

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,	)	Case No. 2024-RM-002
	)	
	)	ORDER DENYING GENERAL
Petitioner Labor	)	COUNSEL’S MOTION TO
Organization,	)	CONSOLIDATE UNFAIR LABOR
	)	PRACTICE CONSOLIDATED
and,	)	COMPLAINT WITH OBJECTIONS
	)	HEARING OR TO PARTICIPATE AT
	)	HEARING TO DEVELOP RECORD
WONDERFUL NURSERIES, LLC,	)	
	)	
Employer.	)	Administrative Order No. 2024-11
	)	(April 30, 2024)
	)	

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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).<sup>1</sup> In *Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB 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 the morning the hearing was scheduled to

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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.

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.<sup>2</sup> 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).)<sup>3</sup> On April 12, we issued an order reversing the IHE’s stay order, placing the related unfair labor practice charges on file with the general counsel in abeyance, and directing the objections hearing recommence without delay. (*Wonderful Nurseries, LLC* (Apr. 12, 2024) ALRB Admin. Order No. 2024-08.) On April 18, we reconsidered that order *sua sponte* to remove from abeyance unfair labor practice charges filed by the UFW against Wonderful and by two individual farmworkers against the UFW, while keeping in abeyance Wonderful’s charge against the UFW that “mirrored” the allegations of its objection no. 2, which we previously set for hearing. (*Wonderful Nurseries, LLC* (Apr. 18, 2024) ALRB Admin. Order No. 2024-10.) We reiterated in this second order our direction the objections hearing recommence without delay. (*Id.* at p. 2.)

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<sup>2</sup> On March 22, the last business day before the hearing was scheduled to commence, the UFW also had 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.

<sup>3</sup> The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

Shortly after the Board removed the UFW's unfair labor practice charges from abeyance, on April 22 the general counsel issued a consolidated unfair labor practice complaint based on the UFW's charge nos. 2024-CE-013, 2024-CE-014, and 2024-CE-015. That same day, the general counsel filed the underlying motion to consolidate the prosecution of the complaint with the objections set for hearing or, in the alternative, that the Board allow the general counsel to testify at the objections hearing. Wonderful filed an opposition to the general counsel's motion on April 24.

For the following reasons, the general counsel's motion is DENIED. We further reiterate our direction the objections hearing proceed without delay.

### **DISCUSSION**

#### **I. Consolidation of the Unfair Labor Practice Complaint and Objections Is Improper**

The consolidation of unfair labor practice complaints and objections in a representation proceeding for purposes of hearing is a function of rules derived from *Mann Packing Co., Inc.* (1989) 15 ALRB No. 11 (*Mann Packing*). In *Wonderful Nurseries, LLC, supra*, ALRB Administrative Order No. 2024-08 we endeavored “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.” (*Id.* at pp. 11-12.) We did so “based on our conclusion the rule of *Mann Packing* as articulated by the general counsel and UFW, and adopted by the IHE, lack[s] support in our precedent,” namely, that *Mann Packing* deference rules do not extend to encompass all situations where unfair labor practice

charges filed with the general counsel “relate to” or “overlap” with issues also encompassed in objections presented to the Board in a representation proceeding. (*Id.* at p. 12.) We expressly rejected the notion our precedent applying *Mann Packing* supports taking an expansive “holistic approach” allowing the resolution of all related issues between the parties in a singular proceeding. (*Ibid.*)

We explained “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. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 13.) We further stated “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.” (*Id.* at p. 14.) We then concluded “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. 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.) We reiterated these points in our subsequent order. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-10, pp. 7-8.)

Accordingly, it necessarily follows the UFW’s charges are outside the

scope of *Mann Packing* rules regarding the coordination of mirroring unfair labor practice charges and objections in a representation proceeding. Under *Mann Packing*, the Board will defer to the general counsel's disposition of unfair labor practice charges mirroring the allegations of objections presented to it in a representation proceeding. (*Premiere Raspberries, LLC* (2017) 43 ALRB No. 2, p. 5.) In situations where the general counsel dismisses charges, the Board likewise will dismiss mirroring objections. (*Ibid.*) And where the general counsel issues an unfair labor practice complaint the Board will order mirroring objections consolidated with the unfair labor practice complaint for purposes of hearing. (See, e.g., Board reg. 20335, subd. (c).) Because the UFW's charges fall outside the scope of *Mann Packing* deferral and coordination rules, consolidation of the unfair labor practice complaint with the employer objections set for hearing in this representation matter is inappropriate.<sup>4</sup>

For these reasons, the general counsel's request to consolidate the unfair labor practice complaint for hearing with the employer's objections in this representation matter is denied.

## **II. The General Counsel's Alternative Request to Testify at the Objections Hearing Also Is Improper**

As an alternative to consolidation, the general counsel asks to be allowed to

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<sup>4</sup> In fact, we recently denied a request by the general counsel in a separate majority support proceeding to defer our consideration of employer objections based on the general counsel's ongoing investigation of unfair labor practice charges filed by the UFW on grounds the subject charges did "not mirror the allegations of any majority support certification objections filed by the same party." (*Ho Sai Gai Farms, Inc.* (Apr. 18, 2024) ALRB Admin. Order No. 2024-09, p. 2, fn. 2, citing *Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 14.)

testify at the objections hearing for the purpose of developing the record in this case. We deny this alternative request for the following reasons.

At the outset, aside from requesting permission “to participate in the hearing to develop the factual record” in the caption of its motion, the general counsel does not make any such request in the body of its motion. The general counsel does not describe what testimony it would offer or for what purpose. In short, the request is not properly made, is unsupported by any authority, discussion, or reasoned analysis, and thus is deemed forfeited. (*Dept. of Personnel Admin. v. Cal. Correctional Peace Officers Assn.* (2007) 152 Cal.App.4th 1193, 1201.)

Even if not forfeited, we still would deny the request. Absent the consolidation of mirroring unfair labor practice charges, the general counsel is not a party to a representation proceeding. The general counsel has statutory authority to prosecute unfair labor practice complaints and in such capacity has no role to play in representation proceedings, including an objections hearing not involving consolidated unfair labor practices. (§ 1149; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 20, pp. 34-35.) Thus, allowing the general counsel to participate in the objections hearing in this capacity would be improper. (See *Kubota Nurseries, Inc.* (1989) 15 ALRB No. 12, pp. 8-9.)

In addition, assuming the general counsel bases its request on Board regulation 20370, subdivision (c), that regulation does not support it. Rather, that provision allows a *regional director* a limited ability to participate in a hearing solely for the purpose, and “to the extent necessary[,] to ensure that the evidentiary record is fully developed ....” (Board reg. 20370, subd. (c).) Again, the general counsel’s participation

in an objections hearing absent consolidated unfair labor practices is not contemplated in our regulations. (See *Arnaudo Brothers, Inc.* (June 7, 2014) ALRB Admin. Order No. 2013-26-A, pp. 2-3.)

Accordingly, the general counsel's request to testify at the objections hearing is denied.

**ORDER**

For the foregoing reasons, the Agricultural Labor Relations Board DENIES the general counsel's motion to consolidate the consolidated unfair labor practice complaint regarding charge nos. 2024-CE-013, 2024-CE-014, and 2024-CE-015 with the objections set for hearing in this matter. The Board further DENIES the general counsel's alternative request to testify at the objections hearing.

IT IS SO ORDERED.

DATED: April 30, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member