

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,)	Case Nos.	2012-CE-041-VIS
)		2013-CE-007-VIS
Respondent,)		2013-CE-010-VIS
)		(44 ALRB No. 1)
and)		(49 ALRB No. 2)
)		
UNITED FARM WORKERS OF)		
AMERICA,)		
)	50 ALRB No. 1	
Charging Party.)		
)	(July 9, 2024)	
_____)		

DECISION AND ORDER

In *Gerawan Farming, Inc.* (2018) 44 ALRB No. 1, the Agricultural Labor Relations Board (ALRB or Board) found that respondent Gerawan Farming, Inc. (Gerawan) violated section 1153, subdivision (e) of the Agricultural Labor Relations Act (ALRA or Act)¹ by engaging in bad faith “surface bargaining” during the period from January 2013 to August 2013. In addition, the Board found that Gerawan violated section 1153, subdivision (e) by proposing and insisting on the exclusion of workers employed by farm labor contractors (FLCs) from the terms of any collective bargaining agreement reached between Gerawan and charging party United Farm Workers of America (UFW). As a remedy for these violations, the Board ordered that a bargaining makewhole remedy be paid to Gerawan’s agricultural employees who worked during the period January 18,

¹ The ALRA is codified at Labor Code section 1140 et seq.

2013, to June 30, 2013, in addition to standard noticing remedies. (*Gerawan Farming, Inc., supra*, 44 ALRB No. 1, p. 59.) Gerawan sought review of the Board’s decision and order in the Fifth District Court of Appeal, and the court affirmed the Board’s order. (*Gerawan Farming, Inc. v. ALRB* (2020) 52 Cal.App.5th 141, rev. den. Oct. 8, 2020, S264099.)

This matter was released to the Board’s Visalia Regional Office for compliance with the Board’s order on October 30, 2020. On December 13, 2021, the regional director issued a makewhole specification setting forth a makewhole amount of \$4,867,702.54, plus interest. The formula used to calculate this amount was based on average wages and benefits found in 23 collective bargaining agreements between the UFW and various employers that were in effect during the makewhole period. This formula or methodology for calculating makewhole is referred to throughout the parties’ filings as the contract averaging method or CAM.

Gerawan’s answer to the makewhole specification opposed the region’s method of calculating the specification and argued that the terms of the parties’ 2013 mandatory mediation and conciliation (MMC) contract supplied most reasonable measure of makewhole owed the workers.²

² As discussed in our underlying decision in this matter (see *Gerawan Farming, Inc., supra*, 44 ALRB No. 1, p. 4), the parties participated in MMC proceedings with a mediator during the summer of 2013, including two “on-the-record” sessions in August 2013. The mediator issued a report to the Board in September 2013 resolving the terms in dispute between the parties and setting the terms of a final contract. Gerawan sought review of the mediator’s report, which the Board granted in several respects. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 16.) On remand from the Board, the parties met with

Following a hearing on the makewhole specification, the administrative law judge (ALJ) issued a recommended decision. The ALJ found the regional director met her burden of establishing that the makewhole formula used to calculate the remedy was reasonable and that Gerawan failed to meet its burden of showing that the regional director's formula was unreasonable, arbitrary, or inconsistent with Board precedent. The ALJ also concluded that Gerawan failed to establish that there was a more appropriate method of calculating bargaining makewhole.

On June 22, 2023, the Board issued its decision in *Gerawan Farming, Inc.* (2023) 49 ALRB No. 2. The Board reversed the ALJ and concluded that the MMC contract provided the most appropriate and reasonable measure of makewhole in this case.³ The Board remanded the matter to the region for the issuance of a revised bargaining makewhole specification calculated in accordance with its decision.

On May 29, 2024, the regional director issued an amended makewhole specification. The amended specification sets forth a revised makewhole amount of

the mediator and resolved the final outstanding terms of the contract. The mediator then issued another report to the Board, and on November 19, 2013, the Board ordered the MMC contract into effect between the parties. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 17.) Gerawan thereafter sought judicial review of the Board's order and challenged the constitutionality of the MMC statute. The California Supreme Court upheld the MMC statute in *Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118. Ultimately, the contract was never implemented, and the UFW subsequently was decertified as the exclusive bargaining representative of Gerawan's agricultural employees in *Gerawan Farming, Inc.* (2018) 44 ALRB No. 10.

³ Members Lightstone and Flores dissented from the majority opinion and stated that they would have affirmed the ALJ's decision approving the use of the contract averaging method in this case.

\$1,193,733.25, including interest calculated through January 31, 2024.⁴ Attached as Exhibit “A” to the amended makewhole specification is a spreadsheet showing makewhole calculations for 4,617 individuals -- direct hires and farm labor contractor employees -- who worked for Gerawan at some point between January 18, 2013, and June 30, 2013. The total gross payroll for the period in question was \$17,575,432.38. The amended specification shows that Gerawan owes \$715,618.92 in makewhole for wages and benefits, and \$478,114.32 in interest computed in accordance with *Kentucky River Medical Center* (2010) 356 NLRB No. 8 and calculated through January 31, 2024. Interest continues to accrue daily until the total amount due to workers is paid.

Pursuant to Board regulation 20292,⁵ and the Board’s order in *Gerawan Farming, Inc.*, *supra*, 49 ALRB No. 2, pages 27-28, Gerawan had the opportunity to file an answer to the specification on or before June 13, 2024. No answer was filed.

⁴ On September 25, 2019, Gerawan and Wawona Packing Co., LLC (Wawona), announced that they had completed a merger. The new company, Prima Wawona, was owned by private equity firm Paine Schwartz Partners, which had purchased Wawona Packing in 2017. Paine Schwartz owns Wawona Delaware Holdings, LLC, which in turn owns a 75% share of MVK Farm Co LLC, a Delaware limited liability company. On October 13, 2023, MVK Farm Co LLC filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware (case no. 23-11721-LSS). On November 1, 2023, Gerawan filed a notice of bankruptcy and automatic stay in several ALRB cases currently in the compliance process, including the above-captioned makewhole matter. According to Gerawan, the filing of the bankruptcy case automatically stays all proceedings by the ALRB in all matters involving it. In *Gerawan Farming, Inc.* (Nov. 14, 2023) ALRB Administrative Order No. 2023-12-P, the Board found this matter to be exempt from the automatic bankruptcy stay, rejecting Gerawan’s argument that permission from the bankruptcy court is required to continue with further proceedings in this case and directing the regional staff to proceed with compliance.

⁵ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

The regional director's amended specification meets the requirements of Board regulation 20291, subdivision (b) and conforms to the Board's decision in *Gerawan Farming, Inc., supra*, 49 ALRB No. 2. Therefore, the Board adopts the regional director's amended makewhole specification.

ORDER

It is hereby ordered that respondent Gerawan Farming, Inc. pay bargaining makewhole to the employees set forth in the makewhole specification issued by the regional director on May 29, 2024, in the amount of \$715,618.92, plus interest, for the period, January 18, 2013, and June 30, 2013.

DATED: July 9, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia Flores, Member

CASE SUMMARY

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

Case Nos. 2012-CE-041-VIS
2013-CE-007-VIS
2013-CE-010-VIS
44 ALRB No. 1
49 ALRB No. 2
50 ALRB No. 1

Amended Makewhole Specification

On May 29, 2024, the regional director filed an amended makewhole specification with the Agricultural Labor Relations Board (ALRB or Board) pursuant to the Board's decision in *Gerawan Farming, Inc.* (2023) 49 ALRB No. 2. The Board in that decision reversed an administrative law judge's (ALJ) decision recommending adoption of the makewhole specification originally issued by the regional director based on a contract averaging approach. The amended specification sets forth a revised makewhole amount of \$1,193,733.25, including interest calculated through January 31, 2024. Respondent Gerawan Farming, Inc. (Gerawan) did not file an answer to the amended makewhole specification as instructed by the Board's prior decision.

Board Decision

The Board found that the regional director's amended specification met the requirements of Board regulation 20291, subdivision (b) and conformed to the Board's decision in *Gerawan Farming, Inc., supra*, 49 ALRB No. 2. Therefore, the Board adopted the regional director's amended makewhole specification, and ordered that Gerawan pay bargaining makewhole to the employees set forth in the makewhole specification issued by the regional director on May 29, 2024, in the amount of \$715,618.92, plus interest, for the period, January 18, 2013, and June 30, 2013.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.