

TATE 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,	)	WITHOUT PREJUDICE	
	)	GENERAL COUNSEL'S	
Petitioner,	)	REQUEST TO SEEK COURT	
	)	ORDER REQUIRING	
and	)	COMPLIANCE WITH SUBPOENA	
	)	DUCES TECUM	
UNITED FARM WORKERS OF)		
AMERICA,)		
	)	Admin. Order No. 2014- 45	
<u>Certified Bargaining Representative.</u>)		
	)	Case Nos.	
GERAWAN FARMING, INC.,)		
	)	2012-CE-041-VIS	2013-CE-041-VIS
Respondent,	)	2012-CE-042-VIS	2013-CE-042-VIS
	)	2012-CE-046-VIS	2013-CE-043-VIS
and	)	2012-CE-047-VIS	2013-CE-044-VIS
	)	2013-CE-007-VIS	2013-CE-045-VIS
UNITED FARM WORKERS OF	)	2013-CE-009-VIS	2013-CE-055-VIS
AMERICA,	)	2013-CE-025-VIS	2013-CE-058-VIS
	)	2013-CE-027-VIS	2013-CE-060-VIS
	)	2013-CE-030-VIS	2013-CE-062-VIS
	)	2013-CE-038-VIS	2013-CE-063-VIS
<u>Charging Party.</u>	)	2013-CE-039-VIS	

On September 20, 2014, the General Counsel of the Agricultural Labor Relations Board (“Board”) served upon Gilliard Blanning & Associates (“GB&A”) a subpoena duces tecum (the “Subpoena”) requiring the production of certain documents relating to a website owned by Gerawan Farming, Inc. (“Gerawan”). The Subpoena required the production of two categories of documents. 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 September 26, 2014, Administrative Law Judge Mark Soble (the “ALJ”) issued an order partially denying a petition to revoke the Subpoena filed by Gerawan.¹ 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.

¹ Gerawan argued that GB&A had not been given sufficient time to respond to the Subpoena, that the Subpoena violated 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 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"), which the General Counsel opposed. On October 29, 2014, the Board denied the Request to Appeal. (*Gerawan Farming, Inc.* (2014) Admin. Order No. 2014-36.)

Prior to the issuance of the Board's order denying the Request to Appeal, the General Counsel filed the instant Request for Leave to Seek Court Order Requiring Compliance with Subpoena Duces Tecum (the "Request for Leave"). The General Counsel represents that, as of the October 24, 2014 filing date of the Request for Leave, Gerawan had not produced any of the documents identified in the Subpoena and requests that she be granted leave to seek judicial enforcement of the Subpoena pursuant to Labor Code section 20250, subdivision (k). The General Counsel does not state that she has supplied the response to the ALJ concerning Category 2 of the Subpoena nor does she state that the ALJ has made any ruling regarding Gerawan's petition to revoke as to Category 2. Gerawan has not filed a response to Request for Leave.

On November 12, 2014, the General Counsel filed with the Board a document titled "Supplement to October 24, 2014 Request for Leave to Seek Court Order Requiring Compliance with Notice in Lieu of Subpoenas Duces Tecum." (the "Supplement"). Although the Supplement relates to a separate notice in lieu of subpoena, rather than the Subpoena at issue here, a response to the Subpoena from

Gerawan, on behalf of GB&A, is attached to the Supplement, which response purports to respond to both Category 1 and Category 2 of the Subpoena.

The General Counsel does not state what impact, if any, Gerawan's response to the Subpoena has on her Request for Leave. However, it is possible that the response renders the Request for Leave moot, as it purports to provide a full response to the Subpoena.² In any event, for the reasons stated below, we conclude that the Request for Leave should have been filed with the ALJ, rather than the Board itself, and it is DISMISSED WITHOUT PREJUDICE on that basis.

The Request for Leave is made pursuant to Board regulation section 20250 ("Section 20250"), which authorizes the issuance of subpoenas. Section 20250(f) sets forth a procedure for a subpoenaed party to file a petition to revoke a subpoena and specifies that, where a petition to revoke is filed at or after the pre-hearing conference, the petition "shall be filed with the administrative law judge who may rule on the matter." In this case, a petition to revoke was filed with the ALJ and, at least as to Category 1, was denied. Section 20250(k) states that "[u]pon any other failure of any person to comply with a subpoena or notice, the Board may apply to an appropriate superior court" for an order requiring compliance with the subpoena. A request that the Board apply for an order may be made by the General Counsel during the investigatory stages of a proceeding or by any party after the issuance of a

² The issue of whether the response satisfies GB&A's obligations pursuant to the Subpoena is not before us and we reach no conclusions as to that issue.

complaint. However, Section 20250(k) states that “[t]he administrative law judge will review any requests made in the course of a hearing.”

Accordingly, pursuant to Section 20250(k), because the hearing in this matter has commenced, a request for judicial enforcement of the Subpoena should have been made with the ALJ, not the Board. Therefore, the Request for Leave must be dismissed as improperly filed. To the extent that Gerawan and GB&A’s response to the Subpoena has not rendered the issue moot, the General Counsel may file a request for judicial enforcement of the Subpoena with the ALJ. In the event that the ALJ recommends that the Board seek judicial enforcement of the Subpoena, and if the Board concludes that judicial enforcement would not be inconsistent with law or the policies of the Agricultural Labor Relations Act, the Board may authorize the General Counsel to seek judicial enforcement of the Subpoena on the Board’s behalf.³

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³ The Board has previously authorized the General Counsel to seek judicial enforcement of subpoenas on the Board’s behalf, including in this case. (See *Gerawan Farming, Inc.* (2014) Admin. Order 2014-19 (order issued in Case No. 2013-CE-027-VIS.)

PLEASE TAKE NOTICE that the General Counsel's Request for Leave
to Seek Court Order Requiring Compliance with Subpoena Duces Tecum is
DISMISSED WITHOUT PREJUDICE.

Dated: December 16, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member