



Relations Act (ALRA or Act).<sup>1</sup> We set several of Wonderful's objections for hearing in *Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB Administrative Order No. 2024-04.

The matter was assigned to an independent hearing examiner (IHE) and set for hearing on March 25, 2024. Both the UFW (on the eve of the hearing) and general counsel (on the morning of the hearing) moved to stay the hearing based on related unfair labor practice charges filed by the parties. The IHE granted the motions and issued an order staying the hearing of all objections -- even those beyond the scope of the stay requests -- for 30 days to allow the general counsel additional time to conduct its charge investigations. Wonderful timely appealed. (See Board regs. 20242, subd. (b), 20370, subd. (s).)<sup>2</sup>

On April 12, we issued an order reversing the IHE's order staying the objections hearing, among other things. (*Wonderful Nurseries, LLC* (Apr. 12, 2024) ALRB Admin. Order No. 2024-08.) Later that same day, the UFW filed a request that we stay our order to allow it an opportunity to oppose Wonderful's appeal, stating it would file its opposition by close of business on April 15. On April 15, the general counsel filed a motion for reconsideration of our administrative order. Also on April 15, the UFW filed a motion for reconsideration of our April 12 order.

For the following reasons, the UFW's stay request and both the general

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<sup>1</sup> The ALRA is codified at Labor Code section 1140 et seq. Subsequent statutory citations are to the Labor Code unless otherwise indicated.

<sup>2</sup> The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

counsel's and UFW's reconsideration motions are DENIED. However, we do grant reconsideration of our prior order *sua sponte* regarding the handling of the unfair labor practice charges we directed be placed in abeyance (nos. 2024-CL-001, 2024-CL-002, 2024-CL-003, 2024-CE-013, 2024-CE-014, and 2024-CE-015). Nothing herein alters our prior order that the objections hearing shall recommence without delay.

## **I. The UFW's Stay Request**

The UFW contends Board regulation 20242, subdivision (b) requires the executive secretary to inform parties of their ability to respond to an appeal and the time in which to do so. It does not.<sup>3</sup> As we stated in our April 12 order, the UFW already had an opportunity to respond to Wonderful's appeal. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 2.) To the extent the UFW characterizes its April 15 filing as a motion for reconsideration as opposed to a belated opposition to Wonderful's appeal, Board regulation 20393, subdivision (c) expressly states "[a] motion filed under this section shall not operate to stay the decision and order of the Board."

Accordingly, the UFW's stay request is denied.

## **II. The Reconsideration Motions**

Board regulation 20393, subdivision (c) states, in relevant part, that "[a]

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<sup>3</sup> The UFW quotes outdated language from the regulation in support of its contention. Board regulation 20242, subdivision (b) was subject to a rulemaking action, and amendments to the regulation took effect October 1, 2023. (Office of Administrative Law (OAL) Notice File No. Z2022-1121-01; OAL Reg. Action Nos. 2023-0215-02S and 2023-0718-04SR; ALRB Rulemaking web page [see Procedural Revisions], available at < <https://www.alrb.ca.gov/rulemaking/> >; OAL web page re: Regulations Effective October 1, 2023, available at < [https://oal.ca.gov/october-1-effective\\_date/](https://oal.ca.gov/october-1-effective_date/) >.)

party to a representation proceeding may, because of extraordinary circumstances, move for reconsideration or reopening of the record, after the Board issues a decision or order in the case.” Accordingly, our precedent requires “[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.’” (*Gerawan Farming, Inc.* (Oct. 11, 2018) ALRB Admin. Order No. 2018-13, quoting *South Lakes Dairy Farm* (2013) 39 ALRB No. 2, p. 2, emphasis in original; see *Wonderful Nurseries, LLC* (Mar. 27, 2024) ALRB Admin. Order No. 2024-07, p. 2; *Wonderful Nurseries, LLC* (Mar. 22, 2024) ALRB Admin. Order No. 2024-05, p. 2.) Neither the general counsel nor UFW meet this standard.<sup>4</sup> Accordingly, we deny both motions.

### **III. Sua Sponte Reconsideration of Administrative Order No. 2024-08**

Although the UFW and general counsel do not satisfy the standard for seeking reconsideration under our regulations and precedent, we nonetheless find it appropriate to reconsider, *sua sponte*, our instructions regarding the handling of the various unfair labor practice charges we directed be placed in abeyance in our prior administrative order. (*South Lakes Dairy Farms, supra*, 39 ALRB No. 2, p.3; see, e.g.,

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<sup>4</sup> The general counsel, like the UFW, had an opportunity to respond to Wonderful’s appeal. We reject the general counsel’s argument it lacked notice or an ability to respond because it is not a party to the objections proceeding. While not a party to the objections proceeding, the general counsel filed its underlying stay request with the IHE. Also, Wonderful served its interim appeal on general counsel staff. We similarly reject the UFW’s argument our order itself constitutes a change in law sufficient to warrant reconsideration. The UFW argues the Board should have allowed it and the general counsel an opportunity to respond to Wonderful’s appeal before we issued our order. As noted above, both the UFW and general counsel did have such an opportunity.

*San Joaquin Tomato Growers, Inc.* (Mar. 4, 2010) ALRB Admin. Order No. 2010-05.)

**A. Clarification of Our Order Re: *Mann Packing***

As a preliminary matter, we must correct both the UFW's and general counsel's misconceptions about our prior order. To be clear, we did not say we were overruling or rejecting *Mann Packing Co., Inc.* (1989) 15 ALRB No. 11 (*Mann Packing*) or its progeny. In fact, we expressly reached no conclusion on whether the rule of *Mann Packing* applies in the context of majority support proceedings under section 1156.37. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 11 ["we express no opinion whether *Mann Packing* applies as a general rule in majority support proceedings under section 1156.37"].)

Nor did our prior order purport to usurp the general counsel's authority over unfair labor practice cases under section 1149. We did not order the general counsel to dismiss or issue complaints on any charge(s). Rather, our direction that charges be held in abeyance pending the objections hearing merely sought to strike an appropriate balance between the general counsel's authority over unfair labor practices and our own authority over the administration of representation proceedings -- the more "crucial concern" under our Act -- by sequencing the manner in which such proceedings occurred. (*Wonderful Nurseries, LLC, supra*, ALRB Administrative Order No. 2024-08, pp. 19-20.) We reject the general counsel's suggestion its authority over unfair labor practice cases necessarily trumps our own authority over representation proceedings under Chapter 5 of the ALRA, or that the Board in all circumstances must yield its authority to the general counsel in the administration of elections and representation proceedings, to which the

general counsel is not a party.

As we indicated in our previous order, and simply put, timing matters. The general counsel was in possession of Wonderful's charge, and the UFW's various charges, well before Wonderful filed its objections with the Board. The general counsel also was aware, or at the very least should have been aware, of the requirement of section 1156.37, subdivision (f)(2) that a hearing on objections be conducted within 14 days from the date objections are filed. Regional staff, who also appear on the caption of the general counsel's filings, have received notice and service of filings in the majority support proceeding. The statutory timeframe necessitates prompt action, and the Board promptly disposed Wonderful's objections one week after they were filed. Despite the charges being on file with the general counsel, it made no request to the Board to defer consideration of the objections in order that any disposition of the objections could be coordinated with any charges the general counsel may have deemed appropriate.<sup>5</sup> Therefore, the Board acted, as we are required to do under the statute. For reasons already explained, the general counsel's efforts to inject itself into the objections hearing based on an untimely request to stay the processing of objections the Board -- which has authority over the administration of representation matters -- already set for hearing, was

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<sup>5</sup> The general counsel's reconsideration motion fails to include any declaratory support or proper evidence supporting its claims regarding the status of its investigations. (See *Rincon Pacific, LLC* (2020) 46 ALRB No. 4, p. 25, fn. 14; *Gerawan Farming, Inc.* (June 9, 2017) ALRB Admin. Order No. 2017-06, p. 5 [denying reconsideration when party failed to support factual assertions with proper evidence, among other things]; *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 454 ["unsworn averments in a memorandum of law prepared by counsel do not constitute evidence"].)

improper. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 17.)

**B. The Placement of Non-“Mirroring” Unfair Labor Practice Charges in Abeyance Was Incorrect**

Notwithstanding the foregoing discussion, we have reexamined our instruction to place in abeyance the “mirroring” charge filed by Wonderful (no. 2024-CL-001), the UFW’s charges against Wonderful alleging unlawful conduct during the time the majority support petition was pending before the regional director (nos. 2024-CE-013, 2024-CE-014, and 2024-CE-015), and the two farmworker charges against the UFW alleging misrepresentation in the solicitation of support for the union (nos. 2024-CL-002 and 2024-CL-003).

While reaching no conclusion regarding the applicability of *Mann Packing* in majority support proceedings, we endeavored to provide clarification to the parties and IHE regarding the proper scope of *Mann Packing* deference rules. Insofar as is relevant here, we explained “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.” (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 14.) After doing so, we further stated “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. [Citations

omitted.] The charges filed by the UFW against Wonderful, or by the two farmworker charging parties against the UFW, do not enter the equation.” (*Id.* at pp. 14-15.)

However, after finding traditional *Mann Packing* rules inapplicable in this case based on the general counsel’s untimely stay request, we ordered Wonderful’s charge, as well as the UFW and farmworker charges, be placed in abeyance pending resolution of the objections process. Consistent with our earlier discussion regarding the scope of *Mann Packing*, we should not have placed the UFW’s charges or the farmworkers’ charges in abeyance. The only charge which fairly may be considered as “mirroring” an objection in this case is Wonderful’s charge, which Wonderful concedes mirrors the allegations of its objection no. 2 in this majority support proceeding. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 17, fn. 10.)

Accordingly, we hereby release from abeyance unfair labor practice charge nos. 2024-CE-013, 2024-CE-014, and 2024-CE-015, filed by the UFW, and the two individual farmworkers’ charges (nos. 2024-CL-002 and 2024-CL-003).<sup>6</sup> Pursuant to our authority under the Act to administer and oversee the processing of representation matters, and to avoid interference with the objections hearing in this case, Wonderful’s mirror charge (no. 2024-CL-001) shall remain in abeyance pending resolution of the

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<sup>6</sup> We acknowledge subdivision (j) of section 1156.37 provides a labor organization may be certified when “an employer commits an unfair labor practice or misconduct” during the union’s organizing campaign and such “unfair labor practice or misconduct would render slight the chances of a new majority support campaign reflecting the free and fair choice of employees.” By its own language, the certification remedy described in subdivision (j) does not depend upon an unfair labor practice finding but rather may be predicated upon a showing of “employer misconduct.”

objections process.

**ORDER**

For the foregoing reasons, petitioner labor organization United Farm Workers of America's request the Board stay Administrative Order No. 2024-08 is DENIED. The United Farm Workers of America's motion for reconsideration is DENIED. The general counsel's motion for reconsideration is DENIED. The Agricultural Labor Relations Board hereby GRANTS reconsideration, *sua sponte*, of its Administrative Order No. 2024-08 regarding the placement of unfair labor practice charges in abeyance, and hereby now RELEASES from abeyance unfair labor practice charge nos. 2024-CE-013, 2024-CE-014, 2024-CE-015, 2024-CL-002, and 2024-CL-003. Employer Wonderful Nurseries, LLC's unfair labor practice charge no. 2024-CL-001, which mirrors the allegations of its objection no. 2 in this proceeding, shall remain in abeyance pending resolution of the objections process.

IT IS SO ORDERED.

DATED: April 18, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Cinthia N. Flores, Member

Broad and Lightstone, Members, CONCURRING and DISSENTING:

We concur in the majority opinion except as follows.

We disagree with the majority's decision to hold Wonderful's unfair labor practice charge (no. 2024-CL-001) in abeyance pending resolution of Wonderful's objections to the certification of the UFW in this matter. We believe that holding Wonderful's unfair practice charge in abeyance impermissibly intrudes upon the General Counsel's final authority under Labor Code section 1149 to investigate charges and issue complaints in unfair labor practice cases.