

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

RAY M. GERAWAN and STAR R.	)	
GERAWAN, A Married Couple, dba	)	
GERAWAN RANCHES and GERAWAN	)	Case No. 92 -CE- 38 -VI
ENTERPRISES; GERAWAN CO., INC.,	)	
A California Corporation;	)	
GERAWAN FARMING, INC., A	)	
California Corporation,	)	
	)	
Respondents,	)	21 ALRB No. 6
	)	(September 1, 1995)
and	)	
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Charging Party.	)	

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ERRATUM

The first sentence of the first complete paragraph on page 9 of the above-captioned decision was incomplete and should read as follows:

In the instant case, the NLRB Regional Director ruled that Gerawan was a commercial employer based on the percentage of outside produce packed in Gerawan's shed, and the years for which he analyzed the data (1989 through 1992) *included* the year when the alleged unfair labor practices herein were committed (1992).

Remove pages 9 and 10 of the Decision and Order which are copied back- to-back and substitute the attached pages in their place.

DATED: September 12, 1995

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

its progeny. Thus, while this Board has jurisdiction to determine its jurisdiction, where a claim of preemption is raised, it must be addressed. If preemption is found, then this Board may not proceed any further and the matter must be raised with the NLRB. (*International Longshoremen's Association, AFL-CIO v. Davis* (1986) 476 U.S. 380 [106 S.Ct. 1904].)

In the instant case, the NLRB Regional Director ruled that Gerawan was a commercial employer based on the percentage of outside produce packed in Gerawan's shed, and the years for which he analyzed the data (1989 through 1992) *included* the year when the alleged unfair labor practices herein were committed (1992). There is no suggestion in the NLRB Regional Director's decision that the outside growers whom he found to be independent of Gerawan (Gerdts, Boos and Western Ag) were ever part of Gerawan's enterprise. The Regional Director discussed the separate ownership history of the three companies, found that they have been separately managed and have not shared employees, maintained themselves as separate entities with separate lines of credit, have farmed property separate from that of Gerawan family members and have had the option of utilizing other packers and have done so.

Thus, it is clear from these findings that, in the NLRB's view, Gerawan packs a regular amount of fruit from independent growers not part of any Gerawan integrated enterprise. Under *Camsco*, this establishes that the packing shed is a commercial operation and, therefore, the shed employees are under the jurisdiction of the NLRB. Due to the nature of the

proceeding before the NLRB, the finding that the packing shed is a commercial operation is prospective in nature, i.e., it is operative only as of the date of the hearing. Nevertheless, given that fact that the Regional Director's findings covered a period including 1992, it is certain that the NLRB would reach the same conclusion if the status of the packing shed in 1992 were squarely placed in issue before it. Under existing constructions of *Garmon*, such circumstances result in this Board being preempted.

Until such time that Congress amends the NLRA or the NLRB reverses its current direction, disputes such as the one in the instant case will be left to the NLRB to resolve.

ORDER

As explained above, the findings contained in the decision of the NLRB in *Gerawan Farming, Inc.* Case No. 32-RM-700 require the conclusion that the Board is preempted from proceeding to adjudicate the merits of the unfair labor practice allegations in the instant case. On this basis, Case No. 92-CE-38-VI is hereby DISMISSED.

DATED: September 1, 1995

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member