

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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|---|---|---------------------------|------------------|
| GERAWAN FARMING, INC., |) | Case No. | 2013-RD-003-VIS |
| |) | | (39 ALRB No. 20) |
| Employer, |) | | |
| |) | | |
| and |) | | |
| |) | ORDER AUTHORIZING | |
| SILVIA LOPEZ, |) | GENERAL COUNSEL TO SEEK | |
| |) | COURT ORDER REQUIRING | |
| Petitioner, |) | COMPLIANCE WITH NOTICE | |
| |) | IN LIEU OF SUBPOENA DUCES | |
| and |) | TECUM | |
| |) | | |
| UNITED FARM WORKERS OF |) | | |
| AMERICA, |) | | |
| |) | Admin. Order No. 2014-47 | |
| <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 |
| Charging Party. |) | 2013-CE-030-VIS | 2013-CE-062-VIS |
| |) | 2013-CE-038-VIS | 2013-CE-063-VIS |
| |) | 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 (the “ALJ”) a petition to revoke the Notice, which the ALJ granted in part and denied in part. Gerawan sought immediate appeal of the ALJ’s order, which was denied by the Agricultural Labor Relations Board (the “Board”) on October 24, 2014 (Admin. Order No. 2014-33).

On October 24, 2014, the General Counsel sought leave to seek a court order requiring compliance with the Notice. The Board denied that request without prejudice because the Board’s regulations require that a request for judicial enforcement of a notice be heard by the assigned administrative law judge once the hearing has commenced (Admin. Order 2014-46). The General Counsel subsequently filed such a request with the ALJ. On December 22, 2014, the ALJ issued an order in which he recommended, pursuant to section 20250(k) of the Board’s regulations, that the Board, or its designee, seek judicial enforcement of Notice to the extent specified by the ALJ.¹ Specifically, the ALJ recommended that the Board seek judicial enforcement of the Notice to the extent that it requires the production of “a list of 6 first names of agricultural workers” that Gerawan possesses but has refused to produce.²

Section 20250(k) of the Board’s regulations provides 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 such person to appear and produce

¹ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

² The ALJ declined to recommend enforcement of another document responsive to the Notice, concluding that it was not likely to result in useful, relevant evidence.

evidence and give testimony regarding the matter under investigation or in question.”

Once the hearing has commenced, requests for judicial enforcement are to be made with the assigned administrative law judge, rather than the Board itself. (Board regulation 20250(k) (“The administrative law judge will review any requests [for judicial enforcement] made in the course of a hearing.”).) If the administrative law judge “deems the request appropriate, he or she shall promptly recommend that the Board seek enforcement” (*Ibid.*) Thereupon, the Board is to seek enforcement “unless in the judgment of the Board the enforcement of such subpoena or notice would be inconsistent with law or the policies of the [Agricultural Labor Relations] Act.” (*Ibid.*)

Here, the ALJ has recommended that the Board seek judicial enforcement of the Notice to the extent that it requires production of the list of six first names of agricultural workers described in the ALJ’s order. The Board has reviewed the ALJ’s recommendation and does not find that enforcement of the Notice, as limited by the ALJ, would be inconsistent with law or the policies of the Agricultural Labor Relations Act. Accordingly the Board accepts the ALJ’s recommendation. The Board hereby authorizes the General Counsel, on behalf of the Board, and pursuant to Section 20250(k) of the Board’s regulations, to seek an order from a superior court enforcing

the Notice in Lieu of Subpoena consistent this Order and with the ALJ's order of December 22, 2014.³

The General Counsel is to keep the Board advised as to the status of any court action initiated pursuant to this authorization and is to provide the Board with copies of all documents filed by any party in the case or issued by the court immediately as such documents are filed or received. In the event that it becomes necessary to appeal any order of the superior court concerning enforcement of the Notice in Lieu of Subpoena, the General Counsel must obtain further authorization from the Board before initiating any such appeal.

Dated: December 23, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

³ In previous cases where judicial enforcement of subpoenas or notices has been sought, the General Counsel has typically not requested that the Board itself seek judicial enforcement, but has requested that the Board authorize the General Counsel to seek judicial enforcement on the Board's behalf. The Board has granted such requests under appropriate circumstances. (See, e.g., *George Amaral Ranches, Inc.* (2013) Admin. Order 2013-25; *RBI Packing, LLC* (2014) Admin. Order 2014-03; *Gerawan Farming, Inc.* (2014) Admin. Order 2014-19.) The General Counsel previously requested such authorization in this case.