

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,	)	Case No. 2024-RM-002
	)	
	)	ORDER DENYING EMPLOYER
Petitioner Labor Organization,	)	WONDERFUL NURSERIES, LLC'S
	)	"RENEWED" REQUEST FOR REVIEW
and,	)	OF RECORD OF REGIONAL
	)	DIRECTOR'S DETERMINATION OF
	)	PROOF OF MAJORITY STATUS
WONDERFUL NURSERIES, LLC,	)	
	)	
Employer.	)	Administrative Order No. 2024-19
	)	(May 28, 2024)
	)	

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On February 23, 2024,<sup>1</sup> petitioner labor organization United Farm Workers of America (UFW) filed a majority support petition pursuant to section 1156.37 of the Agricultural Labor Relations Act (ALRA or Act).<sup>2</sup> Following a determination of majority support 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. 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 thereafter assigned to an

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<sup>1</sup> All dates are in 2024 unless otherwise indicated.

<sup>2</sup> The ALRA is codified at Labor Code section 1140 et seq. Subsequent statutory citations are to the Labor Code unless otherwise indicated.

investigative hearing examiner (IHE) to conduct the objections hearing.

On April 18, Wonderful filed a request to review the “record of regional director’s determination of proof of majority status,” by which Wonderful expressly seeks production of the authorization cards reviewed by the regional director. Despite this matter being assigned to an IHE, Wonderful asserted its motion was directed to the Board itself because it involves an exercise of authority delegated by the Board to the regional director. The Board dismissed Wonderful’s request, without prejudice, as improperly directed to the Board. (*Wonderful Nurseries, LLC* (May 10, 2024) ALRB Admin. Order No. 2024-15.)

On May 16, Wonderful filed with the Board a “renewed” request for the same records (including, specifically, the authorization cards). On May 20, the UFW moved to strike Wonderful’s request,<sup>3</sup> and on May 21 the regional director filed an opposition to the request.<sup>4</sup>

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<sup>3</sup> There is no process by which to “strike” a filing before the Board, and the UFW’s motion to strike Wonderful’s request is denied.

<sup>4</sup> On May 24, Wonderful filed a request for leave to reply to the regional director’s opposition, accompanied by its proposed reply brief. The Board grants Wonderful’s request. In doing so, we note both the regional director and Wonderful suggest provisions of article II of the California Constitution or the Elections Code apply to majority support proceedings under section 1156.37. We reject these arguments. Never before have the provisions of the Elections Code or article II of the Constitution been found to apply to representation proceedings under chapter 5 of our Act. The history and context of California Constitution, article II, section 7—cited by both the regional director and Wonderful—clearly establish it applies to political elections, not labor union representation proceedings under the ALRA. (Ballot Pamp., Gen. Elec. (Nov. 7, 1972) analyses of Prop. 7, pp. 18-19, test of Prop. 7, appen. pp. 8-9 [adopting art. II, § 6 to provide “Voting shall be secret”]; Ballot Pamp., Primary Elec. (June 8, 1976) analysis of Prop. 14, p. 58, text of Prop. 14, p. 64 [renumbering former § 6 to current § 7]; Elec.

For the following reasons, Wonderful’s request is DENIED.

The Board already dismissed Wonderful’s previous request for the same records -- i.e., the authorization cards -- on grounds it should be directed to the IHE. The Board deems Wonderful’s reiteration of its same request as a motion for reconsideration pursuant to Board regulation 20393, subdivision (c). “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, p. 2, quoting *South Lakes Dairy Farm* (2013) 39 ALRB No. 2, p. 2, emphasis in original; see *Wonderful Nurseries, LLC* (Apr. 18, 2024) ALRB Admin. Order No. 2024-10, p. 4; *Wonderful Nurseries, LLC* (Mar. 22, 2024) ALRB Admin. Order No. 2024-05, p. 2.) Wonderful does not identify any intervening change in law or new evidence since our May 10 order to support its request, and thus fails to meet the standard for reconsideration.

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Code, § 318 [defining the term “election” to refer to any election “under this code”]; see *Chantiles v. Lake Forest II Master Homeowners Assn.* (1995) 37 Cal.App.4th 914, 923, fn. 5 [acknowledging Cal. Const., art. II, § 7 applies to “voting for public office”], *id.* at p. 928, fn. 1 (conc. opn. of Crosby, J.) [stating Cal. Const., art. II, § 7 “applies to public elections, not homeowners association balloting”]; see also *Patterson v. Padilla* (2019) 8 Cal. 5th 220, 244-245 [discussing adoption of Prop. 7 in the 1972 general election].) Elections Code section 2194, cited by the regional director, also plainly does not apply in representation proceedings under our Act. That section applies to affidavits of voter registration which have no application to our Act. (See Elec. Code, § 359 [defining “voter” to mean “any elector who is registered under this code”]; see also Cal. Code Regs., tit. 2, § 19001, subd. (h).) In sum, the cited constitutional or Elections Code provisions do not apply to representation proceedings under chapter 5 of the ALRA, including majority support proceedings under section 1156.37.

Prior to issuance of our May 10 order (Admin. Order No. 2024-15) dismissing Wonderful’s earlier request, Wonderful also moved the IHE to require production of the authorization cards by the regional director. The IHE issued an order on May 6 denying that motion. If Wonderful’s renewed request were not deemed a reconsideration motion, then we must treat it as an improper and untimely application for special permission to appeal the IHE’s May 6 order denying its efforts to obtain the same records (the authorization cards) it asks the Board to order the regional director to produce. (Board reg. 20242, subd. (b) [application for special permission to appeal ruling of executive secretary or administrative law judge must be filed within 5 days from the ruling]; see Board reg. 20370, subd. (s).)

Accordingly, Wonderful’s self-styled “renewed” request is improper and DENIED. As we have stated more than once in this case already, this matter is assigned to an IHE to preside over the objections hearing. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-15, pp. 2-3; *Wonderful Nurseries, LLC* (Mar. 22, 2024) ALRB Admin. Order No. 2024-06, p. 3.) The hearing is being conducted and the parties actively are participating in it. The parties shall direct their evidentiary motions or requests to the IHE in the first instance. There is no process by which to bypass the IHE to obtain direct Board review. Wonderful’s prior request for the authorization cards was improperly directed to the Board, and so, too, is its current request.

**ORDER**

For the foregoing reasons, the Agricultural Labor Relations Board DENIES employer Wonderful Nurseries, LLC's "renewed" request to review the record of the regional director's determination of proof of majority status for the UFW.

IT IS SO ORDERED.

DATED: May 28, 2024

Victoria Hassid, Chair

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member