

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2013-RD-003-VIS
	)		(39 ALRB No. 20)
Employer,)		
)		
and)		
	)	ORDER DENYING GENERAL	
SILVIA LOPEZ,	)	COUNSEL'S APPLICATION FOR	
	)	SPECIAL PERMISSION TO	
Petitioner,	)	APPEAL THE EXCLUSION OF	
	)	EVIDENCE BASED ON	
and	)	DISPUTED ISSUES	
)		
UNITED FARM WORKERS OF)		
AMERICA,)		
	)	Admin. Order No. 2014-32	
Certified Bargaining Representative.)		
)		
<hr/> GERAWAN FARMING, INC.,	)	Case Nos.	
)		
Respondent,	)	2012-CE-041-VIS	2013-CE-041-VIS
	)	2012-CE-042-VIS	2013-CE-042-VIS
and	)	2012-CE-046-VIS	2013-CE-043-VIS
	)	2012-CE-047-VIS	2013-CE-044-VIS
UNITED FARM WORKERS OF	)	2013-CE-007-VIS	2013-CE-045-VIS
AMERICA,	)	2013-CE-009-VIS	2013-CE-055-VIS
	)	2013-CE-025-VIS	2013-CE-058-VIS
Charging Party.	)	2013-CE-027-VIS	2013-CE-060-VIS
	)	2013-CE-030-VIS	2013-CE-062-VIS
	)	2013-CE-038-VIS	2013-CE-063-VIS
	)	2013-CE-039-VIS	

On October 14, 2014, the General Counsel filed an Application for Special Permission to Appeal the Exclusion of Evidence Based on Disputed Facts (“Application”) in which she seeks to appeal a ruling made by the Administrative Law

Judge (“ALJ”) on October 7, 2014, during the hearing in the above-captioned matter. Respondent Gerawan Farming, Inc. filed an opposition to the application on October 21, 2014. In her application, the General Counsel argues that it was improper for the ALJ not to allow a witness, Jaime Montano Dominguez, to complete his testimony about what happened at a protest that he attended in Visalia. The General Counsel acknowledges that Mr. Dominguez gave contradictory answers about his recollection of the date of the Visalia protest, initially testifying that the protest occurred in September 2013 and then later testifying (several times) that it was after the election. However, she argues that by preventing Regional Director Silas Shawver from continuing to ask Mr. Dominguez questions about the Visalia protest, the ALJ will cause the record of the hearing to be incomplete. The General Counsel further argues that the ALJ may repeat this type of ruling “numerous times” with future hearing witnesses, and thus will exclude much relevant evidence. She argues that this cannot be remedied through the exceptions process. We find this argument to be without merit.

Section 20242 subsection (b) of the Board’s regulations provides that rulings and orders of an ALJ are only appealable upon special permission of the Board. In *Premiere Raspberries* (2012) 38 ALRB No. 11, the Board stated that it would only hear interim appeals of interlocutory rulings pursuant to Regulation 20242 subsection (b) that could not be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370(j).

A review of the hearing transcript selections attached as exhibits to the General Counsel’s Application indicates that the ALJ, following Board Administrative

Order 2014-27, stated that he would “sever and separate from this hearing any testimony or evidence related to either rallies or protests that occurred on the day after the election to the present.” (TR: Vol. VII, p. 143-144.) After giving Mr. Shawver multiple opportunities to try to establish with witness Dominguez that the Visalia protest occurred before the election, and after observing that Mr. Shawver had been unsuccessful in doing that, the ALJ refused to allow Mr. Shawver to proceed with further examination of Mr. Dominguez with respect to the Visalia protest. (TR: Vol. VII p.168-171.)

In Administrative Order 2014-27, dated on September 19, 2014 (“Order to Sever Amended Consolidated Complaint and Expedite Hearing of Election Objections”), the Board clearly stated “[o]ur objective is to address the pre-election issues . . .” Accordingly, the Board ordered that “[t]he ALJ shall limit the witnesses and evidence in the case, as severed and consolidated by this Order, to resolve only those allegations germane to the pre-election conduct at issue.” The ALJ’s ruling comports with the Board’s order.

The General Counsel is strongly cautioned not to re-litigate and defy, directly or indirectly the Board’s Order. Here, if there is some basis for bringing the testimony within the pre-election period, and the ALJ found specifically that there was not, that issue can be addressed effectively through the exceptions process.

Moreover, the General Counsel’s concern that her Application must be granted because the ALJ will continue to exclude relevant witness testimony because witnesses may have inaccurate recollections of dates is unfounded. The ALJ very

clearly stated on the record that in limiting testimony relevant to the resolution of the Respondent's pre-election conduct, attorneys would not be precluded with witness Dominguez, or with other witnesses "to try to determine in fact, what date they think something did take place. And I'll just have to rule on a question-by-question basis if I think a party is trying to circumvent my order. Or if they're just trying to clarify whether or not a witness may have answered incorrectly or misunderstood or misremembered the timing of a particular event." (TR: Vol. VII, p. 144.)

While the General Counsel states that she is "well aware" of the Board's order directing that the hearing be limited to pre-election conduct, she also argues that "Gerawan's improper involvement in post-election farmworker-led protests is relevant" under the theory that it may serve as "background information to shed light on the character of the events that properly are being litigated." This comment is directly contrary to the Board's September 19, 2014 order which was designed to establish a pristine demarcation line between pre-election and post-election conduct. As stated above, we strongly caution the General Counsel against any effort to undermine, directly or indirectly the Board's September 19, 2014 order.¹

¹ We note that on October 22, 2014, the General Counsel filed a request for a hearing date on other unfair labor practice cases against Respondent "to trail" the current hearing on 2013-RD-003-VIS et al. This is contrary to the clear priority stated by the Board in its September 19, 2014 order—that the ALJ is to issue a decision on pre-election conduct prior to reopening the hearing with respect to the remaining ULP allegations.

PLEASE TAKE NOTICE that the General Counsel's Application is
DENIED for the reasons discussed above.

Dated: October 23, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member