STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA, Respondent, and AGUSTIN GARCIA, Charging Party, and GERAWAN FARMING, INC., Intervenor.	)	Case No. 2018-CL-003-VIS (45 ALRB Nos. 4, 8) ORDER DENYING INTERVENOR GERAWAN FARMING, INC.'S REQUEST FOR APPELLATE COSTS Administrative Order No. 2022-02 (May 24, 2022)

On April 27, 2022, intervenor Gerawan Farming, Inc. (Gerawan) filed with the Agricultural Labor Relations Board (ALRB or Board) a memorandum of costs on appeal. As discussed below, Gerawan's attempt to recover its litigation costs is DENIED.

BACKGROUND

Respondent United Farm Workers of America (UFW) was decertified as the bargaining representative of Gerawan's agricultural employees in *Gerawan Farming, Inc.* (2018) 44 ALRB No. 10. In an effort to seek judicial review of the Board's decertification decision, the UFW threatened to picket Gerawan if it did not recognize and bargain with the union. We held that threat unlawful in *United Farm Workers of America (Garcia)* (2019) 45 ALRB No. 4, and following a brief remand to the administrative law judge we

issued a remedial order in *United Farm Workers of America (Garcia)* (2019) 45 ALRB No. 8. Pursuant to Labor Code sections 1158 and 1160.8, the UFW sought judicial review of our decertification decision in the Fifth District Court of Appeal. The court affirmed the Board's decisions in an unpublished opinion. (*UFW v. ALRB* (Feb. 18, 2022, F080469) 2022 Cal. App. Unpub. LEXIS 1020.)[1] The UFW did not seek review in the California Supreme Court, and the appellate court issued its remittitur on April 20, 2022. The court's opinion and remittitur specify the Board and Gerawan are awarded their costs.

On April 27, Gerawan filed with the Board a memorandum of costs on appeal in the amount of $651.35.[2]

DISCUSSION

The Board has no authority to award appellate litigation costs. (*Gerawan Farming, Inc*. (Nov. 19, 2018) ALRB Admin. Order No. 2018-05, p. 4.) Normally, when appellate courts award costs to prevailing parties, procedures for determining the amount of recoverable costs occur in the superior court. (Cal. Rules of Court, rules 8.278(c)(1), 8.493(a).) These rules are inapplicable in original proceedings initiated in the courts of appeal, including petitions seeking review of our unfair labor practice decisions under Labor Code section 1160.8. However, this does not mean the Board has the authority to stand in the place of a superior court for purposes of determining appellate costs.

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[1] The opinion also is available at: <https://www.courts.ca.gov/opinions/nonpub/F080469.PDF>.

[2] Gerawan electronically filed its cost bill at about 4:32 p.m. on April 26, 2022. Per Board regulation 20169, subdivision (a)(4), the document is deemed filed the next business day. (Cal. Code Regs., tit. 8, § 20169, subd. (a)(4).)

Furthermore, the absence of a superior court with jurisdiction to award costs does not deprive the litigant of the ability to have costs awarded by the appropriate court. California courts have examined the procedure for recovering costs in original proceedings in the appellate courts and have found that in such cases it is incumbent on a party to pursue any claimed entitlement to costs or attorneys' fees in the appellate court before issuance of the remittitur.[3] (*Cumero v. PERB* (1985) 49 Cal.3d 575, 606-607; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103; *Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1202.) In *Cumero* and *Harbor*, the California Supreme Court expressly instructed the appellate courts to determine claims for attorneys' fees under Code of Civil Procedure section 1021.5 because the cases involved original proceedings initiated in the appellate courts. (*Cumero*, *supra*, 49 Cal.3d at p. 607; *Harbor*, *supra*, 43 Cal.3d at p. 1103.) In a similar context, the appellate court in *Swoap* recognized its authority to determine the amount of costs and fees recoverable by the prevailing party in the absence of any trial court proceeding to which the parties would return upon conclusion of the appellate proceeding. (*Swoap*, *supra*, 173 Cal.App.3d at p. 1202.)

Accordingly, Gerawan should have pursued recovery of its appellate costs before the court of appeal prior to issuance of the remittitur. In any event, the Board has no authority to determine a prevailing party's recoverable litigation costs or fees. Only a court

[3] Indeed, issuance of the remittitur formally terminates the appellate court's jurisdiction over the case. (*Gallenkamp v. Superior Court* (1990) 221 Cal.App.3d 1, 10.) Thus, it is impractical to attempt to follow the timeframe for filing a cost bill as stated in California Rules of Court, rule 8.278(c)(1), which contemplates filing in the trial court after the appellate court's remittitur.

may do so.

ORDER

For the foregoing reasons, Gerawan's request for the Board to determine its recoverable appellate costs pursuant to the appellate court's opinion is DENIED.

DATED: May 24, 2022

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE

(Code Civ. Proc.,§§ 1013a, 2015.5)

Case Name: UNITED FARM WORKERS OF AMERICA, Respondent, and,
AGUSTIN GARCIA, Charging Party, and,
GERAWAN FARMING, INC., Intervenor.

Case No.: 2018-CL-003-VIS
(45 ALRB Nos. 4, 8)

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the above-entitled action. My business address is 1325 J Street, Suite 1900-B, Sacramento, California 95814.

On **May 24, 2022,** I served the within **ORDER DENYING INTERVENOR GERAWAN FARMING, INC.'S REQUEST FOR APPELLATE COSTS** on the parties in the above-entitled action as follows:

By Email and Certified Mail by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, with return receipt requested, in the United States mail at Sacramento, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 24, 2022**, at Sacramento, California.

Devaka R. Gunawardena