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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

**UNITED FARM WORKERS OF
AMERICA,**

Respondent,

and

AUGUSTIN GARCIA,

Charging Party

GERAWAN FARMING, INC.

Intervenor

**Case No.: 2018-CL-003-VIS
[45 ALRB No. 4]**

**RECOMMENDED DECISION AND
ORDER ON REMAND**

On June 19, 2019, the Agricultural Labor Relations Board (the Board) issued its Decision and Order in this matter, reported at 45 ALRB No. 4. The Board affirmed certain recommended findings and conclusions and reversed others.

Thus, the Board affirmed the recommended conclusion of law that United Farm Workers of America (UFW) violated Labor Code section 1154(h),¹ the first cause of action set forth in the complaint. However, the Board reversed the recommended conclusion of law that UFW violated section 1154(a)(1) and (a)(2), the second and third causes of action set forth in the complaint. These two causes

¹ California Agricultural Labor Relations Act, Labor Code §§ 1140-1166.3 as amended, effective January 1, 2012.

1 of action were remanded for further proceedings consistent with the Board's
2 Decision.²

3 Further, the Board reversed the recommended conclusion that notice
4 mailing and reading remedies were not appropriate. Finally, the Board ordered that
5 UFW must provide a copy of the notice to agricultural employees hired in the
6 twelve-month period following the Board's final decision.

7 Pursuant to the Board's Decision, it is hereby recommended that the
8 second and third causes of action be dismissed for the reasons stated by the Board.
9 The following revised findings of fact, conclusions of law, remedy, recommended
10 Order, and recommended Notice are set forth pursuant to the remand.

11 Findings of Fact³

- 12 1. On December 10, 2018, agricultural worker Garcia properly filed and
13 served unfair labor practice charge (Charge) 2018-CL-003-VIS. The Charge
14 alleges that on November 13, 2018, the UFW violated the Act when it
15 threatened to picket Intervenor Gerawan Farming, Inc. (Gerawan) if it
16 should refuse to recognize and bargain with the UFW. The Charge was filed
17 within the statute of limitations contained in Labor Code §1160.2 and was
18 served on the UFW by certified mail return receipt requested on December
19 10, 2018.
- 20 2. At all material times, UFW was a labor organization within the meaning of
21 Labor Code §1140.4(f). However, on December 10, 2018, UFW was not the
22 certified representative of Gerawan agricultural employees, as defined by
23 Labor Code §1140.4(b), where charging party Garcia was employed.

24
25 ² The Board cited *Hernandez v. County of San Bernardino* (2004) 117 Cal.App.4th 1055, 1057
26 (lower court erred in granting motion for judgment on the pleadings based on undeveloped factual record).

³ These findings of fact are substantively identical to those set forth in the prior ALJ Order
Granting General Counsel's motion for judgment on the pleadings.

- 1 3. At all material times, Garcia was an agricultural worker as defined in
2 §1140.4(b) of the Act, and employed by Gerawan.
- 3 4. On October 25, 2013, Silvia Lopez filed a petition to decertify UFW as the
4 bargaining representative of the agricultural employees of Gerawan. The
5 ALRB ordered that an election be held and the ballots cast in the election be
6 impounded. The election took place on November 5, 2013.
- 7 5. Following a hearing on election objections and related unfair labor practice
8 allegations, an administrative law judge (ALJ) determined that Gerawan
9 committed multiple unfair labor practices and engaged in other objectionable
10 conduct by providing unlawful assistance to the efforts to decertify the
11 UFW. Due to the pervasive nature of the misconduct found, the ALJ
12 recommended dismissing the decertification petition and setting aside the
13 election. The ALRB affirmed and reversed various of the ALJ findings
14 holding that Gerawan's unlawful and/or objectionable conduct tainted the
15 entire decertification process, thus dismissing the petition and setting aside
16 the election. (*Gerawan Farming, Inc.* (2016) 42 ALRB No. 1.)
- 17 6. On May 30, 2018, the California Court of Appeal for the Fifth Appellate
18 District issued an opinion reversing certain portions of the ALRB's unfair
19 labor practice findings in *Gerawan Farming, supra*, and vacating the
20 ALRB's order dismissing the decertification petition and setting aside the
21 election. (*Gerawan Farming, Inc. v. ALRB* (2018) 23 Cal.App.5th 1129.)
22 The appellate court remanded the matter to the ALRB to open and count the
23 ballots cast in the 2013 election and to reconsider the ALRB decision in light
24 of its opinion.
- 25 7. On September 14, 2018, the ALRB issued an intervening administrative
26 order directing the vote count and pursuant to that order, Regional Director

1 Chris Schneider directed that the votes be opened and counted on September
2 18, 2018, yielding the following results:

- 3 • 197 for the UFW
- 4 • 1098 for the “No Union” choice
- 5 • 660 unresolved challenged ballots
- 6 • 18 voided ballots

7 8. After the vote count, the ALRB evaluated the record on remand and found
8 that the unlawful and/or objectionable conduct committed by Gerawan did
9 not interfere with the employees’ free choice to such an extent that it
10 affected the outcome of the election. Therefore, the ALRB certified that a
11 majority of the valid ballots indicated “No Union” in the representation
12 election and decertified the UFW as the exclusive bargaining representative
13 of the Gerawan agricultural employees.

14 9. On September 27, 2018, the ALRB issued its supplemental decision and
15 order in *Gerawan Farming, Inc.* (2018) 44 ALRB No. 10 wherein it attested
16 to the decertification vote count and totals cited above.

17 10. On November 13, 2018, Armando Elenes, National Vice President of the
18 UFW sent a letter to Gerawan’s counsel Ron Barsamian in which Mr. Elenes
19 stated:

20 Pursuant to the UFW’s role as a collective bargaining
21 representative of Gerawan’s employees, we request to meet and
22 bargain in an attempt to finalize a collective bargaining agreement
23 between UFW and Gerawan Farming. As you know, we believe the
24 Board’s decertification of UFW was made in error, is invalid as a
25 matter of law, and has no legal force or effect. Should Gerawan
26 refuse to meet and bargain, UFW will file charges and will also
picket Gerawan at any and all public locations and retailers, in
order to be recognized as the lawful representative of Gerawan’s
employees.

1 11. On December 10, 2018, charging party Garcia filed charge 2018-CL-003-
2 VIS alleging that the UFW committed an unfair labor practice in threatening
3 to picket Gerawan absent a certification as the employees' collective
4 bargaining representative.

5 12. In a letter dated December 13, 2018, and addressed to Chris Schneider,
6 Regional Director of the ALRB in the Visalia region, UFW counsel Mario
7 Martinez stated:

8 UFW is in receipt of the . . . charge that UFW has violated the
9 ALRA by requesting that Gerawan recognize and bargain with
10 UFW and threatening to picket Gerawan. . . . UFW admits to
11 violating the Act, including Labor Code sections 1154(g) and/or (h)
12 as a means to seek review of the ALRB decision in *Gerawan*
13 *Farming, Inc.* (2018) 44 ALRB No. 10. . . . UFW believes that
14 decision by the ALRB was made in error and seeks to challenge
15 that decision. UFW has no other means to seek review of that
16 decision, other than by engaging in this technical violation of the
17 Act.

18 Revised Conclusions of Law

19 By the actions set forth in Findings of Fact 5-12, UFW committed an
20 unfair labor practice in violation of Section 1154(h) when it threatened to
21 picket at Gerawan thus threatening Gerawan with picketing to force or
22 require Gerawan to recognize UFW as the bargaining representative of
23 Gerawan employees despite its decertification pursuant to the 2013 election.

24 By the actions set forth in Findings of Fact 5-12, UFW did not commit
25 an unfair labor practice in violation of Section 1154(a)(1) and (a)(2) and it is
26 recommended that these allegations be dismissed. As the Board stated, the
27 complaint alleges no facts to support a finding the UFW's picketing threat to
Gerawan in any way restrained or coerced employees in their choice of a
labor organization. Further, as the Board stated, the complaint contains no

1 facts that would support a finding that UFW's picketing threat to Gerawan in
2 any way restrained or coerced Gerawan in the selection of its own
3 representatives for purposes of collective bargaining or adjusting
4 grievances.⁴

5 Revised Remedy

6 In addition to the cease and desist portions of the recommended order,
7 the Board found that mailing and reading of the notice was appropriate in
8 this case.⁵ The Board further found that UFW should be ordered to provide a
9 copy of the notice to agricultural employees hired at Gerawan during the
10 twelve-month period following the Board's final decision.⁶ The
11 recommended order below has been revised to add these remedies.

12 REVISED RECOMMENDED ORDER

13 Pursuant to Labor Code section 1160.3, Respondent United Farm
14 Workers of America, its officer, agents, successors, and assigns shall:

15 1. Cease and desist from:

16 (a) Threatening to picket or cause to be picketed Gerawan Farming,
17 Inc. or any other agricultural employer where the object thereof is
18 to force or require the employer to recognize or bargain with a
19 labor organization that is not currently certified as the bargaining
20 representative of its agricultural employees.

21 (b) In any like or related manner restrain or coerce employees in the
22 exercise of their rights guaranteed by section 1152 of the
23 Agricultural Labor Relations Act.

24
25 _____
26 ⁴ *United Farm Workers of America* (2019) 45 ALRB No. 4, pp. 16-19.

⁵ *Id.*, 45 ALRB No. 4, pp. 19-20.

⁶ *Id.*, 45 ALRB No. 4 at p. 20.

1 2. Take the following affirmative actions that are deemed necessary to
2 effectuate the purposes of the Act:

3 (a) Within 30 days after this Order becomes final, sign the attached
4 Notice to Agricultural Employees and after its translation by an
5 ALRB agent into appropriate languages, reproduce sufficient
6 copies in each language for the purposes set forth below.

7 (b) Within 30 days after this Order becomes final, post copies of the
8 attached Notice, in all appropriate languages, in conspicuous
9 places at UFW's business offices, meeting halls, and bulletin
10 boards, as well as at locations provided to UFW by Gerawan
11 Farming, Inc., such places to be determined by the Regional
12 Director, and exercise due care to replace any Notice which has
13 been altered, defaced, covered, or removed. Pursuant to Labor
14 Code section 1151(a), agents of the ALRB shall have access to
15 confirm the posting of the Notices.

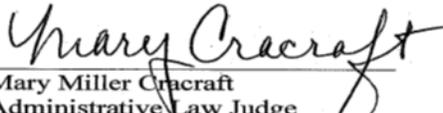
16 (c) Notify the Regional Director in writing, within 30 days after the
17 date this Order becomes final, of the steps UFW has taken to
18 comply with its terms. Upon request of the Regional Director,
19 UFW shall notify the Regional Director periodically thereafter in
20 writing of further actions to comply with the terms of this Order.

21 (d) Mail signed copies of the attached Notice in all appropriate languages
22 within 30 days after the date this Order becomes final or thereafter if
23 directed by the Regional Director to the last known address of all
24 agricultural employees it employed, including those employed by farm
25 labor contractors, during the planting and harvesting periods or other
26 relevant periods of employment from November 13, 2018 to date.

- 1 (e) Grant ALRB agents access to work sites where the agricultural
2 employees work at mutually arranged times in order to distribute and
3 read the attached Notice to them and to answer questions employees may
4 have about their rights under the Act outside the presence of supervisory
5 personnel.
- 6 (f) Compensate employees for the time spent during the Notice reading and
7 the following question and answer period at the employees' regular
8 hourly rates, or each employee's average hourly rate based on their piece-
9 rate production during the prior pay period.
- 10 (g) Provide access during the notice-posting period to ALRB agents to
11 ensure compliance with the notice-posting requirements of this Order.
- 12 (h) Provide a signed copy of the Notice to each person it hired for work as an
13 agricultural employee during the 12-month period following the issuance
14 of the Board's Order in this case.
- 15 (i) Notify the Regional Director in writing within thirty (30) days after the
16 date of issuance of this Order of the steps Respondents have taken to
17 comply with the terms and, on request, notify the Regional Director
18 periodically in writing of further actions taken to comply with the terms
19 of this Order until notified that full compliance has been achieved.

20
21 Dated: July 17, 2019

22 **SO ORDERED**

23 
24 Mary Miller Cracraft
25 Administrative Law Judge
26 Agricultural Labor Relations Board

1 **NOTICE TO AGRICULTURAL EMPLOYEES**

2 After investigating charges that were filed by Augustin Garcia with the Visalia office of the
3 Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a
4 complaint that we had violated the law. Based on the admitted facts and record, the ALRB found
5 that we violated that Agricultural Labor Relations Act (ALRA) by threatening to picket if
Gerawan Farming, Inc. refused to bargain even though we were not certified by the ALRB as
your bargaining representative.

6 The ALRB has told us to post and publish this Notice.

7 The ALRA is a law that gives you and all other farm workers in California these rights:

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

15 Because you have these rights, we promise that:

16 WE WILL NOT demand to bargain or threaten to picket if an agricultural employer refuses to
17 bargain if we have not been certified by the ALRB as the bargaining representative.

18 WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in
19 their exercise of rights guaranteed under the ALRA.

20 DATED:

21 UNITED FARM WORKERS OF AMERICA`

22 By _____
23 Representative Title

24 If you have any questions about your rights as farm workers or about this Notice, you may
25 contact any office of the Agricultural Labor Relations Board. One office is located at 1642 West
26 Walnut Avenue, Visalia, California. The telephone number is 559-627-0995.

27 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 ON REMAND

UNITED FARM WORKERS OF AMERICA 45 ALRB No. 4
(Agustin Garcia) Case No. 2018-CL-003-VIS

Background

On June 19, 2019, the Board issued its Decision and Order affirming certain portions of the recommended Order of the Administrative Law Judge (ALJ) granting judgment on the pleadings. Specifically, the Board affirmed that charging party Agustin Garcia (Garcia) had standing to file the unfair labor practice charge. The Board also agreed that Gerawan Farming, Inc. (Gerawan) was not entitled to a hearing on its allegations of collusion between Garcia and United Farm Workers of America (UFW). Further, the Board concluded that UFW's picketing threat violated Labor Code section 1154(h).

The Board reversed the ALJ's recommended conclusion that UFW violated Labor Code section 1154(a)(1) and (a)(2) because the undisputed allegations failed to establish that UFW's conduct violated these provisions. Additionally, the Board concluded that Notice mailing and reading remedies were appropriate in this case and also required providing a copy of the Notice to employees hired during the twelve-month period after the final decision in this matter.

ALJ Decision

On remand, for the reasons stated by the Board, the ALJ entered a conclusion of law that UFW did not violate Labor Code section 1154(a)(1) and (a)(2). The ALJ also incorporated the Board's additional remedies requiring Notice mailing and reading as well as Notices to newly-hired employees for a twelve-month period.