

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2015-CE-007-VIS
	)		2015-CE-008-VIS
Respondent,	)		2015-CE-014-VIS
	)		2013-CE-064-VIS
and,)		
	)	ORDER DENYING GENERAL	
UNITED FARM WORKERS OF	)	COUNSEL'S MOTION TO	
AMERICA, and JUAN MANUEL	)	CONSOLIDATE LIABILITY AND	
JUAREZ HERNANDEZ,	)	COMPLIANCE PROCEEDINGS	
	)	PRIOR TO ISSUANCE OF FINAL	
Charging Parties.	)	ORDER	
)		
	)	Admin. Order No. 2018-14	
)		
	)	(October 16, 2018)	
)		

A hearing on these consolidated unfair labor practice charges before an administrative law judge (ALJ) commenced on May 22 and concluded on May 24, 2018. That hearing did not encompass issues relating to the backpay specification issued by the General Counsel before hearing, but rather focused solely on the issue of liability for the unfair labor practices alleged. The ALJ issued a Decision and Recommended Order on August 27. The General Counsel and respondent Gerawan Farming, Inc. (Gerawan) both filed exceptions on October 5. Also on October 5, the General Counsel filed a motion under Board regulation¹ 20244, subdivision (d) to consolidate the unfair labor practice case with compliance proceedings before the Agricultural Labor Relations Board (ALRB

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

or Board) issues a final order pursuant to Labor Code section 1160.8. We DENY the General Counsel's motion for the following reasons.

The General Counsel proposes in its motion that the Board review the parties' exceptions and issue a decision concerning liability for the unfair labor practices alleged. Then, if liability is determined and backpay ordered, the Board should remand the matter to the Regional Director for compliance proceedings, upon the completion of which the Board then may issue a "final" order encompassing both its liability and backpay determinations. After this, the General Counsel contends, an appellate court may have jurisdiction to review the case. The General Counsel further asserts that, "[i]f not consolidated, it is possible that the Court of Appeal would review liability in one proceeding and years later, review the Board's order as to the specific amount due." While this last assertion certainly may be true, on the record before us (and assuming liability is established) it is the route this case must take.

The General Counsel issued a First Amended Consolidated Complaint and Backpay Specification on April 12, 2018. On April 30, Gerawan filed a motion to sever the backpay specification from the first amended complaint. The ALJ granted Gerawan's severance motion in an order dated May 10, 2018. The General Counsel did not file any application for special permission to appeal that ruling with the Board. (See Cal. Code Regs., tit. 8, § 20242, subd. (b).) In fact, on May 7 the General Counsel filed a statement of non-opposition to Gerawan's severance motion, effectively consenting to bifurcation of the case. Following the General Counsel's consent to bifurcation of the liability and compliance proceedings and the ALJ's order severing them, the matter proceeded to

hearing solely on the liability issues. Consolidation of the unfair labor practice and compliance proceedings now where the parties previously agreed to bifurcation and a record has been developed only with respect to liability issues is untenable.

Moreover, the Board lacks authority to issue a “non-final” order determining a party’s liability, and directing a remedy, for an unfair labor practice. Labor Code section 1160.8 states: “Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the board be modified or set aside.” The term “final order of the board” refers to a Board decision “either dismissing an unfair labor practice complaint or directing a remedy for an unfair labor practice” (*Belridge Farms v. ALRB* (1978) 21 Cal.3d 551, 556; Lab. Code, §§ 1160.3, 1160.8; *ALRB v. Superior Court* (1996) 48 Cal.App.4th 1489, 1498 [recognizing “a final order on the unfair labor practice complaint ... is reviewable in the Court of Appeal”]; *United Farm Workers v. ALRB* (1977) 74 Cal.App.3d 347, 349; see *Sandrini Bros. v. ALRB* (1984) 156 Cal.App.3d 878, 888 [discussing different procedures for review of final unfair labor practice order and subsequent backpay proceedings]; see also Lab. Code, § 1148; 29 U.S.C. § 160(c), (f); *Intl. Union v. Scofield* (1965) 382 U.S. 205, 210 [“When the Board enters a final order against the charged party, it is clear that the phrase ‘any person aggrieved’ in § 10(f) enables him to seek immediate review in the appropriate Court of Appeals”]; *E.C. Waste, Inc. v. NLRB* (1st Cir. 2004) 359 F.3d 36, 39

[employer entitled to seek immediate review of final order finding it committed an unfair labor practice by discriminatorily discharging an employee and directing a backpay remedy]; *Harrison Steel Castings Co. v. NLRB* (7th Cir. 1991) 923 F.2d 542, 545 [a charged party against whom an order directing a remedy issues is “aggrieved” and may seek immediate judicial review].) Accordingly, a Board decision finding liability for an unfair labor practice and directing a remedy against the wrongdoing party under Labor Code section 1160.3 is a final one for purposes of Labor Code section 1160.8, and the party aggrieved by such a decision is entitled under the statute to seek immediate review of it. (*Harrison Steel Castings Co., supra*, 923 F.2d at p. 545.) The Board thus may not do what the General Counsel proposes.

This is not to say compliance of unfair labor practice and compliance proceedings may not be accomplished. Indeed, as the General Counsel points out, Board regulation 20290, subdivision (b) expressly authorizes such a consolidated proceeding “[w]henver the regional director deems it appropriate in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs and delay” The Regional Director apparently did so here; however, after doing so the General Counsel effectively abandoned that position and consented to bifurcation of the first amended complaint and backpay specification proceedings. Had the hearing gone forward with both liability and compliance issues fully litigated, the Board would then have the opportunity to issue a final order under Labor Code section 1160.8 addressing both issues, i.e., liability and the amount of backpay owed, if any. On the record presently before us, however, where the matter was severed (upon the agreement of both the General Counsel and respondent)

and a record developed only on the issues of liability, we decline the General Counsel's proposal to consolidate the proceedings after the fact.

Accordingly, the General Counsel's consolidation motion is DENIED.

Dated: October 16, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member