Kerman, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| GERAWAN FARMING, INC., | ) | Case Nos. 2013-CE-011-VIS |
| | ) | 2014-CE-023-VIS |
| | ) | 2014-CE-024-VIS |
| Respondent, | ) | 2015-CE-003-VIS |
| | ) | 2015-CE-022-VIS |
| and, | ) | 2015-CE-024-VIS |
| | ) | |
| UNITED FARM WORKERS OF AMERICA, | ) | 44 ALRB No. 11 |
| | ) | |
| Charging Party. | ) | (October 31, 2018) |
| | ) | |
| | ) | |

**DECISION AND ORDER**

On May 29, 2018, Administrative Law Judge Mary Miller Cracraft (the "ALJ") issued a decision and recommended order in the above-captioned cases involving respondent Gerawan Farming, Inc. ("Gerawan") and charging party United Farm Workers of America (the "UFW"). The ALJ found that Gerawan committed unfair labor practices in violation of the Agricultural Labor Relations Act (the "ALRA" or "Act") by failing to respond to four separate requests for information from the UFW. The ALJ further found that Gerawan violated the Act by implementing changes to its employee health insurance plans and paid sick leave policies without providing the UFW with notice and an opportunity to bargain over the discretionary aspects of the changes. Gerawan filed exceptions to the ALJ's decision with the Agricultural Labor Relations

Board (the "ALRB" or "Board") challenging the ALJ's conclusions as to all violations found.[1]

The Board has considered the ALJ's decision, the record, and the exceptions and briefs filed in the case and has decided to affirm the ALJ's rulings, findings, and conclusions as modified in this Decision and Order. While we affirm the ALJ's conclusion that Gerawan violated the Act by failing to respond to a UFW information request dated March 1, 2013, we conclude that the remainder of the unfair labor practice allegations in this case must be dismissed due to the decertification of the UFW as the bargaining representative of Gerawan's agricultural employees on November 5, 2013. (*Gerawan Farming, Inc*. (2018) 44 ALRB No. 10, pp. 11-12; *Nish Noroian Farms* (1982) 8 ALRB No. 25, p. 14.) Additionally, with respect to the remedy for the unfair labor practice finding that we do affirm, we shall modify the ALJ's recommended remedy in light of the UFW's decertification and substitute a new notice to conform to the modified order.

[1] Gerawan asserts in its brief in support of exceptions that it objects to the participation of Member Isadore Hall III in the decision in this matter due to alleged "conflict of interest, improper bias, and lack of impartiality" and requests that the Board "disqualify" him from participating in this case. Apart from a general reference in its brief to Member Hall's alleged participation in a UFW-sponsored march in Los Angeles, California in October 2014 (at a time when he served in the California State Assembly), Gerawan does not describe any specific facts, or produce any evidence, that would require Member Hall's disqualification. Instead, Gerawan merely refers to its assertion of these grounds in a motion it filed with the Board in another case. The Board denied that motion and the assertion therein that Member Hall's alleged participation in the October 2014 march requires his disqualification in cases involving Gerawan. (*Gerawan Farming, Inc*. (May 18, 2017) ALRB Admin. Order No. 2017-03.)

## I. Background

The UFW was certified as the bargaining representative of Gerawan's agricultural employees in 1992. (*Ray and Star Gerawan* (1992) 18 ALRB No. 5, pp. 19-20.) There has never been a collective bargaining agreement in effect between the parties. In late 2012, the UFW requested negotiations with Gerawan.

### A. The March 1, 2013 Request for Information Relating to Documents Signed by Employees

In or about December 2012, Gerawan's Human Resources Director, Jose Erevia, met with Gerawan's "crew" and "cultural" employees. Mr. Erevia read from a prepared script, copies of which were distributed to employees. The script made reference to employees being asked to sign statements. On March 1, 2013, the UFW sent Gerawan a letter requesting "copies of ALL sheets that employees signed on or about December 7, 2012." The letter also requested documents signed by employees or distributed to employees since the UFW requested bargaining in late 2012. The ALJ found that Gerawan never responded to the March 1, 2013 information request.

### B. The Decertification Election and Subsequent Proceedings

On November 5, 2013, the ALRB conducted a decertification election among Gerawan's agricultural employees. (Case No. 2013-RD-003-VIS (the "election case").) The ballots were impounded pending resolution of pending unfair labor practice allegations and related election objections. After a lengthy hearing, an administrative law judge issued a decision finding that, due to misconduct on the part of Gerawan, the

election should be set aside and the decertification petition dismissed. 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 California Court of Appeal for the Fifth Appellate District. In an opinion issued on 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.) In doing so, the court further determined the Board's order impounding the ballots cast in the decertification election was in error, and the court's remand instruction expressly directed the Board "to open the ballots and issue a tally." (*Id.* at p. 1240.)

The appellate court returned the case to the Board by way of remittitur issued on September 13, 2018. On September 18, a ballot count was conducted and the tally reflected that a majority of those who cast ballots in the election chose the "no union" option.[2] On September 27, the Board issued a decision on remand certifying the results of the election by which the UFW was decertified as the bargaining representative

[2] The vote tally was as follows: 197 for the UFW; 1,097 for "No Union;" 18 void ballots; and 660 unresolved challenged ballots. Because the unresolved challenged ballots were insufficient to affect the outcome of the election, the Board found it unnecessary to resolve them. (*Gerawan Farming, Inc.*, *supra*, 44 ALRB No. 10, pp. 3-4.)

of Gerawan's agricultural employees. (*Gerawan Farming, Inc., supra,* 44 ALRB No. 10, pp. 11-12.)

C. Gerawan's Alleged Post-Election Conduct

As discussed in the ALJ's decision, the UFW sent additional information requests to Gerawan at various times after the November 2013 election. Specifically, on June 18, 2014, the UFW requested information regarding changes Gerawan made to its crop acreage. On August 6, 2014, the UFW requested information concerning Gerawan's employee health insurance plans. On April 4, 2015, the UFW requested information concerning a non-employee's alleged access to Gerawan's property. The ALJ found that Gerawan unlawfully failed to adequately respond to these information requests in violation of Labor Code section 1153, subdivisions (a) and (e).

In or around December 2014, Gerawan made changes to its employee health insurance plans in order to comply with the federal Patient Protection and Affordable Care Act. Additionally, in July 2015, Gerawan made changes to its policies on employee paid sick leave to comply with California's Healthy Workplaces, Healthy Families Act of 2014. The ALJ found that Gerawan violated Labor Code section 1153, subdivisions (a) and (e) by failing to provide the UFW with notice and an opportunity to bargain over the discretionary aspects of the changes that it implemented.

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## II. Discussion

### A. The ALJ Correctly Concluded that Gerawan Unlawfully Failed to Respond to the UFW's March 1, 2013 Information Request

The unfair labor practice complaint alleges that Gerawan violated the Act by failing to respond to the request for documents signed by employees on December 7, 2012. Gerawan argues that, in finding that this violation was established, the ALJ failed to consider the fact that the portion of the request put at issue by the complaint was only part of a broader request and that the entire request, taken as a whole, was neither relevant nor reasonable. Responding to the entire request, Gerawan argues, would have entailed collecting "thousands upon thousands" of documents and Gerawan could not have known in advance that the UFW or the ALRB's General Counsel would select a discrete portion of the request and assert failure to respond to that portion as an unfair labor practice.

Where a union's request for information pertains to employees in the bargaining unit, the information is presumptively relevant. (*Bud Antle, Inc*. (2013) 39 ALRB No. 12, p. 8.) Gerawan's argument that the ALJ should have found the UFW's request to be overbroad and unduly burdensome is vitiated by the fact Gerawan did not raise these issues in a timely manner. As the ALJ correctly found, if a party presented with an information request contends that the request is overbroad or burdensome, the party must assert as much in a timely response to the request, not for the first time as a defense to an unfair labor practice allegation. (*United Parcel Service of America, Inc*. (2015) 362 NLRB No. 22, p. 11; *Oil, Chemical & Atomic Workers Local Union No. 6-*

*418 v. NLRB* (D.C. Cir. 1983) 711 F.2d 348, 353, fn. 6 ["if the company does wish to assert that a request for information is too burdensome, this must be done at the time the information is requested and not for the first time during the unfair labor practice proceeding"]; see *Chula Vista City School Dist*. (1990) PERB Dec. No. 834-E, pp. 52-53 ["Once a request for relevant information is made, '. . . the employer must either supply the information or adequately set forth the reasons why it is unable to comply'"], quoting *The Kroger Company* (1976) 226 NLRB 512, 513-514.)

Furthermore, even where an employer timely raises an undue burden objection in response to an information request, such an objection does not relieve the employer of its obligation to respond. Rather, the employer must "articulate those concerns to the union and make a timely offer to cooperate with the union in reaching a mutually acceptable accommodation." (*United Parcel Service of America, supra*, 362 NLRB No. 22, p. 11; *Gruma Corp*. (2005) 345 NLRB 788, 789; *Yeshiva University* (1994) 315 NLRB 1245, 1248-1249 [employer that argued that responding to information request would require an investment of time and expense "failed to meet its burden of proving . . . that [it] offered to bargain with the Union about who should bear the cost thereof"].) Here, that did not occur, as Gerawan simply did not respond to the information request at all.[3]

[3] Gerawan's attorney, Ronald Barsamian, testified that he provided no "specific written response" to the request. However, he did not claim to have provided a generalized or non-written response to the request either, and the record is devoid of evidence of any response. Thus, the ALJ's conclusion that Gerawan provided no response to the request is supported by the record.

Accordingly, we affirm the ALJ's conclusion that Gerawan violated Labor Code section 1153, subdivisions (a) and (e) by failing to provide the UFW with information requested on March 1, 2013 concerning documents signed by employees at meetings held by Jose Erevia on or around December 7, 2012. However, we shall modify the ALJ's recommended remedy for this violation in light of the subsequent decertification of the UFW.

B. The Remainder of the Unfair Labor Practice Allegations in this Case Must be Dismissed due to the Decertification of the UFW

The remaining unfair labor practice allegations are all predicated on conduct that occurred after the November 5, 2013 election that resulted in the decertification of the UFW.[4] Although the Board's order certifying the results of the election did not issue until after the conduct in question had occurred, under established Board precedent, the decertification of a union relates back to the date of the election. (*Nish Noroian Farms*, *supra*, 8 ALRB No. 25, p. 14.) Thus, an employer's refusal to bargain with a union may not be held to violate the Act where it occurs after the decertification election and the union is ultimately decertified.[5] (*Jack or Marion Radovich* (1983) 9 ALRB No. 45, p. 11.)

[4] These are Case Nos. 2014-CE-032-VIS (June 18, 2014 request for information on crop acreage changes), 2014-CE-024-VIS (August 6, 2014 request for information on health care plans), 2015-CE-003-VIS (December 2014 unilateral changes to health care plans), 2015-CE-022-VIS (April 10, 2015 request for information on non-employee access), and 2015-CE-024-VIS (July 2015 unilateral changes to paid sick leave policies).

[5] It is established that an employer's duty to respond to information requests from the certified union is an "aspect of the duty to bargain." (*Cardinal Distributing Co. v.*

The Board announced in *Nish Noroian Farms*:

> Under the ALRA, the rule is as follows: After a union is certified, an employer has a duty to bargain upon request with that union. A filed petition, direction of election, or tally of ballots does not affect that duty. If a "no union" vote prevails in a decertification election or in a rival-union election, the certification of results dates back to the day of the election so that no violation can be found, and no remedial order imposed, based on an employer's refusal to bargain from that point forward. This is an application of the "at the employer's peril" doctrine.
>
> (*Nish Noroian Farms, supra*, 12 ALRB No. 25 p. 14.)

In adopting this rule, the Board recognized that there was a split in federal authorities interpreting the National Labor Relations Act ("NLRA") on the issue. (Lab. Code, § 1148 [ALRB to follow "applicable precedents" of the NLRA].) The Board stated that the National Labor Relations Board ("NLRB") "considers unilateral changes in these circumstances to be unfair labor practices." (*Nish Noroian Farms, supra*, 9 ALRB No. 25, p. 11, citing *Presbyterian Hospital in the City of New York* (1979) 241 NLRB 996.) However, the Board also found that, while the NLRB continued to apply its own precedent, the NLRB rule had been "strongly rejected" by the federal Fifth Circuit Court of Appeals, which held that an employer may make unilateral changes after a decertification election, but does so "at its peril" that the union will be found ultimately to have retained its certification. (*Nish Noroian Farms, supra*, 9 ALRB No. 25, p. 11, citing *Dow Chemical Co., Texas Division v. NLRB* (5th Cir. 1981) 660 F.2d 637.) The Board

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*ALRB* (1984) 159 Cal.App.3d 758, 762 ["an employer's breach of the duty [to provide information] constitutes a refusal to bargain in good faith"].)

considered this split in authority in *Nish Noroian Farms* and chose to apply the "at peril" rule in the decertification context. (*Nish Noroian Farms, supra*, 9 ALRB No. 25, p. 16; see *Arnaudo Brothers, L.P. v. ALRB* (2018) 22 Cal.App.5th 1213, 1226 [under Labor Code section 1148, the Board may look to precedent of "the United States Supreme Court, federal appellate courts or the [NLRB"].) Subsequent Board decisions have continued to apply the "at peril" rule to the employer's duty to bargain after a decertification election. (*Jack or Marion Radovich, supra*, 9 ALRB No. 45, p. 10 ["An employer who refuses to bargain with the incumbent union after a no-union vote does so 'at its peril.' However, as the Union is herein decertified, Respondent's refusal to bargain after the election does not constitute a violation of Labor Code section 1153(e) or (a)"]; *S&J Ranch, Inc.* (1992) 18 ALRB No. 2, at ALJ Dec. p. 97 [employer that unilaterally increased wages after election "acted at its peril in making the change"]; see also *Gerawan Ranches* (1992) 18 ALRB No. 16, p. 2 [recognizing "the well settled doctrine which holds that an employer who makes changes in employees' terms and conditions of employment falling within the scope of mandatory subjects of bargaining without prior notice to the union while election challenges and objections are pending incurs a risk that the changes may be found to be violations of the duty to bargain"].)[6]

[6] It might be argued that, because the ballot count in the election case did not occur until long after the date of the election, this case is distinguishable from *Nish Noroian Farms* and that the UFW's decertification should relate back to the date of the ballot count, not the date of the election. However, in *Nish Noroian Farms*, the Board stated that the employer's duty to bargain is unaffected by the election and the tally, but that "the certification of results dates back *to the day of the election . . .*" (*Nish Noroian*

After the *Nish Noroian Farms* decision issued, the NLRB confirmed and explained its adherence to its own precedent concerning post-decertification election refusals to bargain. (*W.A. Krueger Co*. (1990) 299 NLRB 914.) The NLRB has continued to apply that precedent in its cases. (See, e.g., *Virginia Concrete Corp., Inc*. (2003) 338 NLRB 1182, 1184, fn. 5.) For its part, the Fifth Circuit has continued to deny enforcement to NLRB decisions not applying the "at peril" rule. (See *NLRB v. Arkema, Inc.* (5th Cir. 2013) 710 F.3d 308, fn. 12; see also *NLRB v. Westinghouse Broadcasting & Cable, Inc*. (1st Cir. 1988) 849 F.2d 15, 22 [citing *Dow Chemical* with approval for the proposition that the "at peril" rule "also applies when union loses decertification election" because the "choice of employees must be honored immediately"].) As discussed above, when it adopted the "at peril" rule for post-decertification election bargaining under the

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*Farms, supra*, 8 ALRB No. 25, p. 14 (emphasis added); cf. *Ozburn-Hessey Logistics, LLC* (2018) 366 NLRB No. 177, slip op. p. 6, fn. 8 ["when a majority of the unit employees have selected the union as their representative in a Board-conducted [certification] election, the obligation to bargain . . . commences not on the date of certification, *but as of the date of the election*"] (emphasis added).) When the Board certifies the results of the election, it is giving effect to the choice made by employees in the election, not the administrative act of tallying the ballots. We find *United Farm Workers of America* (*Egg City*) (1989) 15 ALRB No. 10 to be inapplicable. That case did not involve post-election bargaining but rather the ability of a union to engage in certain "secondary" picketing activity that was lawful only if it was "currently certified." (See Lab. Code, § 1154, subd. (d)(4).) Finally, even if it could be argued that the employer's right to make "at risk" changes should begin only after a tally of ballots, application of such a rule to this case would be inappropriate because the Fifth District Court of Appeal ruled that, in the election case, the Board's decision to impound the ballots and delay the tally was erroneous.

ALRA, the Board was aware of the split between NLRB and federal court authority. The NLRB's subsequent decisions did not change this. Thus, the overall state of NLRA precedent has not materially changed since *Nish Noroian Farms* was decided. The NLRB's *W.A. Krueger* decision in 1990 essentially reiterates the rationale previously adopted by the NLRB in *Presbyterian Hospital*, albeit perhaps in greater detail. This Board already considered the conflicting rationales of *Presbyterian Hospital* and *Dow Chemical* in its *Nish Noroian Farms* decision. Furthermore, the Board since has confirmed its continued adherence to the "at peril" rule in the decertification context after the issuance of the *W.A. Krueger* decision. (See *S&J Ranch, Inc. supra*, 18 ALRB No. 2, at ALJ Dec. p. 97.)

We must give weight to the fact that the Board previously evaluated the competing approaches to the issue of post-decertification election bargaining and adopted and applied the "at peril" rule in a line of precedent dating back over 35 years. There are strong policy reasons for the Board to adhere to its own long-standing precedents absent compelling reasons to reverse. (*Estate of Duke* (2015) 61 Cal.4th 871, 893 [the policy favoring adherence to precedent "is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law"].) Thus, the weight owed to the Board's established precedent militates in favor of continuing to apply the "at peril" rule in the decertification context.

In this case, Gerawan's employees voted to decertify the UFW on November 5, 2013. The Board certified the results of that election in *Gerawan Farming, Inc.*, *supra*, 44 ALRB No. 10. Under the Board's long-standing precedent, the decertification of the UFW relates back to the date of the election, and the Board cannot find or remedy unfair labor practices based upon Gerawan's alleged bargaining violations occurring after that date.[7] Accordingly, the unfair labor practice allegations in this case based upon bargaining conduct occurring after November 5, 2013 must be dismissed.

## ORDER

Pursuant to Labor Code section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board (the "ALRB" or "Board") ORDERS that Respondent Gerawan Farming, Inc. ("Gerawan"), its officers, agents, labor contractors, successors and assigns shall:

1) Cease and desist from:

   a) Refusing to provide a certified union with requested information that is relevant and necessary to the union's duties as bargaining representative as required under section 1153, subdivisions (a) and (e) of the Agricultural Labor Relations Act ("ALRA" or "Act").

[7] On October 18, 2018, the General Counsel filed a motion requesting that the parties be given leave to file supplemental briefing concerning Gerawan's duty to bargain between the date of the decertification election and the date of the tally of ballots. The General Counsel stated that such briefing should be permitted to address the application of *Nish Noroian Farms*, *supra*, 8 ALRB No. 25 in light of *W.A. Krueger Co.*, *supra*, 299 NLRB 914 and *United Farm Workers of America* (*Egg City*), *supra*, 15 ALRB No. 10. Our decision today addresses these issues. We find that additional briefing is not necessary and, accordingly, we deny the General Counsel's request.

b) In any like or related manner interfering with, restraining, or coercing its agricultural employees in the exercise of the rights guaranteed them by section 1152 of the Act.

2) Take the following affirmative actions necessary to effectuate the policies of the Act:

a) Upon request of the Regional Director, sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

b) Post copies of the Notice in all appropriate languages at conspicuous places on Gerawan's property, including places where notices to employees are usually posted, for sixty (60) days, the times and places of posting to be determined by the Regional Director. Gerawan shall exercise due care to replace any copies of the Notice which may be altered, defaced, covered or removed.

c) Pursuant to the authority granted under section 1151, subdivision (a) of the Act, give agents of the Board access to its premises to confirm the posting of the Notice.

d) Mail signed copies of the attached Notice in all appropriate languages within 30 days after the date this Order becomes final or thereafter if directed by the Regional Director to the last known address of all agricultural employees it employed, including those employed by farm labor contractors, during the planting and harvesting periods or other relevant periods of employment from November 2012 to November 5, 2013.

e) Grant ALRB agents access to work sites where the agricultural employees in the bargaining unit work at mutually arranged times in order to read the attached Notice to them and to answer questions employees may have about their rights under the Act outside the presence of supervisory personnel.

f) Compensate employees for the time spent during the Notice reading and the following question and answer period at the employees' regular hourly rates, or each employee's average hourly rate based on their piece-rate production during the prior pay period.

g) Provide access during the notice-posting period to ALRB agents to ensure compliance with the notice-posting requirements of this Order.

h) Provide a signed copy of the Notice to each person it hired for work as an agricultural employee during the 12-month period following the issuance of the ALRB's Order in this case.

i) Notify the Regional Director in writing within thirty (30) days after the date of issuance of this Order of the steps Gerawan has taken to comply with the terms of this Order and, on request, also notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order until notified that full compliance has been achieved.

DATED: October 31, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall III, Member

## NOTICE TO AGRICULTURAL EMPLOYEES

After a hearing at which all parties had an opportunity to present evidence, the Agricultural Labor Relations Board (the "ALRB" or "Board") found that we violated the Agricultural Labor Relations Act (the "ALRA" or "Act") by failing to provide the United Farm Workers of America (the "UFW") with information that was necessary and relevant to the performance of its duties while it was certified as the bargaining representative of the agricultural employees of Gerawan Farming, Inc. ("Gerawan") as alleged in a complaint issued by the ALRB's General Counsel.

The ALRB has told us to post, publish and abide by the terms of this Notice. The ALRA is a law that gives you and all other farm workers in California the following rights:

1. To organize yourselves;
2. To form, join, or help a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another;
6. To decide not to do any of these things.

Because you have these rights, we promise that:

**WE WILL NOT** refuse to provide a union chosen by the majority our employees and certified under the ALRA as their collective bargaining representative with information relevant and necessary to the performance of its duties.

**WE WILL NOT** in any like or related manner, refuse to bargain with a union chosen by the majority our employees and certified under the ALRA as their collective bargaining representative over wages, hours or conditions of employment, or interfere with, restrain or coerce employees from exercising their rights under the Act.

DATED: _____ GERAWAN FARMING, INC.

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board (ALRB). One ALRB

office is located at 1642 W. Walnut Avenue, Visalia, CA 93477, telephone number (559) 627-0995.

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

**DO NOT REMOVE OR MUTILATE**

# CASE SUMMARY

**GERAWAN FARMING, INC.**
(United Farm Workers of America)

44 ALRB No. 11
Case Nos. 2013-CE-011-VIS
2014-CE-023-VIS
2014-CE-024-VIS
2015-CE-003-VIS
2015-CE-022-VIS
2015-CE-024-VIS

## Background

The United Farm Workers of America (the "UFW") was certified as the representative of the agricultural employees of Gerawan Farming, Inc. ("Gerawan"). An Administrative Law Judge ("ALJ") found that Gerawan unlawfully failed to respond to four separate UFW requests for information and failed to provide notice and an opportunity to bargain over benefit changes in violation of the Agricultural Labor Relations Act ("ALRA" or "Act"). After the ALJ's decision issued, the Agricultural Labor Relations Board ("ALRB" or "Board") certified the results of a decertification election that had occurred in November 2013. As a result, the UFW was decertified.

## Board Decision

The Board affirmed the ALJ's conclusion that Gerawan violated the Act by failing to respond to an information request issued by the UFW prior to the November 2013 election. While Gerawan argued that the request at issue was only part of a much broader request, compliance with which would have been very burdensome, the Board agreed with the ALJ that Gerawan had failed to raise the alleged burden at the time of the request and had failed to negotiate with the union over its response. Rather, Gerawan provided no response whatsoever. However, the Board found that dismissal of the remaining unfair labor practice allegations was required because the conduct at issue took place after the November 2013 decertification election. Although the results of the election were not certified until October 2018, under *Nish Noroian Farms* (1982) 8 ALRB No. 25, the certification of results "relates back" to the date of the election and no bargaining violation could be found after that date.

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**STATE OF CALIFORNIA**

**AGRICULTURAL LABOR RELATIONS BOARD**

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| **GERAWAN FARMING, INC.,**<br><br>**Respondent,**<br><br>**and**<br><br>**UNITED FARM WORKERS OF AMERICA,**<br><br>**Charging Party** | **Case Nos.: 2013-CE-011-VIS**<br>**2014-CE-023-VIS**<br>**2014-CE-024-VIS**<br>**2015-CE-003-VIS**<br>**2015-CE-022-VIS**<br>**2015-CE-024-VIS**<br><br>**DECISION AND RECOMMENDED ORDER** |

*Appearances*

For the ALRB General Counsel
*Julia Montgomery, General Counsel*
*Chris A. Schneider, Regional Director, Visalia*
*Merced C. Barrera, Graduate Legal Assistant*

For the Charging Party United Farm Workers of America
*Edgar Iván Aguilasocho, Esq.*
*Brenda Rizo, Paralegal*
*Martinez Aguilasocho & Lynch*

For the Respondent Gerawan Farming, Inc.
*Ronald H. Barsamian, Esq.*
*Patrick S. Moody, Esq.*
*Barsamian & Moody*

*Neil Mallery*
*Gerawan Farming, Inc.*
*Office of the General Counsel*

## DECISION

The issues in these consolidated cases are

- Whether Gerawan Farming, Inc. (Respondent or Gerawan) refused to provide relevant information to United Farm Workers of America (Charging Party or UFW) pursuant to requests of
    1. March 1, 2013 (copies of documents employees were asked to sign at meetings held on December 7, 2012 with a human resources representative);
    2. June, July, and August 2014 (detailed information about changes in crops and acreage as well as data reflecting impact of employee wages and hours);
    3. August 2014 (information about any health insurance plan); and
    4. April 10 and May 1, 2015 (documents relating to property access of a non-employee promoting decertification at Respondent).
- Whether Gerawan instituted unilateral changes without affording UFW notice or the opportunity to bargain about
    1. Changes to a health plan instituted on December 29, 2014; and
    2. Implementation of a paid sick leave policy on July 1, 2015.

The parties stipulated many of the underlying facts in this proceeding and agreed to the authenticity and admissibility of all exhibits.[1] These stipulations and exhibits were approved and received on the record. Further, the parties presented limited testimony at a hearing held in Fresno, California on Tuesday, March 6, 2018. On the entire record, including the briefs of all parties, the following findings of fact and conclusions of law are made.

## I. FINDINGS OF FACT

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[1] The unfair labor practice charges were properly filed and served as follows: 2013-CE-011-VIS, March 20, 2013 (alleging failure to furnish information employees signed during mandatory meetings); 2014-CE-023-VIS, September 9, 2014 (alleging failure to furnish information regarding crop planting); 2014-CE-024-VIS, September 9, 2014 (alleging refusal to provide health care plan information); 2015-CE-003-VIS, February 2, 2015 (alleging unilateral change in health plan(s)); 2015-CE-022-VIS, July 2, 2015 (alleging failure to provide information regarding access to company property); and 2015-CE-024-VIS, July 2, 2015 (alleging unilateral change in sick leave policy). There is no dispute that the ALRB has jurisdiction of this matter.

Respondent is a California corporation with its principal place of business in Fresno, California. It is engaged in growing and harvesting fresh fruit. Respondent admits and it is found that, at all material times, Respondent has been an agricultural employer within the meaning of Section 1140.4(a) and (c) of the Agricultural Labor Relations Act (the Act). Respondent admits and it is found that at all material times, UFW has been a labor organization within the meaning of Section 1140.4(f) of the Act. On July 8, 1992, the UFW was certified by the Agricultural Labor Relations Board (the Board) as the exclusive collective-bargaining representative of all Respondent's agricultural employees.[2] The parties agree that there has never been a collective-bargaining agreement in effect.[3] In late 2012, the UFW requested negotiations and requested employee information.[4]

## A. Information Requests

### 1. March 1, 2013 Information Request Regarding Documents which Employees Were Required to Sign on December 7, 2012[5]

In or about December 2012, Gerawan Human Resources Director Jose Erevia (Erevia) met with Gerawan crew and cultural labor employees and read from a prepared script related to the UFW's demand to bargain and request for employee information. The prepared script was handed out to the employees that it was read to in December 2012, and copies were attached to the paychecks of all

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[2] *Gerawan Ranches* (1992) 18 ALRB No. 5, slip op. 19-20. A decertification election was conducted on November 5, 2013. The ballots were impounded subject to resolution of election objections and alleged unfair labor practices. In *Gerawan Farming, Inc.*, (2016) 42 ALRB No. 1, the Board found many of the objections and unfair labor practice allegations meritorious and held that Gerawan's objectionable conduct tainted the entire decertification process. Thus, the Board dismissed the decertification petition. This decision was appealed and is currently pending before the Fifth District Court of Appeals. *Gerawan Farming, Inc. v. ALRB* (Docket #F073720).

[3] Following negotiations in early 2013 in which no collective-bargaining agreement was reached, on March 29, 2013, the UFW invoked the Board's mandatory mediation and conciliation (MMC) process set forth in Sec. 1164 et seq. of the ALRA. The mediator's report establishing the final terms of a collective-bargaining agreement was submitted to the Board and the Board's final order adopting the mediator's report took effect on November 19, 2013. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 17). On review, the Fifth District Court of Appeal held that the MMC statute was, inter alia, unconstitutional. *Gerawan Farming, Inc. v. ALRB* (2015) 236 Cal.App.4th 1024. This holding was reversed by the California Supreme Court. *Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118. The California Supreme Court holding is now pending before the United States Supreme Court on writ of certiorari filed March 28, 2018. (Docket No. 17-1375).

[4] This request for employee information is not at issue in this proceeding.

[5] Stipulations 1-6 as well as relevant testimony and exhibits.

employees who were working at that time and mailed to all employees who were not working at that time.

Armando Elenes (Elenes), Third Vice President of the UFW, testified that after these meetings, employees reported "captive audience" meetings that they were required to attend. They also reported to Elenes that they were asked to sign "certain documents" at these meetings.

Gerawan and the UFW met and negotiated during six sessions in 2013 before March 1, 2013. These sessions were on January 17 and 18; February 12, 13, 27, and 28, 2013. At these meetings, the UFW, through its representatives, never requested any documents concerning the prepared script of December 2012.

By letter of March 1, 2013, the UFW requested that Gerawan produce alleged documents signed by Gerawan employees on or about December 7, 2012, including sign-in sheets, during or immediately following Erevia's discussions with them.[6] Gerawan's attorney Ron H. Barsamian (Barsamian) to whom the letter was addressed, agreed that he did not provide a specific written response to the letter and did not turn over sign-in sheets to the UFW. Gerawan and the UFW met and negotiated on March 19, 2013. During that session, the UFW never mentioned its request of March 1, 2013.

2. June, July, and August 2014 Request for Detailed Information about Crops and Acreage[7]

On November 27, 2013, Gerawan attorney Barsamian emailed a letter to Elenes that notified the UFW that it had made a tentative decision about how to utilize 940 acres of land, which had become available due to normal pulling of trees and vines. The letter stated that Gerawan had tentatively decided to plant almond and pistachio trees with 825 acres of almonds and 115 acres of pistachios. Gerawan stated that it was relaying this information to UFW in order to provide an opportunity to discuss "the tentative decision and any effects it may have on the

[6] The March 1, 2013 request for information also asked for other information including documents that employees were asked to sign and all documents distributed to employees "since negotiations were first requested last year." Failure to respond to this second category of requested documents is not alleged as an unfair labor practice. Only the documents signed by employees regarding the December 7, 2012 meeting are at issue in this information request allegation.

[7] Stipulations 7-31 as well as relevant testimony and exhibits.

workforce." Gerawan further noted that preparation of the land for the new planting would begin immediately. Although the letter noted that the almond and pistachio land preparation would differ somewhat from the preparation for planting stone fruit or vineyards, Gerawan opined that this would "not significantly change the amount of cultural labor normally associated with planting stone fruit and/or vineyards." UFW did not make any request for information at this point. The UFW did not request information regarding the contents of this letter.

Gerawan began pre-harvest work in its fruit trees and vineyard acreage in late March 2014 and began harvesting tree fruit in May 2014. After receiving reports from employees in May and June 2014 that Gerawan was pulling more acreage than in previous years, on June 18, 2014, the UFW requested information about 12 "bargaining unit issues" regarding crop pulling and planting as follows:

1. The actual acreage and specific blocks of trees that were pulled and the approximate age of those trees.
2. The actual acreage and specific blocks of vines that were pulled and the approximate age of those vines.
3. Maps for both the trees and vine blocks that were pulled.
4. Maps for trees and/or vines blocks that have been pulled in the years 2010-2013.
5. Information on the impact in terms of reduced work hours and numbers of employees that such action(s) will or could have on bargaining.
6. Hours worked and gross wages paid for all bargaining unit classifications in pre-harvest and harvest work performed in the blocks of vines that were pulled during the last full year of production.
7. Hours worked and gross wages paid for all bargaining unit classifications in pre-harvest and harvest work performed in the blocks of trees that were pulled during the last full year of production.
8. Average hours worked and gross wages paid per acre for all bargaining unit classifications in cultivation and harvest work in existing almond crop operations performed in the last full year of production.
9. Average hours worked and gross wages paid per acre for all bargaining unit classifications in cultivation and harvest work in existing pistachio crop operations performed in the last full year of production.
10. Total number of acres pulled for each crop involving bargaining unit work for each of the years, 2010-2013.
11. Total number of acres planted for each crop involving bargaining unit work for each of the years, 2010-2013.

12. Total number of tons harvested for each crop involving bargaining unit work for each of the years, 2010-2013.

On July 10, 2014, the UFW renewed its June 18, 2014, request for information regarding crop changes and data regarding impact on wages and hours. On July 23, 2014, Gerawan responded to the UFW's June 18, 2014 information request regarding crop changes but did not provide any of the information. Rather, Gerawan's July 23, 2014 letter noted the UFW's delay in requesting information from the November 27, 2013 announcement until June 18, 2014. The letter further stated that Gerawan was not agreeing that all of the requested information would be provided. Finally, the letter advised that "much of the information you have requested will need to be kept strictly confidential. . . ." No specific confidentiality agreement was tendered at this time.

On July 31, August 19, and September 3, 2014, the UFW renewed its June 18, 2014 request for the information to crop changes. In these requests, the UFW averred that there was no legal basis for requiring confidentiality.

On March 18, 2015, Gerawan responded to the UFW's requests for information regarding crop changes without providing information. Rather, Gerawan proposed discussions relating to the form and content of the information to be provided and the need for confidentiality.

On May 18, 2015, the UFW renewed its June 18, 2014 request for the information regarding crop changes and its data on impact to wages and hours. On May 29, 2015, Gerawan responded to the UFW and renewed its March 18, 2015 request to meet. The letter stated that the information could not be provided without a confidentiality agreement.

On August 11, 2015, Gerawan sent the UFW a proposed confidentiality agreement concerning information requested by the UFW. The proposed confidentiality agreement set liquidated damages for intentional or negligent disclosure at $10,000 per occurrence.

On August 24, 2015, the UFW responded to Gerawan's proposed confidentiality agreement claiming that the proposed confidentiality agreement forwarded by Gerawan on August 11, 2015, was "overbroad, illegal and

unacceptable." The UFW stated that it was willing to negotiate a reasonable confidentiality agreement.[8]

Gerawan replied on September 5, 2015 advising that it would reply soon to UFW's objections to the confidentiality proposal. On September 18, 2015, Gerawan replied to UFW's concerns regarding the confidentiality proposal. Specifically, Gerawan advised that it did not seek confidentiality for every document and that it would designate which documents need to be maintained on a confidential basis. On November 10, 2015, Gerawan once again followed up with the UFW noting that it had not received a response to the September 18, 2015 letter.

On December 4, 2015, UFW received a letter from Gerawan which attached a table regarding current acreage entitled "Planted Acreage by Commodity." The letter further stated that Respondent might be pulling trees and vines in the next several weeks. Respondent reiterated that it was not able to provide UFW with "current thinking about future crop mixes" until the confidentiality agreement was executed.

In the meantime, the parties were involved in extensive litigation and other information requests. As was mentioned earlier, in late 2013 a decertification petition was filed. The election was conducted on November 5, 2013. On May 30, 2014, the General Counsel issued its status report concerning the expedited investigations of unfair labor practice charges related to the election objections filed by the UFW after the decertification election. From May through August 2014, the General Counsel conducted interviews of Gerawan supervisors as part of its investigation of unfair labor practice charges related to the decertification election. Attorney Barsamian testified that this investigation tied up crew bosses and human resources director Erevia on a daily basis. On August 29, 2014, the General Counsel issued a subpoena duces tecum for numerous telephone records, employee documents, and other records for its investigation of the unfair labor practice charges related to the decertification election. From September 2014

[8] The parties executed a confidentiality agreement in 2012 following the UFW's demand for bargaining. This agreement related to employee information and did not provide for liquidated damages.

through mid-March 2015, the parties were engaged in weekly litigation regarding the decertification petition.[9]

In addition to the litigation, on June 6, 2014, the UFW requested Gerawan provide employment information for all direct and farm labor contractor employees. On June 11, 2014, Gerawan responded to the UFW's request for employment information for all direct and farm labor contractor secured employees.[10]

On June 26, 2015, the UFW sent Gerawan a request to continue negotiations for a collective-bargaining agreement and requested information related to crops and the amount of acreage, the farm labor contractors involved in the operation, a detailed summary of employee benefits (including health, dental, and vacation), and copies of current employee manuals and policies. This request did not repeat the request for information regarding crop changes and data on its impact on wages and hours.

On November 20, 2015, the UFW responded to a request from Gerawan dated September 24, 2015. This request was for UFW benefits plans. UFW provided a partial response and noted further that the remaining information due from the UFW would need to be subject to the confidentiality agreement that the parties were working on.

On December 18, 2015, Gerawan informed the UFW that it was pulling all of the table grape vineyards and fully closing its table grape operation. On January 5, 2015, the UFW requested effects bargaining regarding the closure of Gerawan's table grape operation and requested information regarding employees involved in table grape operations. On February 5, 2015, Gerawan provided this requested information.

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[9] On September 9, 2014, the General Counsel issued its Second Amended Complaint concerning 21 unfair labor practice charges related to the decertification election. Motions and orders concerning severance and consolidation with election objections were filed and issued during September 2014 and a new consolidated complaint was issued. During September 2014, subpoenas, motions, and prehearing briefings requested by the administrative law judge were filed. The hearing began on September 29, 2014 and continued weekly, save for short breaks for administrative purposes and holidays until March 12, 2015.

[10] There are no unfair labor practice issues with regard to this information request.

Throughout these discussions, extensive litigation, and other information requests not at issue here, UFW did not receive the information it requested in June, July, August, and September 2014 regarding detailed information about plans for pulling and planting crops and the impact of implementation of these plans on employee wages and hours.

3. August 2014 Information Request Regarding Employee Health Plans[11]

On August 6, 2014, the UFW requested that Gerawan provide it with information related to its employee health plan in light of changes to be made in legal requirements under the federal Affordable Care Act.[12] The details requested were as follows:

1. Detailed description(s) and any summary description(s) of the Company's present medical plan(s);
2. The identity, address and phone number of your present medical plan(s) administrator(s);
3. The Company's present contribution rate(s) regarding any medical plan(s);
4. The express terms of any life, health and/or welfare plan(s) presently offered bargaining unit employees by or through the Company;
5. The name, employee number, address, and phone number of all seniority employees presently eligible for the Company's life, health and welfare plan(s);
6. Detailed description(s) and any summary description(s) of any Company self-insured plan(s) that presently provide medical benefits or life, health and welfare benefits to bargaining unit employees;
7. The total monthly costs per eligible employee presently paid by the Company to provide medical coverage to bargaining unit employees;
8. A record of all costs of life, health and welfare coverage, where said costs were or are now borne directly by any bargaining unit employee(s);
9. The name, employee number, address, and phone number of all seniority employees who, during the past year, have borne any costs of life, health and welfare coverage;

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[11] Stipulations 32-34 as well as relevant testimony and exhibits.

[12] The Patient Protection and Affordable Care Act of 2010 (ACA).

10. Payroll records detailing the amounts withheld from pay from all seniority employees who, during the past year, have borne any costs of life, health and welfare coverage;
11. The name, employee number, address, and phone number of all seniority employees who during the past year have borne any costs of their life, health and welfare coverage as a co-payment.
12. Please inform the Union whether the Company's medical plan is a "grandfathered" plan or a Non-Grandfathered plan under present federal regulation;
13. Please inform the Union whether the Company's medical plan is granted or intends to solicit a waiver for any amount of time under present federal regulation;
14. The name, address, and phone number of any plan provider for any plan(s) that have provided or might later provide a medical plan or life, health and welfare plan or coverage for bargaining unit employees.

This request was renewed on August 19 and September 3, 2014. UFW did not receive the requested information in 2014. However, on August 7, 2015, Respondent provided "information concerning current company benefits and premiums you requested." Gerawan provided this detailed information about its health plans in anticipation of renewed bargaining over a collective-bargaining agreement. On August 12, 2015, the UFW sent a health plan questionnaire to Gerawan. On September 5, 2015, Gerawan sent the completed questionnaire and information to the UFW.

4. April 2015 Information Request Regarding Access to Gerawan Property[13]

On April 10, 2015, the UFW wrote Gerawan requesting any documentation which authorized non-employee Jesse Rojas (Rojas) to enter Gerawan fields property and information about the nature of Rojas' association with Gerawan Farming. As explained by Elenes, the reason for this request was employee reports that Rojas was entering Gerawan property, visiting crews, and distributing leaflets to employees. Elenes was aware that Rojas, a member of an organization known as "Pick Justice," was associated with decertification efforts at Gerawan along with Sylvia Lopez.[14] Elenes also knew that Gerawan's employee manual insisted on

[13] Stipulations 28-30 and 42-46 as well as relevant testimony and exhibits.
[14] Sylvia Lopez was the decertification petitioner in 2013-RD-003-VIS.

strict application of visitor rules and prohibited solicitation on company property by non-employees.

On May 1 and May 20, 2015, the UFW renewed its April 10 request for information. In the May 1 letter, the UFW stated that Rojas had been seen the prior day, April 30, on Gerawan field property passing out literature. Gerawan never provided the UFW with a response to its April 10, 2015 or subsequent requests related to the same topic. According to Barsamian's testimony at hearing, no one was aware of anybody taking access. There had been no reports of anything like that.

## B. Alleged Unilateral Changes

### 1. Health Plan[15]

The Affordable Care Act (ACA)[16] required, inter alia, that certain employers provide essential health benefits to employees. There is no dispute that Gerawan was required to provide this benefit. There is further no dispute that prior to 2014, Gerawan had no ACA health plan benefit. Barsamian agreed that an ACA-mandated plan was adopted in early 2014. He also agreed that this new plan was not negotiated with the UFW.

The complaint alleges that on or about December 29, 2014, that is, about one year following implementation of the ACA-mandated plan, Gerawan instituted changes to its employee health insurance plans including but not limited to changing the health plan options for employees, changing the deductible, and modifying the percentage of the premium that Gerawan would pay. Barsamian testified that one change was made in late 2014: the premiums were decreased for both the employer and employees.

Barsamian's testimony is consistent with Elenes' testimony. Elenes testified that employees informed UFW in late December 2014 that health plan literature was being distributed by Gerawan. Both Elenes and Barsamian testified that no changes were negotiated with UFW.

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[15] Stipulations 36-38 as well as relevant testimony and exhibits.

[16] The Patient Protection and Affordable Care Act was signed into law on March 23, 2010 with most major provisions becoming effective by January 2014.

There is no dispute that Gerawan did not negotiate any changes to its 2014 options, the deductible, or decreasing the amount of total employee premium when these changes were made in December 2014.

2. Paid Sick Leave Plan[17]

California's paid sick leave law[18] took effect on July 1, 2015. The law sets forth mandatory requirements for accrual of paid sick leave time and for taking the accrued sick leave. It applies to all California employers, including Gerawan and the UFW. The UFW did not request any information from Gerawan concerning its plans for compliance with the new paid sick leave law before or after July 1, 2015. On July 1, 2015, Gerawan implemented a sick leave policy in compliance with new requirements under California law. Prior to this time, Gerawan did not have a sick leave policy. Gerawan did not negotiate implementation of the sick leave policy with UFW.

## II. ANALYSIS

### A. Information Requests

"There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties. . . ."[19] This obligation is rooted in recognition that union access to such information can often prevent conflicts which hamper collective bargaining."[20] In order to bargain meaningfully, there is a reciprocal duty[21] on the part of unions and employers to supply, on request, information that is necessary and relevant.[22]

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[17] Stipulations 39-41 as well as relevant testimony.

[18] The California Healthy Workplace Healthy Family Act of 2014, Cal Labor Code Sec. 245 et seq. Administrative notice is taken of Sec. 246(a)(1) providing that, "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section."

[19] *NLRB v. Acme Industrial Co.,* (1967) 385 U.S. 432, 435-436, citing *NLRB v. Truitt Mfg. Co.,* (1956) 351 U.S. 149.

[20] *Florida Steel Corp. v. NLRB,* (1979) 601 F.2d 125, 129 (4th Cir.).

[21] *American Commercial Lines, Inc.,* (1989) 296 NLRB 622, 652; *National Union of Hospital and Health Care Employees (Sinai Hospital of Baltimore), (*1980) 248 NLRB 631, 646, enfd. 673 F.2d 1314 (T) (4th Cir. 1981).

[22] *NLRB v. Acme Industrial Co.,* supra, 385 U.S. at 435-436.

Information is relevant if it relates to the union's function as bargaining representative and is "reasonably necessary" for the performance of that function in negotiation, contract administration, and grievance processing.[23] The standard for determining relevance is a liberal, discovery-type standard[24] and it is necessary only to establish "the probability that the desired information is relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities."[25]

Once a union makes a good faith request for relevant information, an employer must make a diligent effort to provide the information in a timely manner[26] and in a useful form,[27] if it has the information.[28]

Examination of UFW's four requests reveals that the information requested was necessary and relevant to its duties as the bargaining representative of Gerawan's employees. UFW has been the certified representative of Gerawan's agricultural employees since 1992. Although the parties have never had a collective-bargaining agreement, there is no claim that lack of a bargaining agreement in any way affects the duty to provide information.

1. March 1, 2013 Information Request about Documents which Employees were Required to Sign

Regarding the first request, UFW learned from employees of meetings held on December 7, 2012. These employees expressed uncertainty and concern to the UFW about the nature of "certain documents" that they had been asked to sign at

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[23] *Beth Abraham Health Services,* (2000) 332 NLRB 1234, 1234-1235.

[24] *NLRB v. Acme Industrial*, supra, 385 U.S. at 437; see also, *Cardinal Distributing Co. v. ALRB,* (1984) 159 Cal.App.3d 758, 767; *Perez Packing, Inc.* (2013) 39 ALRB No. 19, slip op. at 3.

[25] *NLRB v. Acme Industrial*, supra, 385 U.S. at 437.

[26] In making a determination regarding whether there has been unlawful delay, the totality of the circumstances surrounding the incident is considered. *Allegheny Power* (2003) 339 NLRB 585, 587. The information must be supplied as promptly as circumstances allow. *The Good Life Beverage Co.,* (1993) 312 NLRB 1060, 1062 n. 9. In examining the promptness of the response, the complexity and extent of the information sought, its availability and the difficulty in retrieving the information are considered. *Samaritan Med. Ctr.* (1995) 319 NLRB 392, 398.

[27] *Cincinnati Steel Castings Co.* (1949) 86 NLRB 592, 593.

[28] See, e.g., *Hanson Aggregates* (2008) 353 NLRB 287, 288 (employer must make reasonable effort to secure unavailable information; if information is unavailable, employer must explain to the union the reasons for the unavailability).

these "captive audience" meetings.[29] Thus, the March 1, 2013 request for all documents employees were asked to sign on or about December 7, 2012 was reasonable and relevant to UFW's duties. From the employees' statements to the UFW, it was reasonable to conclude that UFW's exclusive bargaining representative status might be the subject of the meetings and documents.

Gerawan argues that it made a reasonable good faith effort to respond as promptly as circumstances would allow. But, in fact, Gerawan never responded to this request which was narrowly tailored to a single date and presumably readily available.[30]

Gerawan references the "totality of the circumstances" noting that it was involved in complex and lengthy litigation. However, when this request was propounded, there was no lengthy litigation ongoing.[31] Moreover, this is no defense.[32]

Gerawan also notes that this discrete, targeted request for information was only a part of a vague, overbroad request for information.[33] This argument lacks merit. Ambiguity in the request does not excuse a response. "It is well established

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[29] The standard for determining whether an information request must be honored is a liberal discovery-type standard. The union is not required to show that the information triggering the request is accurate, non-hearsay or ultimately unreliable. *United Parcel Service* (2005) 362 NLRB No. 22, slip op. at 10.

[30] Gerawan argues that the sign-in sheets for the December 7, 2012 meeting would appear just as any other sign-in sheets for training meetings. In other words, these sign-in sheets would not state that they were for a "Meeting with Jose Erevia." The record does not indicate whether other training meetings were held on December 7, 2012. Under these circumstances, no undue burden may be found. Moreover, even were a legitimate claim that a request for information is unduly burdensome, the employer must articulate these concerns to the union and make a timely offer to cooperate with the union to reach a mutually acceptable accommodation. *United Parcel Service,* supra, 362 NLRB No. 22, slip op. at 11, citing *Mission Foods* (2005) 345 NLRB 788, 789 (if a party wishes to assert that a request for information is too burdensome, this must be done at the time the information is requested, and not for the first time during the unfair labor practice hearing.

[31] Gerawan also avers that the request is unduly burdensome. However, this argument misconstrues the complaint allegation. The complaint relates only to documents signed on December 7, 2012. Accordingly, this argument is rejected. See also, *Fawcett Printing Corp.* (1973) 201 NLRB 964, 974 ("The mere fact that a Union's request encompasses information which the employer is not legally obligated to provide does not excuse him from complying with the Union's request to the extent that it also encompasses information which he would be required to provide if it were the sole subject of the demand.")

[32] The Act does not permit a party to hide behind the crowded calendar of the negotiator whom it selects. *Radiator Specialty Co.* (1963) 143 NLRB 350, 360.

[33] The General Counsel may utilize its discretion in determining whether to issue complaint on failure to provide all or part of the information requested. Here the General Counsel alleged a violation only to a specific portion of the requested information. Respondent claims the narrowing of the complaint allegation was an "unwarranted, after-the-fact attempt to whittle down" the request. This argument is rejected.

that an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information."[34]

Finally, Gerawan argues that, as a practical matter, there is no showing that UFW was prejudiced by Gerawan's failure to provide the requested information. This argument is rejected. Prejudice to the requesting party is not a defense to failure to produce information.[35] It need only been shown that the information is relevant and necessary to the union's duties as exclusive bargaining representative. That showing has been satisfied. Accordingly, it is found that Gerawan violated the Act by failure to provide the information regarding documents signed by employees on December 7, 2012.

2. June, July, and August 2014 Request for Detailed Information about Crops and Acreage

UFW learned from Gerawan in November 2013 that Gerawan had made a tentative decision to plant 940 acres which had become available. In June 2014, UFW requested information regarding implementation of this plan. The requested information regarding actual acreage pulled and planted, the specific crops, as well as hours worked and gross wages paid for bargaining unit classifications relating to these crops was timely requested[36] and necessary and relevant to the UFW's functions in negotiation, contract administration, and potential grievance activity.[37] Because the requested information dealt with matters impinging employee wages, hours, and terms and conditions of employment it was presumptively relevant.[38]

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[34] *Keauhoa Beach Hotel* (1990) 298 NLRB 702 at 702 and fn 3.

[35] See, e.g., *Cardinal Distributing Co. v. ALRB* (1984) 159 Cal.App.3d 758, 767-768 (it is not necessary to show prejudice or that delay in the bargaining process occurred).

[36] Gerawan faults the UFW for waiting seven months after it announced its tentative decision to request the information. This argument is nonsensical in that it was only after implementation of the tentative decision that any of the requested information would be available.

[37] See *O. P. Murphy & Sons* (1979) 5 ALRB No. 63 at pp. 14, 15, cited by the General Counsel (employer yield and production figures closely related to income of employees); see also *Boise Cascade Corp.*, (1986) 279 NLRB 422, 429 (information regarding implementation of changes that had effect on employee wages is presumptively relevant).

[38] Information related to wages, hours, and terms and conditions of employment is presumptively relevant and the union need not make any showing of relevance. If the employer effectively rebuts the presumption of relevance or otherwise shows that it has a valid reason for not providing the requested information, the employer

Thereafter, a "standoff" over confidentiality took place. In July 2014, Gerawan stated a generalized need for confidentiality regarding this information.[39] In July, August, and September 2014, UFW renewed its request for the information averring that no basis for confidentiality had been stated. This stalemate continued into 2015. In March 2015, nine months following the first request for information, Gerawan proposed that the parties engage in discussions regarding the form and content of the information and again asserted general confidentiality concerns.[40] There is no evidence that any discussions took place.

Fourteen months post-request, in August 2015, Gerawan propounded a confidentiality agreement which UFW immediately characterized as "overbroad, illegal, and unacceptable." Eventually, in December 2015, Gerawan provided a summary chart setting forth the amount of planted acreage by crop. This chart did not provide the specific information which had been requested by the UFW eighteen months earlier and offered no basis for determining the impact of crop changes on the bargaining unit.

In *Detroit Edison Corp. v. NLRB* (1979) 440 U.S. 301, 318, the Court held that the NLRB abused its remedial discretion by ordering the employer to turn over a test battery and answer sheets directly to the union. Citing *NLRB v. Truitt Mfg. Co.* (1956) 351 U.S. 149, 153, the Court found that the duty to supply information depends on the particular circumstances of each case. Balancing the parties' relative interests, the Court held that because the employer's interest in confidentiality was well demonstrated and the danger of inadvertent leaks was substantial, the minimal burden placed on the union to obtain employee consents for release of the information was a valid constraint. *Detroit Edison*, supra, 440 U.S. at 319-320. The Court made clear that it may frequently be necessary to balance the legitimate needs of the parties to determine whether and how specific information might be produced. Id., 317-320.

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is excused from providing the information or from providing it in the form requested. *United Parcel Service*, supra, 362 NLRB at pp. 10-11, citing *Coca-Cola Bottling Co.* (1993) 311 NLRB 424, 425.

[39] The July 23, 2014 letter from Barsamian to Elenes stated in relevant part, "I will tell you that much of the information you have requested will need to be kept strictly confidential from any disclosures whatsoever, so please alert your counsel that we will have a confidentiality agreement prepared for his review."

[40] "[W]e do not want information about our current crop acreage and future plans shared beyond those that have an actual need for it. We need to work something out to protect our interests while providing you with what you need. We can discuss this when we meet as well."

Gerawan argues that it had a legitimate and substantial confidentiality interest in its proprietary crop information. Gerawan's September 18, 2018 correspondence explained that it did not require "blanket" confidentiality but did require confidentiality, for example, for future plans and projections and current or past acreage. Gerawan explained that it required confidentiality for such information to protect disclosure to its competitors. Even so, there was no explanation offered regarding how disclosure would have injured the business. This was Respondent's burden.[41] Because Respondent did not provide sufficient evidence to support its claim for confidentiality, there is insufficient evidence with which to assess the appropriate balance to weigh against the union's per se need for the information.

More importantly, this specific request for confidentiality was not intended as a basis for unilaterally withholding the entirety of the requested information.[42] The request for information was directed not only at acreage pulled and planted but also hours worked and gross wages paid for bargaining unit classifications relating to these crops.[43] Even if the need for confidentiality were established as to the crops, the UFW's information request about hours and wages was never addressed. None of the hour or wage information was ever supplied. This failure to produce wage and hour information and the delay in suggesting discussion for accommodating confidentiality concerns or propounding a proposed confidentiality agreement for the crop information speak volumes. Under these circumstances, it is found that Gerawan violated the Act by its failure to provide the requested information.[44]

3. August 2014 Request for Information about Employee Health Plans

[41] See, e.g., *Bud Antel, Inc.* (2013) 39 ALRB No. 12, slip op. at 10 (burden is on employer to show how disclosure would injure business); *Richard A. Glass Co., Inc.* (1988) 14 ALRB No. 11, slip op. at 15-16 (Bare assertion of a trade secret or other grounds for confidentiality of information sought not adequate since Board must be permitted to balance the union's need for information against the legitimate and substantial confidentiality interests of the employer); see also *SBC California* (2005) 344 NLRB 243, 246 (insufficient evidence was cited in support of confidentiality assertion and it therefore fails).

[42] See, e.g., *Transcript Newspapers* (1987) 286 NLRB 124, 129-130 enfd (1st Cir. 1988) 856 F.2d 409; *Washington Star Co.* (1984) 273 NLRB 391, 397.

[43] See, *Tex-Cal Land Management, Inc.* (1986) 12 ALRB No. 26, slip op. 43-44 (employer's failure to provide production information about pruning so as to enable union to bargain over new rate was violation).

[44] See, e.g., *Oil, Chem. & Atomic Workers Local 6-418 (Minnesota Mining & Mfg. Co.) v. NLRB,* (D.C. Cir. 1983) 711 F.2d 348, 362 (Company's trade secret defense applied to only a small portion of requested information and could not justify total noncompliance. *Detroit Edison* "certainly affords no support for the proposition that an employer is absolutely privileged from revealing relevant proprietary or trade secret information.")

The UFW's request for specific information about employee health plans was honored a year later when Gerawan furnished such information. This information was necessary and presumptively relevant to the UFW's duties as exclusive bargaining representative.

Respondent argues that the issue of providing employee health plan information has already been litigated. In support of this argument, Respondent requests that administrative notice be taken of an order granting Gerawan's petition to revoke a two-item General Counsel pre-complaint investigative subpoena duces tecum in cases 2014-CE-024-VIS and 2015-CE-003-VIS. Gerawan's request is granted. In that ruling, Administrative Law Judge William L. Schmidt held that Gerawan had complied with the General Counsel's first request, which was for health benefit eligibility criteria for calendar years 2012, 2013, 2014, and 2015 by providing a page of its employee manual which described the criteria for workers to participate in the health care benefits together with a sworn statement from its compliance manager stating that the eligibility criteria previously furnished had not changed since May 2011. The second request was for all documents and communications between UFW and Gerawan regarding the health plan from November 1, 2012 to the present. Judge Schmidt held that demand for materials during this period was subsumed in the parties' Mandatory Mediation and Conciliation process and were irrelevant.

Having carefully considered the substance of Judge Schmidt's ruling, it is found inapplicable to the facts before me. First, the types of information sought by the investigative subpoena are different from the information sought by the UFW. The subpoena dealt with eligibility for health care and communications between Gerawan and UFW about health care. The UFW information request was for changes in employee health plans due to the ACA. Secondly, two separate entities are involved. In the investigative subpoena, the General Counsel sought information for potential litigation purposes – not by the UFW. The information requested by the UFW was relevant to its obligation to represent employees. Thus, for these reasons, Gerawan's argument that the issue in the current litigation was previously determined by Judge Schmidt is rejected.

Gerawan also argues that the one-year delay in providing the information was not unreasonable under the circumstances. The UFW requested the information in August 2014. Gerawan provided the information in August 2015.

Gerawan notes the parties' litigation from September 29, 2014 to March 12, 2015 as well as "numerous, burdensome requests for information such as a request related to all employees who worked for Gerawan in 2013, information related to close to 1,000 acres of crop changes, information related to all 2014 Gerawan employees . . ." as well as the health plan information. In light of these circumstances, Gerawan argues it was not reasonably possible to provide the information earlier.

Under the circumstances, however, one year constituted an unreasonable delay.[45] There is no evidence that Gerawan's compliance manager, who was involved in furnishing the responsive materials for the investigative subpoena was occupied with the lengthy litigation or the other information requests. As noted before, the fact that Respondent's lawyer was tasked with providing information does not provide a valid defense. Thus, Gerawan's argument that surrounding circumstances precluded turning attention to this matter for one year is rejected. A preponderance of the evidence indicates that no legitimate reason precluded a prompt response to this request. Thus, it is found that Respondent violated the Act by failing to timely respond to this request for information.

4. April 2015 Information Request Regarding Access to Gerawan Property

The UFW sought information regarding the reported presence of a known anti-union activist on Gerawan property in April 2015 in order to investigate filing a potential grievance or unfair labor practice charge alleging unlawful assistance in decertification activity. Gerawan did not provide any information. Barsamian testified at hearing that this was because no such information existed. However, the duty to provide information includes a duty to inform the bargaining representative that no such information exists.[46]

One of the myriad of duties of an exclusive bargaining representative is to monitor the workplace for the existence of potential grievances and unfair labor

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[45] Gerawan cites *Union Carbide Corp.* (1985) 275 NLRB 197, 201 in which the administrative law judge found that because there was no showing that the employer was dilatory or that the union was prejudiced by the delay, no violation occurred. The judge noted that the employer made a diligent search. The Board decision did not treat this finding and it is unclear that exceptions to it were filed. Nevertheless, the judge's decision is not persuasive regarding the facts of this case in that, apparently, Respondent here did conduct a search but failed to inform the Charging Party that there were no responsive documents.

[46] See, e.g., *Hanson Aggregates BMC, Inc.* (2008) 353 NLRB 287, 288 (if documents unavailable, there is a duty to explain or document the reasons).

practices. This access information request thus relates to employee conditions of employment and is necessary information to UFW's performance of its duties. Gerawan violated the Act by failure to respond to this request.

Nevertheless, Gerawan claims it has no duty to provide information because UFW's request was not supported by any factual basis, in that no location was provided. Gerawan agrees that a date, April 30, 2015, was provided in the UFW's second request for information dated May 1, 2015.[47] Thus, Gerawan asserts that the request was "unsubstantiated" and, in any event, there was no such information. These defenses are unavailing. The factual basis of the report was clearly identified. There is no evidence that Gerawan made any attempt to seek clarification at the time the request was made. Further, although there was testimony at the hearing that no such information existed, this was not conveyed to the UFW in a timely manner. Thus, it is concluded that Respondent violated the Act by failing to timely respond to the UFW's request for information.

B. Alleged Unilateral Changes

An employer must provide notice and an opportunity to bargain before altering a mandatory subject of bargaining.[48] Unilateral action harms the process of collective bargaining itself and minimizes the influence of organized bargaining by interfering with the right of self-organization, emphasizing to employees that there is no necessity for a bargaining representative.[49]

Employee health care and sick leave are mandatory subjects of bargaining.[50] It is well established that an employer who is compelled to make changes in terms and conditions of employment in order to comply with the mandates of another statute must nevertheless provide its employees' representative with notice and an

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[47] Respondent's Brief at p. 25, lines 18-19.

[48] *NLRB v. Katz*, (1962) 369 U.S. 736, 738, 743 (finding a violation "in fact" even in the absence of overall bad faith); see also *Warmerdam Packing* (1996) 22 ALRB No. 13, slip op. at 5 (Neither employer's motivation nor effect of a unilateral change is relevant to finding of violation because unilateral changes in mandatory subjects of bargaining are per se violations).

[49] *NLRB v. McClatchy Newspapers* (D.C. Cir. 1992) 964 F.2d 1153, 1162 (Concurrence of Edwards, Circuit Judge).

[50] See, e.g., *Mid-Continent Concrete* (2001) 336 NLRB 258, 259 (health care plan is mandatory subject of bargaining); see also, *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 159 and cases cited at fn. 2 (1971); *FirstEnergy Generation Corp.*, 358 NLRB 842, 848 (2012) (health care plan). Similarly, sick leave is a mandatory subject of bargaining. *NLRB v. Katz* (1962) 369 U.S. 736, 744.

opportunity to bargain over the discretionary aspects of the changes.[51] There is no dispute that Gerawan failed to notify UFW prior to implementing the health plan change in late 2014 and instituting the sick leave policy in July 2015. Neither the ACA nor the California Health Workplace Act insulate employers from the duty to bargain.

Gerawan asserts that UFW was aware of the statutory mandates for compliance with the ACA and the California Healthy Workplace Act but failed to request bargaining thus waiving that right. Thus, Gerawan claims that the UFW's general knowledge of the upcoming statutory changes constituted clear notice. This argument fails. General awareness of upcoming statutory implementation does not constitute clear notice required to satisfy the duty to bargain in good faith.[52] Waiver of bargaining rights requires clear and unmistakable conduct.[53] Specifically, proof of waiver requires clear and unequivocal notice such that the union's subsequent failure to demand bargaining constitutes a "conscious relinquishment" of the right to bargain.[54] There was no notice at all much less clear and unequivocal notice. Thus, Gerawan's waiver argument is rejected.

Gerawan further argues that even if there was a duty to bargain in general, because the employer has no discretion regarding the change, no duty to bargain attaches to these statutory mandates. Gerawan distinguishes *Western Cab*, supra, because in that case the employer made discretionary changes. Gerawan asserts that it made no discretionary changes to its prior health plan offerings or eligibility

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[51] *Western Cab Company*, (2017) 365 NLRB No. 78, slip op. at 5-6, noting that the ACA appears to offer flexibility as to how an employer can satisfy the requirements of the ACA. See generally Shared Responsibility for Employers Regarding Health Coverage, 79 Fed. Reg. 8544 (Feb. 12, 2014) publishing Final Rule amending 26 C.F.R. Parts 1, 54, and 301 (noting different methods to establish that a plan satisfies minimum value and affordability criteria. See also cases cited by UFW: *Watsonville Register-Pajaronian*, 327 NLRB 957, 958-959 (1999) (FLSA overtime provisions do not excuse failure to bargain regarding employee schedules); *Keystone Consolidated Industries, Inc.*, 309 NLRB 294, 297 fn. 7, 298 (1992), rev'd on other grounds, 41 F.3d 746 (D.C. Cir. 1994) (ERISA did not excuse refusal to bargain over changes to pension plan); *Foodway*, (1978) I234 NLRB 72, 77-78 (mandate of other statutes may serve to limit the area of discretion to be exercised in fulfilling the bargaining obligation but does not minimize or obviate duty to bargain).

[52] Notice of a contemplated unilateral change in employee working conditions must be formally given. *NLRB v. Rapid Bindery, Inc.* (2d Cir. 1961) 293 F.2d. 170, 176: "[C]onjecture or rumor is not an adequate substitute for an employer's formal notice to a union." Moreover, notice must be given to a union agent authorized for this purpose. *California Portland Cement Co. v. NLRB* (9th Cir. 2001) 19 Fed.Appx. 683, 684-685 (enforcing Board's finding that notice given to union steward was inadequate as the steward was not the union's agent for purposes of receiving notice of unilateral changes in job duties).

[53] *Metropolitan Edison Co. v. NLRB* (1983) 460 U.S. 693, 708 n. 12.

[54] See, e.g., *NL Industries, Inc.*, (1975) 220 NLRB 41, 43 enfd (8th Cir. 1976) 536 F.2d 786.

criteria other than to make the plans available to additional employees as required by the ACA. It argues that it made no changes to the statutory requirements of the sick leave policy and, accordingly, there was nothing discretionary to bargain about regarding sick leave as well.

There is no dispute that Gerawan failed to notify UFW that it was going to implement a sick leave policy or make a change to health care premium amounts. There is further no dispute that Gerawan failed to bargain with UFW prior to implementation of the health care premium change or the sick leave policy. Accordingly, it is found that Gerawan's failure to notify and provide UFW with an opportunity to bargain over the discretionary aspects of the changes to its health care premium and implementation of its sick leave plans prior to unilateral implementation violates the Act.

## CONCLUSIONS OF LAW

1. By failing or delaying to provide necessary and relevant information to the UFW regarding documents employees were required to sign on December 7, 2012; detailed information about crop acreage pulling and planting changes and impact on employee pay in 2014 and 2015; information regarding employee health care plans in 2014; and documents which authorized non-employee access to property in April 2015, Gerawan violated Section 1153(a) and (e) of the Act.
2. By unilaterally implementing changes to its health care premium in December 2014 and unilaterally implementing a sick leave policy in July 2015, Gerawan failed to provide notice and an opportunity to bargain about discretionary aspects of these legislatively-mandated programs in violation of Section 1153(a) and (e) of the Act.

## REMEDY

Having concluded that Respondent violated the Act as alleged in the General Counsel's complaint, it will be ordered to cease and desist from the unlawful conduct and take certain affirmative action to remedy the unlawful conduct.

Information Requests

Respondent must produce, on request, the information it has withheld. Respondent will also be required to grant ALRB agents access to work sites where their agricultural employees are employed at mutually arranged times to provide a reading of the attached Notice outside the presence of supervisory personnel. Following the reading, Respondent's agricultural employees must be provided a reasonable period in which to ask questions of the ALRB agents about the Notice or about their rights under the Act. Respondent shall compensate the time spent during the reading and the question and answer period at the employees' regular hourly rates, or each employee's average hourly rate based on their piece-rate production during the prior pay period.

Unilateral Implementation of Health Care Plan and Sick Leave Policy

Violations of the Act have been found in unilaterally implementing changes to an ACA-mandated health care plan and unilaterally implementing a sick leave policy to comply with the California Healthy Workplace Act. Although there was ACA health insurance prior to Respondent's unilateral changes to the plan, in this somewhat novel situation, the General Counsel argues that, on request, Respondent rescind the unlawfully implemented changes to its ACA-mandated health care plan as far as permissible by law.

It is unclear on this record whether the changes made in December 2014 to the ACA-mandated plan were required by ACA or were discretionary changes made by Respondent. Thus, it is unclear whether Respondent could restore the status quo ante without depriving employees of the changes to their health insurance and running afoul of the ACA. Thus, no rescission order is recommended.[55] If, however, it is determined in compliance that any employee was negatively affected by Respondent's refusal to bargain over a discretionary aspect of the implementation, Respondent shall make such employee whole for losses attributable to the Respondent's unlawful conduct. Such amounts shall include interest thereon, computed in accordance with *H & R Gunlund Ranches*,

[55] See, *Western Cab*, supra, 365 NLRB No. 78, slip op. at 3, "In view of the absence of a request for rescission, along with the fact that it is unclear how the Respondents might restore the status quo ante without depriving recently-hired employees of health insurance, we shall not order rescission of the changes."

*Inc.* (2013) 39 ALRB No. 21. It is recommended that, on request, Respondent be ordered to negotiate with UFW regarding those changes to the health insurance plan that allow for discretion or flexibility.

Similarly, the General Counsel requests that Respondent, upon request, rescind its unilaterally implemented sick leave plan as far as permissible by law. Respondent did not provide sick leave prior to unilateral implementation of the plan. It is unclear how Respondent could restore the status quo ante without depriving employees with sick leave and potentially violating the California Healthy Workplace Act. Thus, no rescission order is recommended.

As far as a make whole remedy for the unilateral change in sick leave, none appears warranted under the particular facts of this case. Prior to the unilateral change, Respondents did not provide sick leave.

On these findings of fact, conclusions of law, and the entire record, the following order is recommended:

## ORDER

Pursuant to Labor Code section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board (Board) ORDERS that Respondent Gerawan Farming, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

   (a) Failing to bargain in good faith in violation of section 1153(a) and (e) of the Act by failing and refusing to provide United Farm Workers of America (UFW), the certified bargaining representative with necessary and relevant information.
   (b) Failing to bargain in good faith in violation of section 1153(a) and (e) of the Act by unilaterally implementing a health care plan and a sick leave policy without prior notification to the UFW or providing UFW an opportunity to negotiate about discretionary aspects of such plans.
   (c) In any like or related manner interfering with, restraining, or coercing its agricultural employees in the exercise of the rights guaranteed them by section 1152 of the Agricultural Labor Relations Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:
   (a) Upon request, make available to UFW the relevant and necessary information requested.
   (b) Upon request, bargain in good faith with UFW regarding discretionary changes in health plans and sick leave.
   (c) Upon request of the Regional Director, sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.
   (d) Post copies of the Notice in all appropriate languages at conspicuous places on Respondent's property, including places where notices to employees are usually posted, for sixty (60) days, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copies of the Notice which may be altered, defaced, covered or removed. Pursuant to the authority granted under section 1151(a) of the Act, give agents of the Board access to tis premises to confirm the posting of the Notice.
   (e) Mail signed copies of the attached Notice in all appropriate languages within 30 days after the date this Order becomes final or thereafter if directed by the Regional Director to the last known address of all agricultural employees it employed, including those employed by farm labor contractors, during the planting and harvesting periods or other relevant periods of employment from November 2012 to September 2015.
   (f) Grant ALRB agents access to work sites where the agricultural employees in the bargaining unit work at mutually arranged times in order to read the attached Notice to them and to answer questions employees may have about their rights under the Act outside the presence of supervisory personnel.
   (g) Compensate employees for the time spent during the Notice reading and the following question and answer period at the employees' regular hourly rates, or each employee's average hourly rate based on their piece-rate production during the prior pay period.
   (h) Provide access during the notice-posting period to ALRB agents to ensure compliance with the notice-posting requirements of this ORDER.

(i) Provide a signed copy of the Notice to each person it hired for work as an agricultural employee during the 12-month period following the issuance of the ALRB's Order in this case.

(j) Notify the Regional Director in writing within thirty (30) days after the date of issuance of this Order of the steps Respondents have taken to comply with the terms and, on request, also notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order until notified that full compliance has been achieved.

DATED: _____

Mary Miller Cracraft
Administrative Law Judge
Agricultural Labor Relations Board

NOTICE TO AGRICULTURAL EMPLOYEES

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves.
2. To form, join, or help a labor organization or bargaining representative.
3. To vote in a secret ballot election to decide whether you want a union to represent you.
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board.
5. To act together with other workers to help and protect one another.
6. To decide not to do any of these things.

Because you have these rights, we promise that:

WE WILL NOT refuse to provide the United Farm Workers of America (UFW) with information necessary for it duties as your exclusive representative.
WE WILL NOT make changes in your health care or sick leave without first giving the UFW notice and an opportunity to bargain.
WE WILL NOT in any like or related manner, refuse to bargain with the Union over wages, hours or conditions of employment, or interfere with, restrain or coerce employees from exercising their right under the Act
WE WILL make available to UFW the necessary and relevant information it has requested.
WE WILL, on request, bargain with UFW about changes to your health care and sick leave.

DATED:

GERAWAN FARMING, INC.
By

_____

Representative Title

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board.