

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,	)	WITHOUT PREJUDICE	
	)	GENERAL COUNSEL'S	
Petitioner,	)	REQUEST TO SEEK COURT	
	)	ORDER REQUIRING	
and	)	COMPLIANCE WITH NOTICE	
	)	IN LIEU OF SUBPOENA DUCES	
UNITED FARM WORKERS OF	)	TECUM	
AMERICA,)		
	)	Admin. Order No. 2014-46	
<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 or about September 12, 2014, the General Counsel of the Agricultural Labor Relations Board served upon Gerawan Farming, Inc. (“Gerawan”) a Notice in Lieu of Subpoena (the “Notice”). The Notice required production of 12 categories of documents. On September 19, 2014, Gerawan filed with the assigned administrative law judge (the “ALJ”) a petition to revoke the Notice. On September 23, 2014, the ALJ granted in part and denied in part the petition to revoke. Gerawan requested an immediate appeal with the Agricultural Labor Relations Board (the “Board”), which the Board denied on October 24, 2014 (Admin. Order No. 2014-33).

On October 24, 2014, the General Counsel filed with the Board a Request for Leave to Seek Court Order Requiring Compliance with Notice In Lieu of Subpoena Duces Tecum (the “Request for Leave”). The General Counsel represented that, as of October 24, 2014, Gerawan had refused to provide any documents responsive to the Notice. On November 12, 2014, the General Counsel filed a “supplement” to the Request for Leave (the “Supplement”). In the Supplement, the General Counsel represented that, after the Board’s order denying Gerawan’s request to appeal the partial denial of the petition to revoke, Gerawan served a response to the Notice upon the General Counsel in which Gerawan stated that it had two responsive documents, but that it did not intend to produce them. Gerawan has not filed an opposition to the Request for Leave, nor has it responded to the Supplement.

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 and notices in lieu of subpoenas. Section 20250(f) sets forth a procedure for a subpoenaed party to file a petition to revoke a subpoena or notice 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 was partially 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 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 Notice should have been made with the ALJ, not the Board. Therefore, the Request for Leave must be dismissed as improperly filed. The General Counsel may file a request for judicial enforcement of the Notice with the ALJ. In the event that the ALJ recommends that the Board seek judicial enforcement of the Notice, and if the Board concludes that judicial enforcement would not be inconsistent with law or the policies of the Act, the Board

may authorize the General Counsel to seek judicial enforcement of the Notice on the Board's behalf.¹

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

Dated: December 17, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

¹ 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.)