

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2013-RD-003-VIS
	)		(39 ALRB No. 20)
Employer,	)		
	)		
and	)		
	)	ORDER DENYING	
SILVIA LOPEZ,	)	RESPONDENT'S REQUEST	
	)	FOR SPECIAL PERMISSION TO	
Petitioner,	)	APPEAL ORDER OF THE	
	)	ADMINISTRATIVE LAW JUDGE	
and	)	PARTIALLY DENYING	
	)	PETITION TO REVOKE	
UNITED FARM WORKERS OF	)	SUBPOENA DUCES TECUM	
AMERICA,	)		
	)	Admin. Order No. 2014-36	
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	
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On September 20, 2014, the General Counsel of the Agricultural Labor Relations Board served upon Gilliard Blanning & Associates (“GB&A”) a subpoena duces tecum (the “Subpoena”) and supporting declaration of John Cohen (“Cohen Declaration”). The Subpoena required the production of certain documents by 10:00 a.m. on September 22, 2014. The subpoena required the production of two categories of documents as set forth in the Cohen Declaration. First, the Subpoena required the production of “any and all content updates to Gerawan owned website <http://helpfarmworkers.com> (“the website”) from July 1, 2013 through October 25, 2013” (hereinafter “Category 1”). Second, the Subpoena required the production of any and all emails sent to the Agricultural Labor Relations Board of any person pressing the ‘send’ button at “<http://helpfarmworkers.com/send-message/>” including “to and from e-mail addresses, the subject headings as well as the main body text of any message” (hereinafter “Category 2”).

On or about September 26, 2014, the respondent herein, Gerawan Farming, Inc. (“Gerawan”) filed a Petition to Revoke Subpoena Duces Tecum. Gerawan argued that the Subpoena did not allow a reasonable amount of time for GB&A to respond, that the subpoenas infringed on rights guaranteed by the First Amendment to the United States Constitution, and that the Subpoena should be revoked under California’s “Anti-SLAPP” statute (Code Civ. Proc., § 425.16).

On September 26, 2014, Administrative Law Judge Mark R. Soble (the “ALJ”) issued a ruling on the petition to revoke. The ALJ ordered GB&A to produce documents responsive to Category 1 on or before October 2, 2014. The ALJ authorized

the General Counsel to file a response concerning Category 2 by September 30, 2014. Finally, the ALJ directed that a copy of his order be served upon GB&A.

On September 30, 2014 Gerawan filed a request for special permission to appeal the ALJ's September 26, 2014 order denying its petition to revoke as to Category 1 of the Subpoena (the "Request to Appeal").<sup>1</sup> On October 7, 2014, the General Counsel filed an opposition to the Request to Appeal. For the reasons stated herein, Gerawan's Request to Appeal is DENIED.<sup>2</sup>

Section 20242, subdivision (b) of the Board's regulations provides that rulings and orders of an ALJ are only appealable upon special permission of the Board.<sup>3</sup> That section further provides that the moving party must set forth "its position on the necessity for interim relief and on the merits of the appeal." (*Ibid.*) In *Premiere Raspberries, LLC dba Dutra Farms* (2012) 38 ALRB No. 11, at page 11 (*Premiere*

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<sup>1</sup> It does not appear that the General Counsel filed a response with the ALJ concerning Category 2 pursuant to the ALJ's September 26, 2014 order nor does it appear that the ALJ made any further ruling as to Category 2. Gerawan's Request to Appeal does not encompass Category 2. Accordingly, that aspect of the Subpoena is not at issue.

<sup>2</sup> The General Counsel argues that Gerawan lacks standing to challenge the Subpoena on behalf of GB&A. Gerawan, however, argues that it is not acting on behalf of GB&A but, rather, is asserting its own constitutionally protected right to prevent the disclosure of the subpoenaed documents. As we deny Gerawan's Request to Appeal on other grounds, we shall assume that Gerawan had standing to petition to revoke the Subpoena. (See *M.B. v. Superior Court* (2002) 103 Cal.App.4th 1384, 1392 (stating that custodians of privileged materials owe a duty to the privilege-holder to assert such privilege but that "[t]hird party intervention for the purpose of filing a motion to quash is generally permitted so that evidentiary privileges are not sacrificed just because the subpoena recipient lacks sufficient self-interest to object.").)

<sup>3</sup> The Board's regulations are codified at California Code of Regulations, title 8, section 20100, et seq.

*Raspberries*), the Board announced its standard of “limiting Board review of interlocutory rulings sought pursuant to Regulation 20242(b) to those that cannot be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370(j)” as a means to “strike the proper balance between judicial efficiency and providing an avenue of review of rulings that would otherwise be effectively unreviewable on appeal.”

As a threshold consideration, the ALJ’s order to allow discovery is an evidentiary ruling. As noted in *Premiere Raspberries*, an interlocutory appeal of an evidentiary ruling is not a collateral order and is effectively reviewable on appeal. (*Premiere Raspberries*, *supra*, at pp. 8-9.) Also, California Code of Civil Procedure section 904.1 excludes evidentiary rulings from matters that may be appealed. (*Id.*, at p. 9.) On its face, the request to review the order denying the petition to revoke does not satisfy the standard set forth in *Premiere Raspberries*.

Furthermore, the documents encompassed in Category 1, namely “content updates” to a Gerawan-owned website appear to be limited to materials that were made publicly available via that website. This was the conclusion of the ALJ, who stated that the requested documents “were posted on the website in the public domain.” Gerawan does not claim otherwise. Accordingly, we agree with the ALJ that there is no reason to believe that the production of the documents would have a chilling or detrimental effect on Gerawan’s First Amendment rights.

Finally, with respect to Gerawan’s contention that the Subpoena should be revoked pursuant to the Anti-SLAPP statute, Gerawan provides no authority that

such statute is applicable to administrative proceedings under the Agricultural Labor Relations Act in general, or to investigative subpoenas in particular. In any event, even assuming the statute had some application, Gerawan provides no support for its position other than a single sentence asserting that the Subpoena should be stricken. Gerawan therefore does not meet the requirement of section 20242(b) of the Board's regulations that the moving party seeking special permission to appeal set forth "its position on the necessity for interim relief and on the merits of the appeal."

PLEASE TAKE NOTICE that the Respondent Gerawan Farming, Inc.'s Request for Special Permission to Appeal is DENIED for the reasons discussed above.

Dated: October 29, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member