

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2013-RD-003-VIS
	)		(39 ALRB No. 20)
Employer,	)		(42 ALRB No. 1)
	)		(44 ALRB No. 10)
and,)		
)		
SILVIA LOPEZ,	)	ORDER DENYING GERAWAN	
	)	FARMING, INC.'S MOTION FOR	
Petitioner,	)	COSTS AND ATTORNEYS' FEES	
)		
and,)		
)		
UNITED FARM WORKERS OF)		
AMERICA,	)	Admin. Order No. 2018-15	
)		
Certified Bargaining	)	(November 19, 2018)	
Representative.)		
)		
)		

Gerawan Farming, Inc. (Gerawan) has filed with the Agricultural Labor Relations Board (ALRB or Board) a “protective motion” seeking to recover “costs and attorneys’ fees for work performed in this matter and the subsequent writ proceedings before the Fifth District Court of Appeal.” We DENY the motion.

BACKGROUND

On November 5, 2013, the ALRB conducted a decertification election among Gerawan’s agricultural employees. After a hearing on consolidated unfair labor practice allegations and election objections, an administrative law judge issued a decision which, among other things, recommended dismissing the decertification petition and

setting aside the election. The Board upheld that decision in *Gerawan Farming, Inc.* (2016) 42 ALRB No. 1.

Gerawan filed a petition for writ of review of the Board's decision in the Fifth Appellate District (case no. F073720).¹ In an opinion issued May 30, 2018, the appellate court upheld several of the Board's unfair labor practice findings, reversed others, and remanded the case to the Board to reconsider its decision dismissing the decertification petition and setting aside the election in light of the standard and findings outlined in the court's opinion. (*Gerawan Farming, Inc. v. ALRB* (2018) 23 Cal.App.5th 1129.) The opinion directs that "[e]ach party shall bear their own costs." (*Id.* at p. 1241; see Cal. Rules of Court, rules 8.278, subd. (a), 8.493, subd. (a)(1)(B).) The appellate court issued its remittitur on September 13, 2018, formally terminating its jurisdiction over the case and returning it to the Board.² (See *Isenberg v. Sherman* (1932) 214 Cal. 722, 725; *Gallenkamp v. Superior Court* (1990) 221 Cal.App.3d 1, 10.)

On September 27, the Board issued a Supplemental Decision and Order on Remand in *Gerawan Farming, Inc.* (2018) 44 ALRB No. 10. The Board in this decision considered the findings of unlawful conduct upheld by the appellate court and, exercising

¹ Silvia Lopez, the decertification petitioner, also filed a petition for writ of mandate in the Fifth Appellate District (case No. F073730) challenging the Board's decision dismissing the decertification petition and setting aside the election. Gerawan attempted to join that litigation, but was denied by the court. Gerawan thereafter filed its own separate petition for writ of mandate in the appellate court (case no. F073769), largely copying the allegations of Ms. Lopez's petition. The appellate court summarily denied both petitions on July 25, 2018. (See Cal. Rules of Court, rule 8.490, subd. (b)(1).)

² The remittitur expressly reiterates: "Each party to bear their own costs." (See Cal. Rules of Court, rule 8.278, subd. (b)(1).)

the discretion legislatively vested in it, determined that such conduct did not impact employee free choice to such an extent to have affected the outcome of the election. (*Id.* at p. 11; see *Gerawan Farming, Inc.*, *supra*, 23 Cal.App.5th at p. 1239, citing *J.R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 38-39.) The Board thus certified the results of the November 5, 2013 election, in which the majority of ballots cast were for “No Union” and the United Farm Workers of America (UFW) thereby was decertified as the exclusive bargaining representative of Gerawan’s agricultural employees. (*Gerawan Farming, Inc.*, *supra*, 44 ALRB No. 10, pp. 11-12.)³ The Board’s decision further included a modified remedial order based on the unfair labor practice findings upheld by the appellate court. (*Id.* at pp. 5-6, 12-14.)

DISCUSSION

Gerawan seeks to recover its costs and attorneys’ fees allegedly incurred in this case during both the administrative proceedings before the Board and in the ensuing litigation arising from those proceedings. Gerawan never requested such costs and fees during the course of its appellate litigation. By its current motion Gerawan now asks for such an award from the Board while at the same time inviting the Board to deny the motion so Gerawan “may seek relief from the Court of Appeal under the appropriate procedural mechanism.” We deny the motion on the following grounds.

³ The Board denied a motion by the UFW to reopen the record or reconsider its decision in a subsequent administrative order. (*Gerawan Farming, Inc.* (Oct. 11, 2018) ALRB Admin. Order No. 2018-13.)

First, with respect to Gerawan's request for costs and fees in the context of the administrative proceedings, the Board has no authority to grant such relief. (*Sam Andrews' Sons v. ALRB* (1988) 47 Cal.3d 157, 171-173; see also *Neuman Seed Co.* (1981) 7 ALRB No. 35, p. 2.) Second, Gerawan's request that the Board award it litigation costs and fees allegedly incurred in "the subsequent writ proceedings" also has no merit.⁴ The Board has no authority to award litigation costs or attorneys' fees to a party. (See Cal. Rules of Court, rules 8.278, 8.493.) Moreover, an award of attorneys' fees under Code of Civil Procedure section 1021.5 may be made only by "a court." (Code Civ. Proc., § 1021.5; *Cumero v. PERB* (1985) 49 Cal.3d 575, 606-607.) Thus, the Board has no legal authority to grant such an award. Rather, a request for attorneys' fees should have been made to the appellate court. Gerawan failed to do so, and that litigation (case no. F073720) now is concluded.⁵

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⁴ To the extent that Gerawan is requesting that the Board award its alleged costs and fees incurred in case no. F073720, this request would also be contrary to the appellate court's judgment. To the extent Gerawan is requesting an award of costs or fees in connection with the separate writ petitions filed in case nos. F073730 or F073769, any such request would lack merit as the court summarily denied the petitions in each of those cases.

⁵ We acknowledge Gerawan did attempt to seek an award of costs and fees from the appellate court after issuance of the court's remittitur, which the court rejected for lack of jurisdiction.

CONCLUSION

For the foregoing reasons, Gerawan's motion for an award of costs and attorneys' fees is DENIED.

Dated: November 19, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member