

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2012-CE-041-VIS
	)		2012-CE-047-VIS
Respondent,	)		2013-CE-007-VIS
	)		2013-CE-009-VIS
	)		2013-CE-010-VIS
and	)		2013-CE-025-VIS
)		
	)		ORDER DENYING MOTION TO
	)		SCHEDULE CASES FOR
	)		HEARING; ORDER DENYING
	)		DECERTIFICATION PETITIONER
	)		SILVIA LOPEZ'S REQUEST TO
	)		BE HEARD
UNITED FARM WORKERS OF)		
AMERICA,)		
)		
Charging Party.	)	Admin. Order No.	2014-21

On July 17, 2014, the United Farm Workers of America (UFW) filed a motion requesting that the Agricultural Labor Relations Board (Board) schedule the above-captioned consolidated unfair labor practice cases for hearing in August 2014 and no later than September 2014. On July 24, 2014, Gerawan Farming, Inc. (Respondent) and the General Counsel of the Agricultural Labor Relations Board (General Counsel) each filed a response opposing the UFW's motion.

The UFW argues that a hearing on the above-captioned consolidated cases was already scheduled for May 6, 2014, was taken off

calendar, and should be re-set for hearing in August or September 2014.¹ The UFW's motion includes an argument that bad faith bargaining allegations are just as serious as allegations of unlawful employer assistance in a decertification election matter, and the UFW further points out that a pending bad faith bargaining complaint generally warrants blocking an election.²

The Respondent argues that the resolution of the UFW's election objections nos. 1 and 2 filed in election case no. 2013-RD-003-VIS and the related allegations in ULP case nos. 2013-CE-027-VIS and 2013-CE-039-VIS should be given the highest priority.

The General Counsel states in her response that she opposes the UFW's request to schedule the above-captioned cases in August or September 2014 because that would delay the hearing on election-related case nos. 2013-RD-003-VIS, 2013-CE-027-VIS and possibly 2013-CE-039-VIS. The General

¹ On March 26, 2014, the UFW filed a motion to continue the hearing to May 14, 2014. The Executive Secretary of the Board issued an order on April 11, 2014 holding the UFW's motion for continuance in abeyance pending the scheduling of an expedited hearing in Perez Packing, Inc., Case No. 2014-MMC-001, a case with statutorily mandated deadlines.

² On November 1, 2013, the Board issued Admin. Order 2013-46 in which it vacated the Regional Director's dismissal of decertification petition in case no. 2013-RD-003-VIS and stated that: 1) the Board did not view the allegations, standing alone, as being sufficient to warrant blocking the petition, as their effect on free choice, if any, would be dependent on the establishment of surrounding facts and circumstances, and 2) under the circumstances, notably that the charges on which the consolidated complaint (2012-CE-041-VIS et al.) were based were up to ten months old (as of November 1, 2013), the issuance of a complaint so close in time to the election gave the Board serious doubts as to the propriety of using that complaint to block the election.

Counsel states that she expects the hearing on the election-related cases to go forward in late September 2014, that the election-related cases are a priority, and that a delay of the hearing in the election-related cases would be harmful due to the large number of potential employee witnesses and the possibility of their unavailability during the off-season.³

We agree that the election case no. 2013-RD-003-VIS and the related allegations in ULP case nos. 2013-CE-027-VIS and 2013-CE-039-VIS should be given the highest priority. This is consistent with the Board's longstanding policy of prioritizing election matters.⁴

³ The Visalia Regional Director also stated in response to a request for a continuance in an unrelated matter (Ace Tomato Company, Inc. et al., 93-CE-037-VI) that the expedited election-related matter, case no. 2013-CE-027-VIS was expected to go to hearing in late September 2014 and must go forward during this period because many of the witnesses would leave the area by late November and not return for several months (see attached regional director's response to request for continuance, dated June 25, 2014).

⁴ Indeed, the Legislature, in enacting Senate Bill 126, which took effect in January 2012, provided for more timely resolution of election-related disputes, and amended the Agricultural Labor Relations Act to include specified timelines for the processing of election-related cases. (See Cal. Lab. Code section 1156.3(i).) This is consistent with the long-standing treatment of the National Labor Relations Act (NLRA) by the United States Supreme Court, which has recognized that NLRA elections are themselves to be expedited in comparison to ULP proceedings. (See *American Federation of Labor et al. v. NLRB* (1940) 308 U.S. 401, 409 (concluding that certification of an election by the NLRB was not an "order" reviewable under the statute by the court of appeals and noting that "[t]he reports of the Congressional committees upon the bill which became the Wagner Act refer to the long delays in the procedure prescribed by Resolution 44, resulting from applications to the federal appellate courts for review of orders for elections." The Court noted that Congress had recognized provision for direct judicial review would produce delay, which would constitute a "weakness" in the law.) From its beginning, of course, the ALRA was designed to be far

PLEASE TAKE NOTICE THAT the UFW's motion for scheduling the above-captioned cases in August or September 2014 is denied.

On July 23, 2014, Silvia Lopez, the Decertification Petitioner in election case no. 2013-RD-003-VIS filed a request to be heard on the issue of scheduling the above-captioned cases.⁵ PLEASE TAKE NOTICE that Silvia Lopez's request to be heard is DENIED because Ms. Lopez is not a party to these cases, and in any event, the Board needs no further briefing on this matter.

Dated: July 31, 2014.

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

more expeditious in election cases than the NLRA. (See generally, Levy, *The Agricultural Labor Relations Act—La Esperanza De California Para El Futuro* (1975) 15 Santa Clara Lawyer 783.)

⁵ Ms. Lopez previously filed a motion to intervene in the above-captioned cases. This motion was denied by the Administrative Law Judge (ALJ) on July 22, 2014.