

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

|                        |   |                            |
|------------------------|---|----------------------------|
| GERAWAN FARMING, INC., | ) | Case No. 2013-CE-027-VIS   |
|                        | ) |                            |
| Employer,              | ) |                            |
|                        | ) |                            |
| and                    | ) |                            |
|                        | ) | ORDER DENYING REQUEST      |
| UNITED FARM WORKERS OF | ) | FOR REVIEW OF ALJ'S RULING |
| AMERICA,               | ) | ON PETITION TO REVOKE      |
|                        | ) | SUBPOENA                   |
|                        | ) |                            |
| <u>Charging Party.</u> | ) | Admin. Order No. 2014-02   |

On December 2, 2013, the General Counsel of the ALRB served a subpoena for documents on the law firm of McCormick, Barstow, Sheppard, Wayte & Carruth, LLP (McCormick, Barstow). Fourteen categories of documents were sought in the subpoena. The documents were sought in connection with an unfair labor practice (ULP) complaint against Gerawan Farming, Inc. (Gerawan) alleging employer instigation, assistance and support of a decertification campaign. McCormick, Barstow provided legal services to the decertification petitioner in Case No. 2013-MMC-003, (Sylvia Lopez) and other employees during the decertification campaign, and the complaint alleges that Gerawan's agents paid for this representation.

On December 9, 2013, Anthony Raimondo of McCormick, Barstow filed a

petition to revoke the subpoena. The grounds for the petition to revoke were improper motive, lack of reasonable cause, and attorney-client privilege. On January 2, 2014, Administrative Law Judge (ALJ) Tom Sobel issued a ruling on McCormick, Barstow's petition to revoke the subpoena, granting in part and denying in part the petition to revoke.

On January 13, 2014, decertification petitioner, Sylvia Lopez filed a request for review of ALJ Sobel's ruling on the petition to revoke with the Board.<sup>1</sup> The decertification petitioner states that the request is submitted pursuant to Board Regulation section 20393; however as the subpoena at issue is being sought pursuant to a ULP complaint rather than an election matter, the Regulation that governs the decertification petitioner's request is section 20242 (b).<sup>2</sup>

Board Regulation section 20250 (b) states that a "declaration under penalty of perjury shall be served with a subpoena duces tecum ... showing good

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<sup>1</sup> We note that Sylvia Lopez is not a party to the ULP matter that is the subject of Case No. 2013-CE-027-VIS. Therefore, her petition for review is procedurally irregular because the subpoena was directed to McCormick Barstow, and the petition to revoke was filed by McCormick Barstow. While there is a technical standing issue here, regardless of how we would resolve that issue, we find the request for review to be without merit.

<sup>2</sup> Board Regulation section 20242 (b) states (in part) that: "No ruling or order shall be appealable, except upon special permission from the Board; except that a ruling which dismisses a complaint in its entirety shall be reviewable as a matter of right. A party applying for special permission for an interim appeal from any ruling by the executive secretary or an administrative law judge shall, within five (5) days from the ruling, file with the executive secretary, to be forwarded to the Board for review, its application for permission to appeal, setting forth its position on the necessity for interim relief and on the merits of the appeal."

cause for the production of the matters and things described in such subpoena ... setting forth in full detail the materiality thereof to the issues involved in the case....” Board Regulation section 20250(l) states that “[b]y causing the issuance of a subpoena... the attorney or representative or the party, if not represented, certifies that ... (i) the testimony or material sought is relevant and material to the issues in the proceeding; (ii) the subpoena ... is not interposed for any improper purpose, such to harass or to cause unnecessary delay....”

The decertification petitioner asserts (as did McCormick Barstow in their petition to revoke) that the General Counsel failed to show good cause for the subpoena. This argument rests on two theories. One theory is that the General Counsel has an improper motive for the subpoena (i.e. the General Counsel’s true purpose in issuing the subpoena is to damage Mr. Raimondo’s business relationships with his clients.) The second theory is that information sought by the General Counsel is irrelevant to the matters in question in the ULP complaint.

We find no merit in the decertification petitioner’s arguments. The ALJ properly held that the General Counsel’s subpoena was not interposed for any improper motive. It would be a ULP for an employer to pay for an attorney to represent a decertification petitioner; therefore, a subpoena that seeks to determine whether Gerawan or its agents committed such a ULP cannot be said to have been issued for an improper purpose.

With respect to the argument that the subpoena lacks reasonable cause, the

ALJ properly held that because the General Counsel's complaint alleges that Mr. Raimondo was an agent of Gerawan in assisting the decertification petitioners, to the extent the subpoena seeks additional information about the establishment of the alleged agency relationship, reasonable cause for the subpoena exists.

PLEASE TAKE NOTICE that the request for review of the ALJ's ruling on the petition to revoke the subpoena is DENIED.

Dated: March 28, 2014.

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member