that case, the executive secretary issued a certification after the Board dismissed objections filed by an employer following a secret ballot election in which the UFW prevailed. (*Premiere Raspberries, LLC* (2017) 43 ALRB No. 2.) However, the certification issued prematurely under Board regulation 20380, subdivision (b), which states a certification shall not issue until after the resolution of objections <u>and</u> the expiration of the time to file motions under regulation 20393 or after the Board rules on a motion timely filed under that regulation. When the employer in that case did timely file a motion for reconsideration under Board regulation 20393, subdivision (c), the Board appropriately stayed the certification prematurely issued by the executive secretary consistent with regulation 20380, subdivision (b). (See *Premiere Raspberries, LLC*

(2018) 44 ALRB No. 2, pp. 2-3.) In short, *Premiere Raspberries, LLC*, *supra*, ALRB Administrative Order No. 2017-15 is inapposite and does not support Wonderful's claim we have authority to stay a certification issued under section 1156.37.

For the foregoing reasons, Wonderful's renewed request to stay the UFW's certification is DENIED. However, we are mindful the Legislature crafted the majority support process under section 1156.37 to operate expeditiously, including the processing of objections after a determination of majority support, and we are sensitive to concerns of delay in these proceedings. But, we do not agree with Wonderful's claims it necessarily is prejudiced by the fact it now is under an obligation to bargain with the UFW while at the same time contesting the validity of its certification. (See *Small v. Avanti Health Systems, LLC* (9th Cir. 2011) 661 F.3d 1180, 1196.) The situation is not unlike that when a union is certified following a secret ballot election under section 1156.3 and an employer engages in a "technical" refusal to bargain.[5] In such circumstances, an employer who violates its bargaining duty to undertake a challenge to the union's certification does so at its own risk and will be subject to an unfair labor practice order, and all available remedies, if its endeavor is unsuccessful. (*Dow Chemical Co. v. NLRB* (5th Cir. 1981) 660 F.2d 637, 654; *Anchortank, Inc. v. NLRB* (5th Cir. 1980) 618 F.2d 1153, 1157; *NLRB v. Allied Products Corp*. (6th Cir. 1977) 548 F.2d 644, 653.)

[5] A "technical" refusal to bargain arises where an employer refuses to bargain with a certified union in order to obtain judicial review of the election proceeding, which itself is not subject to direct review. (*J. R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 27; *F & P Growers Assoc. v. ALRB* (1985) 168 Cal.App.3d 667, 680, fn. 10; *Montebello Rose Co. v. ALRB* (1981) 119 Cal.App.3d 1, 38, fn. 18.)

In addition, an employer's challenge to a union's certification will not impede or delay operation of the ALRA's MMC processes. (§ 1158; *Premiere Raspberries, LLC*, *supra*, 44 ALRB No. 8, pp. 4-5; *Premiere Raspberries, LLC*, *supra*, 44 ALRB No. 2, pp. 3-4; *Premiere Raspberries, LLC* (Mar. 6, 2020) ALRB Admin. Order No. 2020-05-P, p. 7.)[6]

B. Clarification Regarding the Scope and Application of *Mann Packing*

Wonderful contends the rule of *Mann Packing* does not apply to majority support proceedings under new section 1156.37. Our Board in *Mann Packing* followed the approach adopted by the National Labor Relations Board (NLRB) in *Times Square Stores Corp*. (1948) 79 NLRB 361 "concerning the interplay of the Board's authority in representation proceedings and the General Counsel's authority regarding parallel unfair labor practice allegations." (*Richard's Grove & Saralee's Vineyard, Inc*. (2007) 33 ALRB No. 7, p. 3.) The NLRB in that case "concluded that the General Counsel's exclusive authority to investigate unfair labor practices and determine if a complaint should issue precluded the adjudication of the same issue in a representation proceeding." (*Ibid*.) Thus, where a party objecting to the result of a secret ballot election also has filed an unfair labor practice charge with the general counsel, "the Board will defer to the

[6] Section 1158 states, in full: "Whenever an order of the board made pursuant to Section 1160.3 is based in whole or in part upon the facts certified following an investigation pursuant to Sections 1156.3 to 1157.2, inclusive, and there is a petition for review of the order, the certification and the record of the investigation shall be included in the transcript of the entire record required to be filed under Section 1160.8 and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in the transcript. The filing of a petition for review described in this section shall not be grounds for a stay of proceedings conducted pursuant to Chapter 6.5 (commencing with Section 1164)."

General Counsel's resolution of the investigation of an unfair labor practice charge where the merits of the issues necessarily decided by the investigation also are determinative of the merits of related issues in the representation case." (*Id*. at p. 5.)

Wonderful is correct the ALRA did not include section 1156.37 or provide for majority support -- a form of "card-check" -- procedures at the time the Board adopted this deferential approach to the general counsel's investigation of unfair labor practice charges "mirroring" the allegations of election objections filed with the Board. However, we do not believe this fact alone provides a reasoned basis why the rule should not, or cannot, also apply in majority support proceedings. While we recognize the differences between the new majority support procedures added to the ALRA last year[7] and traditional secret ballot election procedures under the Act, the new procedures by which agricultural employees may designate a labor organization to serve as their exclusive collective bargaining representative do not alter or otherwise affect the distinct roles of the general counsel and our Board on which the rule of *Mann Packing* is based. Ultimately, because we find application of *Mann Packing* to be inappropriate in this particular case based on the record before us, we express no opinion whether *Mann Packing* applies as a general rule in majority support proceedings under section 1156.37.

Nevertheless, we take this opportunity to provide clarification and guidance to general counsel staff and parties in proceedings before our Board, including the parties in this case, regarding the proper scope and application of *Mann Packing* principles. We

[7] Assem. Bill No. 113 (2023-2024 Reg. Sess.) § 9, Stats. 2023, ch. 7.

do so based on our conclusion the rule of *Mann Packing* as articulated by the general counsel and UFW, and adopted by the IHE, lack support in our precedent. The general counsel and UFW urge, and the IHE adopted, an expansive view of *Mann Packing*, often describing it as applicable when issues presented by objections "overlap" with issues implicated in unfair labor practice charges. In rejecting Wonderful's arguments advocating a more limited application of *Mann Packing*, the IHE found Wonderful's position "overlooks the broader interpretation embraced by the Board, which includes not just identical allegations but also related issues that can influence the adjudication of the objections." The IHE found *Mann Packing* supports taking a "holistic approach" allowing the resolution of all related issues between the parties in a singular proceeding. This description of *Mann Packing* goes a step too far.[8]

We most recently applied *Mann Packing* in *Premiere Raspberries, LLC*, *supra*, 43 ALRB No. 2. We stated in that case that, "[w]here, as here, evaluation of election objections is dependent on the resolution of issues related to pending unfair labor practice charges, the Board must defer to the exclusive authority of the General Counsel regarding the investigation of charges and issuance of complaints." (*Id*. at p. 5.) However, it is not merely the existence of "related issues" appearing in both objections and unfair

[8] It appears the IHE's emphasis on resolving all issues between the parties in a singular proceeding influenced her decision to stay the objections hearing in its entirety, including as to those objections beyond the scope of the general counsel's stay request. This was improper. For instance, objection no. 13 involves allegations the regional director improperly removed 7 employees from the eligibility list after finding they did not belong in an appropriate bargaining unit. Nothing in this objection implicates any issue raised in any of the unfair labor practice charges on file with the general counsel, and no basis to delay the prompt resolution of this objection exists.

labor practice charges that is sufficient to trigger *Mann Packing*. As we further explained, the Board is precluded under *Mann Packing* "from addressing election objections based on the same conduct alleged in dismissed unfair labor practice charges if adjudicating the election objections would require factual findings that would inherently resolve the dismissed unfair labor practice charges." (*Ibid*.)

In *Gallo Vineyards, Inc*. (2008) 34 ALRB No. 6, at page 15, the Board found it "is precluded from adjudicating representation matters when the same issues were the subject of a dismissed [unfair labor practice charge] and the issues in the two proceedings are coextensive in terms of their legal merit …." (*Richard's Grove*, *supra*, 33 ALRB No. 7, p. 6.) This approach strikes a proper balance of preserving the separate roles of the general counsel and Board under our Act, affords appropriate deference to the general counsel's authority over the investigation of unfair labor practice charges when invoked by a party, and avoids the risk of contradictory results from relitigating objections based on the same conduct and allegations as dismissed charges. (*Gallo Vineyards, Inc*., *supra*, 34 ALRB No. 6, p. 21.)

Accordingly, we reiterate now that *Mann Packing* applies when a party files unfair labor practice charges with the general counsel that are based on the same conduct and coextensive in terms of their legal merit with objections filed with the Board in a representation proceeding. We previously have described such situations as involving "mirroring" or "parallel" charges and objections, terms which themselves implicate a rule narrower and less expansive than that urged by the general counsel and adopted by the IHE. In other words, it is not sufficient that charges and objections present "overlapping"

or "related" issues; the objections and charges must "mirror" each other with respect to the underlying conduct alleged and the legal merit of the allegations presented.

Having clarified the scope of *Mann Packing*, it further follows the general counsel and IHE misapply it in another respect. Namely, the rule of *Mann Packing* applies when a party that has filed objections also has filed mirroring unfair practice charges. We never have applied *Mann Packing* deference or preclusion rules to charges filed by a party other than the party objecting to a representation proceeding, nor would it be appropriate to do so. *Mann Packing* is triggered when a party that has filed objections also has invoked the general counsel's authority under section 1149 by filing charges based on the same conduct and allegations. We previously have explained:

> Parties always have the option of filing [unfair labor practice charges] or objections or both depending on the type of remedy sought. In addition, where a party withdraws [unfair labor practice] charges, the Board has stated that it is not precluded from litigating a parallel issue in an election proceeding. (*Richard's Grove*, *supra*, 33 ALRB No. 7 at p. 6 citing *Bayou Vista Dairy* (2006) 32 ALRB No. 6.) The choice faced by the UFW is not wholly unlike the choice faced by litigants under the doctrine of election of remedies, where a litigant who has two inconsistent remedies to obtain relief on the same set of facts must choose between those remedies. (See generally 3 Witkin Cal. Procedure (5th ed. 2008) Actions, § 179, p. 259.)

(*Gallo Vineyards, Inc*., *supra*, 34 ALRB No. 6, pp. 23-24.)

In this case, Wonderful, the UFW, and two farmworker employees of Wonderful have filed charges relating to issues implicated in Wonderful's objections to the UFW's majority support certification. However, the only charge relevant to an inquiry under *Mann Packing* is Wonderful's charge against the UFW, and *Mann Packing*

concepts potentially are triggered in this case because Wonderful has elected to pursue identical claims both before the Board in its objections and before the general counsel in its charge. (*Gallo Vineyards, Inc*., supra, 34 ALRB No. 6, p. 23; *Richard's Grove*, *supra*, 33 ALRB No. 7, p. 6; *Bayou Vista Dairy* (2006) 32 ALRB No. 6, p. 7; *Oceanview Produce Co*. (1998) 24 ALRB No. 6, pp. 3-4.) The charges filed by the UFW against Wonderful, or by the two farmworker charging parties against the UFW, do not enter the equation.

Regardless of whether a workforce is seeking to designate a collective bargaining representative through a secret ballot election or the majority support petition process, the Board is responsible to ensure the protection of employee free choice and the integrity of the representation proceedings. The Board's core concern at this juncture is to ensure that the truth of the parties' various allegations are resolved in a timely and fair manner, and that in the event unlawful conduct is proven the appropriate remedies are applied to protect the organizational rights of workers under the Act and ensure due process for all parties. With that focus on our core duties and responsibilities in mind the Board ultimately concludes it would be inappropriate to apply *Mann Packing* in this particular case based on the record before us for the following reasons.

C. The General Counsel's Untimely Stay Request Renders *Mann Packing* Inapplicable in This Case

When applying *Mann Packing* in the secret ballot election context, the Board requires a timely request by the general counsel to the Board while objections remain pending and before the Board disposes of them. (See Board reg. 20335, subd. (c).)

The rule is intended to coordinate Board disposition of objections when mirroring issues have been addressed or are under investigation by the general counsel. While not directly applicable in majority support proceedings, Board regulation 20335, subdivision (c) codifies this approach. Under that regulation, when a party files post-election objections that mirror the allegations of unfair labor practice charges filed with the general counsel, the general counsel is required to raise issues of consolidation or the need for further time to investigate the charges before expiration of the 21-day deadline imposed on the Board to determine what objections, if any, it will set for hearing. (See § 1156.3, subd. (i)(1)(A).) This requirement of timely notice serves to avoid the risk of contradictory results or findings on allegations presented to both the Board and general counsel, and allows the Board to take timely action to coordinate concurrent objections and charges before disposing of them.

In this case, the general counsel cites the charge filed by Wonderful on March 1, the UFW's charges filed on March 1 and 4, and the two individual farmworker charges filed on March 13 and 14 as the basis for its stay request to the IHE. Wonderful filed its objections on March 11. Section 1156.37, subdivision (f)(2) directs the Board to "conduct" a hearing on any objections the Board so sets within 14 days of the date objections are filed. In this case, that deadline fell on March 25.[9] In light of this timeframe, the Board issued an order disposing of Wonderful's objections on March 18, setting some for hearing—including Wonderful's objection (no. 2) mirroring the

[9] Cf. *Radovich v. ALRB* (1977) 72 Cal.App.3d 36, 46-47.

allegations of its charge against the UFW—while dismissing others.[10]

Although these various charges were on file before or during the time Wonderful's objections were pending before the Board, the general counsel never requested the Board stay or defer action on the objections to allow it additional time to complete its charge investigations. Rather, the general counsel waited until the morning of the objections hearing -- one week after the Board set objections for hearing and more than three-and-a-half weeks after Wonderful filed its charge -- to request a stay from the IHE.

Because the general counsel did not timely request the Board stay or defer resolution of objections mirroring pending unfair labor practice charges prior to Board action on the objections, application of *Mann Packing* rules is inappropriate in this case. In other words, the *Mann Packing* train left the station when the Board issued its order disposing of Wonderful's objections, and it is not appropriate to delay or stop the objections hearing in its tracks based on an untimely request to apply *Mann Packing* retroactively to objections we already have set for hearing. Accordingly, based on the circumstances and record before us, priority must be given the objections set for hearing by the Board consistent with the statutory scheme adopted by the Legislature that objections to a majority support certification be processed expeditiously and without delay.

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[10] Wonderful concedes in its appeal the allegations of objection no. 2 mirror the allegations of its unfair labor practice charge. Because we find application of *Mann Packing* inappropriate in this case, we express no opinion on whether or the extent to which objection nos. 1 and 3 also would be subject to *Mann Packing*.

D. The Unfair Labor Practices Charges Filed by Wonderful, the UFW, and the Two Farmworkers Must Be Placed in Abeyance Pending Resolution of Wonderful's Objections

Because we find the objections hearing must proceed forthwith, we also will order that any further action on the related unfair labor practice charges must be deferred and held in abeyance.[11] This is necessary to prevent a multiplicity of simultaneous proceedings and the risk of contradictory or inconsistent results. Avoiding the risk of inconsistent results in matters before the Board and general counsel is one of the principles underlying the rule of *Mann Packing*. Just as the Board on a timely request may defer action on objections based on the pendency of mirroring charges before the general counsel in order to protect the integrity of the general counsel's authority over unfair labor practices, in a case such as this one the general counsel's disposition of unfair labor practice charges must be deferred to protect the integrity of, and avoid undermining or interfering with, our administration of representation proceedings. (See *Carian v. ALRB* (1984) 36 Cal.3d 654, 668, quoting *Henry Moreno* (1977) 3 ALRB No. 40, p. 9 [emphasizing the need for "the prompt and orderly resolution of the election proceedings which are the prerequisite to the collective bargaining process at the heart of

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[11] After the general counsel filed its stay request with the IHE, the UFW filed two additional unfair labor practice charges against Wonderful. On March 26, the UFW filed charge no. 2024-CE-028 alleging Wonderful coerced workers into participating in a work stoppage to protest against UFW representation. On April 8, the UFW filed charge no. 2024-CE-038 alleging Wonderful interrogated workers about their union support and forced said workers to sign an anti-union petition. These charges are unrelated to the objections set for hearing, all of which involve allegations of misconduct or improper conduct occurring before the filing of the majority support petition or during the course of the regional director's investigation of it. Accordingly, these charges are not subject to deferment or abeyance.

this Act"]; *Ruline Nursery Co. v. ALRB* (1985) 169 Cal.App.3d 247, 253-254 [the ALRA's procedures allowing employees to freely designate bargaining representatives, and the speedy resolution of representation proceedings, are "central" towards effectuating public policy in favor of collective bargaining], citing *J. R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 28, 30 and *ALRB v. Superior Court* (1976) 16 Cal.3d 392, 403.)

Prioritizing the resolution of objections over unfair labor practice proceedings is not without precedent, and the NLRB adopts a similar approach in certain cases. The NLRB's Casehandling Manual, Part II, Representation Proceedings, section 11407(b) recognizes in some circumstances …

> … it is appropriate and more expeditious to hold the charge in abeyance and process the challenges and/or objections. Agreement of the parties is not required. This alternative procedure could be used where the unfair labor practice allegations and the challenges and/or objections are coextensive or related, and the resolution of the challenges and/or objections in the representation case, after Board review, is likely to provide an appropriate basis for resolving the unfair labor practice case.

This approach further is reflected in a February 23, 1996 NLRB General Counsel memorandum, which acknowledges:

> There may be some circumstances in which it may be appropriate and more expeditious to hold the unfair labor practice case in abeyance and conduct a hearing on the objections and/or challenges. This alternative procedure could be used where the unfair labor practice allegations and objections are coextensive and the outcome of the representation case will, after Board review, likely provide an appropriate basis for resolving the unfair labor practice case.

(NLRB Gen. Counsel Memo. GC 96-2 (Feb. 23, 1996), p. 8; see also NLRB Oper. Mgmt. Memo. OM 10-26 (Dec. 23, 2009) [2009 NLRB OM Memo LEXIS 334, *96 ["when there are overlapping ULP and objections issues, Regions have been very successful in first pursuing the objections, the crucial concern, while holding the ULPs in abeyance in appropriate cases. [Footnote omitted] The results of the objections will usually obviate the need to go forward on the unfair labor practices"], citing Casehandling Manual, Part II, § 11407(b).)

We conclude this approach strikes a proper balance between the respective authorities of the general counsel over unfair labor practice proceedings and the Board's authority over representation proceedings which lie at the core of our Act, while at the same time ensuring the prompt and efficient resolution of disputes and the processing of objections, including specifically objections to a majority support certification issued under section 1156.37.

For these reasons, the unfair labor practice charge filed by Wonderful against the UFW that mirrors Wonderful's objection no. 2 (2024-CL-001), as well as the related charges filed by the UFW and the two farmworkers, must be held in abeyance until the resolution of the objections process. This includes charge nos. 2024-CE-013, 2024-CE-014, 2024-CE-015, 2024-CL-002, and 2024-CL-003.[12] The disposition or

[12] The general counsel's stay request to the IHE also cites charge no. 2024-CE-016 filed by the UFW against Wonderful. The UFW alleges in this charge Wonderful unlawfully circulated an anti-union flyer to employees on March 4 which expresses Wonderful's "shock and disappointment" in the ALRB's certification of the UFW and promises Wonderful will object to it. We find this charge not sufficiently related to the

resolution of these specific charges likely will involve consideration of similar issues implicated in Wonderful's objections set for hearing. Therefore, placing these charges in abeyance is necessary to prevent interference with the objections hearing. Moreover, in light of the fact these issues will be litigated in the context of the objections hearing, our disposition of such matters following development of a complete record in the objections process is likely to dictate the appropriate disposition of the related charges, thereby resulting in the prompt and efficient disposition of the charges. In sum, prioritizing the objections hearing in this case will provide a more timely, efficient, and consistent framework for resolving the parties' various disputes and allegations as they relate to the UFW's certified status and the showing of support the union submitted with its majority support petition.

Nothing in this order or the approach we adopt herein prioritizing the objections and placing the above-listed charges in abeyance will inhibit or prevent the parties from fully presenting their respective claims and defenses in the hearing on the objections. Consistent with the duty of the IHE to "inquire fully into all matters in issue and to obtain a full and complete record," the fact that overlapping unfair labor practice charges are held in abeyance shall not be a basis to exclude any relevant evidence from the objections hearing. (Board reg. 20370, subd. (b).) While we have described Wonderful's allegations of union misconduct as "serious" (*Wonderful Nurseries, LLC*,

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issues raised in Wonderful's objection nos. 1, 2, and 3. This charge involves conduct allegedly occurring after the regional director's determination of majority support in favor of the union, as opposed to conduct occurring during the time the UFW's majority support petition still was pending before the regional director.

supra, ALRB Admin. Order No. 2024-02, p. 3), the UFW's allegations of employer coercion, assistance, and support for an anti-union revocation campaign are no less serious. Just as Wonderful will have an opportunity to present its case, including witnesses and evidence, in support of its objections, so, too, will the UFW have an opportunity call witnesses and present evidence in support of its defenses during its case-in-chief at the objections hearing. (Board reg. 20370, subd. (b).) This includes the union's allegations the employee declarations procured and submitted by Wonderful are the product of unlawful employer coercion or assistance.

In sum, prioritizing the processing of Wonderful's objections provides the most appropriate approach in this case towards ensuring the expeditious resolution of Wonderful's challenge to the UFW's certified status consistent with statutory scheme established in section 1156.37.

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ORDER

For the foregoing reasons, we REVERSE the IHE's order staying the objections hearing. The objections hearing shall recommence forthwith as expeditiously as possible. We further ORDER unfair labor practice charge nos. 2024-CL-001, 2024-CL-002, 2024-CL-003, 2024-CE-013, 2024-CE-014, and 2024-CE-015 be held in abeyance pending resolution of employer Wonderful Nurseries, LLC's objections.

IT IS SO ORDERED.

DATED: April 12, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE
(Code Civ. Proc., §§ 1013a, 1013b, 2015.5)

Case Name: UNITED FARM WORKERS OF AMERICA, Petitioner Labor Organization, and, WONDERFUL NURSERIES, LLC, Employer

Case No.: 2024-RM-002

I am over the age of 18 years and not a party to this action. I am employed in the County of Sacramento. My business address is 1325 J Street, Suite 1900-B, Sacramento, California 95814.

On April 12, 2024, I served this **ORDER (1) GRANTING EMPLOYER WONDERFUL NURSERIES, LLC SPECIAL PERMISSION TO APPEAL; (2) DENYING RENEWED REQUEST TO STAY CERTIFICATION; (3) REVERSING INDEPENDENT HEARING EXAMINER'S ORDER STAYING OBJECTIONS HEARING; AND (4) PLACING UNFAIR LABOR PRACTICE CHARGES IN ABEYANCE (Administrative Order No. 2024-08)** on the parties in this action as follows:

- **By Email** to the parties pursuant to Board regulations 20164 and 20169 (Cal. Code Regs., tit. 8, §§ 20164, 20169) from my business email address angelica.fortin@alrb.ca.gov:

Ronald H. Barsamian, Esq. ronbarsamian@aol.com
Seth G. Mehrten, Esq. smehrten@theemployerslawfirm.com
Barsamian & Moody
Counsel for Employer Wonderful Nurseries, LLC

Mario Martinez MMartinez@farmworkerlaw.com
Edgar Aguilasocho, Esq. EAguilasocho@farmworkerlaw.com
Martinez Aguilasocho Law
Counsel for Petitioner United Farm Workers of America

- **Courtesy Copy to**:

Yesenia DeLuna yesenia.deluna@alrb.ca.gov
ALRB Regional Director
Anibal Lopez anibal.lopez@alrb.ca.gov
ALRB Assistant General Counsel

Executed on April 12, 2024, at Sacramento, California. I certify under penalty of perjury that the foregoing is true and correct.

Angelica Fortin
Angelica Fortin
Legal Secretary