

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)
	)		(49 ALRB No. 2)
	)		
and,	)	ORDER (1) FINDING CASE	
	)	EXEMPT FROM AUTOMATIC	
	)	BANKRUPTCY STAY; and (2)	
	)	DIRECTING REGIONAL STAFF	
UNITED FARM WORKERS OF	)	TO PROCEED WITH	
AMERICA,	)	COMPLIANCE	
	)		
Charging Party.	)		
	)	Administrative Order No. 2023-12-P	
	)		
	)	(November 14, 2023)	
	)		

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On November 1, 2023, attorneys for respondent Gerawan Farming, Inc. (Gerawan) filed in this matter a “Notice of Suggestion of Pendency of Bankruptcy for MVK FarmCo LLC and Automatic Stay of Proceedings.”<sup>1</sup> According to Gerawan, all

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\* Although respondent has not provided notice to any party of any change in its corporate form, information available from the California Secretary of State suggests the correctly identified entity at this time is Gerawan Farming LLC. (See pages 2-3, *infra*.)

<sup>1</sup> Gerawan filed identical notices in several other pending matters, including *Gerawan Farming, Inc.*, case no. 2013-CE-011-VIS, et seq. [44 ALRB No. 11], *Gerawan Farming, Inc.*, case no. 2015-CE-007-VIS, et seq. [45 ALRB No. 7], and *United Farm Workers of America (Garcia)*, case no. 2018-CL-003-VIS [45 ALRB No. 8]. We issue administrative orders in each of these cases today consistent with this order.

proceedings in this matter are subject to an automatic stay under 11 U.S.C. § 362(a)<sup>2</sup> in light of the referenced bankruptcy proceedings. Gerawan further asserts “[n]o order has been entered in the Chapter 11 Cases granting relief from the automatic stay with respect” to this case.

Gerawan is wrong that proceedings in this case are subject to the automatic bankruptcy stay. (See § 362(b)(4).) Accordingly, to the extent Gerawan requests we stay such proceedings, that request is denied. Because the administrative proceedings of the Agricultural Labor Relations Board (ALRB or Board) are exempt from the automatic stay, we hereby direct regional staff to continue in their efforts to effectuate the notice remedies we ordered and to fix the amount of bargaining makewhole owed by Gerawan. (*Gerawan Farming, Inc.* (2023) 49 ALRB No. 2; *Gerawan Farming, Inc.* (2018) 44 ALRB No. 1, enfd. in *Gerawan Farming, Inc. v. ALRB* (2020) 52 Cal.App.5th 141.)<sup>3</sup>

## **BACKGROUND**

### **1. Gerawan and the Bankruptcy Case Involving MVK FarmCo LLC**

At the outset, we note the caption in this case refers to Gerawan as “Gerawan Farming, Inc.,” as does the bankruptcy notice filed by Gerawan’s attorneys. Despite ongoing compliance proceedings in this matter (see *Gerawan Farming, Inc.*,

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<sup>2</sup> Subsequent statutory citations are to Title 11, the Bankruptcy Code, unless otherwise indicated.

<sup>3</sup> We designate this administrative order as precedential pursuant to Board regulation 20287, including to provide guidance to staff and parties in future cases. (Cal. Code Regs., tit. 8, § 20187.)

*supra*, 49 ALRB No. 2), it does not appear Gerawan has provided any party with notice of any change in its corporate status.

According to information available from the California Secretary of State, “Gerawan Farming, Inc.” filed a conversion statement on May 23, 2019, under which it converted into Gerawan Farming LLC.<sup>4</sup> Later that year, Gerawan and Wawona Packing Company announced the completion of a merger of their two companies. Two years before this, in 2017, Wawona Packing Company had been acquired by Paine Schwartz Partners, a private equity firm. Paine Schwartz owns Wawona Delaware Holdings, LLC, which in turn owns a 75% share of MVK FarmCo LLC, a Delaware limited liability company.<sup>5</sup>

On October 13, 2023, MVK FarmCo LLC filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware (case no. 23-11721-LSS). MVK FarmCo directly or indirectly owns seven subsidiaries, all of whom are debtors in the bankruptcy proceeding. Gerawan Farming LLC is one of these subsidiaries.

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<sup>4</sup> This information is available on the California Secretary of State “bizfile online” web site, available at < <https://bizfileonline.sos.ca.gov/> >.

<sup>5</sup> Certain of this information is available in the Declaration of John Boken, Interim Chief Executive Officer of MVK FarmCo LLC in Support of Chapter 11 Petitions and First Day Motions, available at < <https://cases.stretto.com/primawawona/court-docket/#search> >, as well as the California Secretary of State “bizfile online” web site and Delaware Division of Corporations “entity search” web site, available at < <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> >.

## 2. The Underlying Unfair Labor Practice and Compliance Case

The Board in this case found Gerawan committed unfair labor practices in violation of the Agricultural Labor Relations Act (ALRA or Act)<sup>6</sup> when it bargained in bad faith with charging party United Farm Workers of America (UFW), a labor organization at the time certified as the exclusive bargaining representative of Gerawan's agricultural employees.<sup>7</sup> (*Gerawan Farming, Inc., supra*, 44 ALRB No. 1, p. 2; Lab. Code, § 1153, subd. (e).) To remedy these violations, the Board ordered its usual cease-and-desist and notice remedies. (*Gerawan Farming, Inc., supra*, 44 ALRB No. 1, pp. 60-62.) In addition, the Board ordered Gerawan to make whole its agricultural employees to compensate them for economic losses suffered as a result of Gerawan's bad faith bargaining conduct, a monetary remedy authorized by the ALRA and commonly referred to as "bargaining makewhole." (*Id.* at pp. 51, 60-61; Lab. Code, § 1160.3.) The makewhole period in this case runs from January 18 to June 30, 2013. (*Id.* at p. 59.)

Gerawan sought judicial review of the Board's decision in 44 ALRB No. 1. The Fifth District Court of Appeal affirmed the Board's decision, including its remedial order, in its entirety. (*Gerawan Farming, Inc., supra*, 52 Cal.App.5th at pp. 148, 212.) The California Supreme Court thereafter denied Gerawan's petition for review. The

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<sup>6</sup> The ALRA is codified at Labor Code section 1140 et seq.

<sup>7</sup> While the underlying events in this case occurred between 2012-2013, the UFW subsequently was decertified by the Board in *Gerawan Farming, Inc.* (2018) 44 ALRB No. 10.

appellate court issued its remittitur on October 30, 2020, and the matter was released to the Visalia Region for compliance with the Board's order that same day.<sup>8</sup>

At this time, the bargaining makewhole remedy ordered by the Board remains pending in compliance proceedings. In *Gerawan Farming, Inc.* (2023) 49 ALRB No. 2, the Board reversed the administrative law judge's (ALJ) decision and recommended order concerning calculation of the makewhole remedy, and remanded the matter to the region for issuance of a new makewhole specification calculating the amount owed by Gerawan in accordance with the Board's instructions. (*Id.* at pp. 4, 27; see Board reg. 20291, subd. (b).)

Full effectuation of the notice remedies ordered by the Board in 44 ALRB No. 1 also remains pending. While the posting and reading remedies have been completed, the mailing remedy remains outstanding, as does the requirement Gerawan provide the notice to employees hired after issuance of the Board's decision.

## **DISCUSSION**

### **1. This Case Is Not Subject to the Automatic Stay**

Gerawan asserts this case is automatically stayed pursuant to § 362(a) by virtue of the MVK FarmCo bankruptcy petitions. That statute states the general rule that, “[e]xcept as provided in subsection (b),” the filing of a bankruptcy petition “operates as a

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<sup>8</sup> Over the course of the compliance proceedings in this matter, the Board denied the regional director's request to modify the scope of the makewhole remedy (*Gerawan Farming, Inc.* (Feb. 2, 2021) ALRB Admin. Order No. 2021-02) and granted a joint motion by the parties to amend certain language included in the notice attached to the Board's order in 44 ALRB No. 1 (*Gerawan Farming, Inc.* (Mar. 12, 2021) ALRB Admin. Order No. 2021-05).

stay, applicable to all entities, of- [¶] (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.” (§ 362(a)(1).) However, this rule is subject to exceptions, as expressly stated, including that it does not apply to “the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit’s or organization’s police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s or organization’s police or regulatory power.” (§ 362(b)(4).)

This case, including the pending proceedings to obtain compliance with our order in 44 ALRB No. 1, falls squarely within the § 362(b)(4) exemption. There is widespread agreement amongst the courts that National Labor Relations Board (NLRB) proceedings fall within the § 362(b)(4) automatic stay exemption. (*NLRB v. Continental Hagen Corp.* (9th Cir. 1991) 932 F.2d 828, 831-834, and cases cited therein; *Ampersand Publishing, LLC v. NLRB* (D.D.C. Oct. 18, 2023) 2023 U.S. Dist LEXIS 186906, \*11-12 [“Case after case has held that unfair labor practice actions brought by the NLRB are within the scope of [§ 362(b)(4)]’s exemption”], collecting cases; see *Solis v. SCA Rest. Corp.* (E.D.N.Y. Dec. 1, 2011) 463 B.R. 248, 255-256.) Courts agree the NLRB falls “within the category of a governmental unit” as described in subsection (b)(4). (*Continental Hagan Corp.*, *supra*, 932 F.2d at pp. 832-833.) Courts also agree NLRB

proceedings under the National Labor Relations Act (NLRA)<sup>9</sup> “qualify as police or regulatory actions” under the statute. (*Id.* at p. 833.) As the Ninth Circuit expressly found, “it is clear that N.L.R.B. actions are generally not affected by the automatic bankruptcy stay.” (*Id.* at p. 834.)

Our Board and administrative processes, including with respect to unfair labor practice proceedings, generally are modeled after the NLRB, and are entitled to exemption from the automatic stay for the same reasons courts have found NLRB proceedings exempt.<sup>10</sup> (*J.R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 8 [noting the Legislature modeled the ALRA after the NLRA and established the ALRB with “authority and responsibilities comparable to those exercised by” the NLRB].) In fact, ALRB proceedings specifically have been held exempt from the automatic stay. (*In re Kawano, Inc.* (S.D. Cal. Feb. 25, 1983) 27 B.R. 855, 856 [finding ALRB “proceedings to determine whether an unlawful labor practice is being committed or to establish the claims of employees which were the subject of such unlawful labor practice” exempt from the automatic stay].)

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<sup>9</sup> 29 U.S.C. § 151 et seq.

<sup>10</sup> The § 362(b)(4) bankruptcy stay exemption applies to state administrative agencies. (*Chao v. Hosp. Staffing Services, Inc.* (6th Cir. 2001) 270 F.3d 374, 385 [under § 362(b)(4), “Congress declared that the policy set forth in the Bankruptcy Code’s automatic stay provision yields to state and federal governmental interests in securing compliance with certain aspects of those authorities’ respective regulatory and police powers”]; see *In re McMullen* (1st Cir. 2004) 386 F.3d 320, 325-326; *In re Thomassen* (9th Cir. 1981) 15 B.R. 907, 910; *In re Draughon Training Inst., Inc.* (W.D. La. Apr. 10, 1990) 119 B.R. 921, 924; *In re Adkins* (D. Or. Nov. 23, 1988) 94 B.R. 703, 704.)

The Ninth Circuit in *Continental Hagan Corp., supra*, noted that previous courts had determined NLRB proceedings to be exempt from the automatic stay under two analyses. (932 F.2d at p. 833.) Under the “pecuniary purpose test” adopted by some courts, the inquiry focuses on “whether the action relates ‘primarily to the protection of the [government’s] pecuniary interest in the debtors’ property [or] to matters of public safety and health.’” (*Ibid.*) On the other hand, the “public policy test” adopted by other courts “distinguishes between proceedings that effectuate public policy and those that adjudicate private rights.” (*Ibid.*) NLRB proceedings qualify for exemption from the automatic stay on both fronts. First, such proceedings are not related to the protection of any pecuniary claim by the government in the debtor’s property. (*Ibid.*) Second, the NLRB effectuates public policy and does not adjudicate private rights. (*Id.* at p. 834.)

ALRB proceedings fall within the scope of § 362(b)(4)’s stay exemption for the same reasons. ALRB unfair labor practice proceedings are “designed to prevent employers from violating” state labor law and the rights of agricultural employees under the ALRA, not to pursue any claim of governmental entitlement to a pecuniary interest in the employer’s property. (*Continental Hagan Corp., supra*, 932 F.2d at p. 833; *ALRB v. Richard A. Glass Co.* (1985) 175 Cal.App.3d 703, 716; *Sandrini Bros. v. ALRB* (1984) 156 Cal. App. 3d 878, 883.) Further, the ALRB effectuates public policies regarding the organizational and collective bargaining rights of agricultural employees under the ALRA, not the vindication of private rights. (*Nish Noroian Farms v. ALRB* (1994) 35 Cal.3d 726, 736 [the NLRB and ALRB “are fora for the vindication of public, not private, rights, and a charge filed with either is not the equivalent of a court complaint”]);

*Sandrini Bros.*, *supra*, 156 Cal. App. 3d at pp. 886-887 [“An ALRB backpay award ... ‘is not a private judgment or a chose in action belonging to the employee, and he has no property right in the award pending his actual receipt of it’”].) As our Board stated in *United Farm Workers of America (Garcia)* (2019) 45 ALRB No. 4, pages 12-13, the ALRB’s general counsel “does not serve the private interests of the parties but rather acts on behalf of the public in vindicating public rights and interests,” and her “role after a charge is filed is to vindicate the public’s interests in protecting employee rights under the Act and stability in agricultural labor relations.”

Accordingly, further proceedings in this case are exempt from the automatic stay.

*A. The Automatic Stay Does Not Prevent Proceedings to Fix the Amount of Gerawan’s Monetary Liability*

In determining the scope of the stay exemption afforded NLRB unfair labor practice proceedings involving claims of backpay, “courts have drawn a distinction between the use of the terms ‘entry’ and ‘enforcement’” of a money judgment as referenced in § 362(b)(4).<sup>11</sup> (*Continental Hagan Corp.*, *supra*, 932 F.2d at p. 834.) In this respect, the Ninth Circuit in *Continental Hagan Corp.*, like other courts, followed the approach taken in an earlier case by the Third Circuit:

In common understanding, a money judgment is an order entered by the court or by the clerk, after a verdict has been

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<sup>11</sup> While the court in *Continental Hagan Corp.*, as well as other courts before it, cite § 362(b)(5), Congress subsequently amended the statute to combine that exemption with § 362(b)(4)’s police power exemption with no significant change, and case law interpreting these subsections prior to those amendments still apply. (*Ampersand Publishing, LLC*, *supra*, 2023 U.S. Dist. LEXIS 186906, \*7, fn. 5.)

rendered for plaintiff, which adjudges that the defendant shall pay a sum of money to the plaintiff. ... As the legislative history explicitly notes, the mere *entry* of a money judgment by a governmental unit is not affected by the automatic stay, provided of course that such proceedings are related to that government's police or regulatory powers.

Quite separate from the entry of a money judgment, however, is a proceeding to *enforce* that money judgment. The paradigm for such a proceeding is when, having obtained a judgment for a sum certain, a plaintiff attempts to seize property of the defendant in order to satisfy that judgment. It is this seizure of a defendant-debtor's property, to satisfy the judgment obtained by a plaintiff-creditor, which is proscribed ....

(*Ibid.*, quoting *Penn Terra Ltd. v. Dept. of Environmental Resources* (3d Cir. 1984) 733 F.2d 267, 275, italics in original; *NLRB v. P\*I\*E Nationwide, Inc.* (7th Cir. 1991) 923 F.2d 506, 512; *NLRB v. Edward Cooper Painting, Inc.* (6th Cir. 1986) 804 F.2d 934, 942-943.)

The stay exemption applicable to ALRB proceedings thus encompasses such proceedings as may be necessary to "fix the amount" of the Gerawan's monetary liability with respect to the bargaining makewhole remedy ordered in this case.

(*Continental Hagan Corp., supra*, 932 F.2d at p. 834; *Edward Cooper Painting, supra*, 804 F.2d at pp. 942-943.) *In re Kawano, supra*, 27 B.R. 855 involved factual circumstances similar to those here. In that case, the employer's unfair labor practice liability had been litigated and determined, and the matter was pending compliance proceedings to determine the amount of the employer's monetary liability according to backpay specifications issued by ALRB staff. (*Ibid.*; see Board reg. 20291, subd. (a).)

The employer commenced a bankruptcy proceeding after the Board's compliance

proceedings had begun, and thereafter sought injunctive relief in the bankruptcy court to enjoin further Board proceedings. (*In re Kawano, supra*, 27 B.R. at pp. 855-856.) The bankruptcy court refused to issue the relief sought by the employer, explaining “[t]he ability of the ALRB to fix the amount of the back-pay claim of each employee does not impinge upon the right and duty of the bankruptcy court to determine the allowability or priority of such a claim once filed in the proceeding, including the determination of interest payable, pursuant to general bankruptcy law.” (*Id.* at p. 857.) Other cases are in accord. (*In re BelAir Chateau Hospital, Inc.* (9th Cir. 1979) 611 F.2d 1248, 1250 [finding the NLRB, “not the bankruptcy court, should liquidate the amount of back pay award owed by the bankrupt to its employees under a Board order”], citing *Nathanson v. NLRB* (1952) 344 U.S. 25, 30; *In re Adams Delivery Service, Inc.* (9th Cir. 1982) 24 B.R. 589, 593.)

It thus necessarily follows that proceedings in this matter to determine the amount of Gerawan’s monetary liability may continue unabated up to and including the point of entry of a court judgment with respect to the bargaining makewhole remedy. (*Continental Hagan Corp., supra*, 932 F.2d at p. 835.) However, we acknowledge under the foregoing cases that enforcement proceedings to collect or seize the money found to be owed by a party whose assets are under the jurisdiction of the bankruptcy court ordinarily do not fall within the scope of the § 362(b)(4) stay exemption. (*Ibid.*) Rather, such enforcement efforts to collect on the makewhole remedy must proceed before the bankruptcy court. (See *ibid.*; *P\*I\*E Nationwide, Inc., supra*, 923 F.2d at p. 512, fn. 5.)

*B. The Automatic Stay Does Not Apply to the Effectuation of the Ordered Notice Remedies*

As previously noted, aspects of the notice remedies ordered in 44 ALRB No. 1 remain outstanding and pending at this time. Proceedings to obtain Gerawan's compliance with the full effectuation of those remedies clearly fall within the scope of the § 362(b)(4) exemption from the automatic stay and are wholly unaffected by the pending bankruptcy proceedings. First, the stay under § 362(a)(1) applies only to proceedings "to recover a claim against the debtor." The effectuation of our notice remedies does not involve an attempt to recover a monetary claim against Gerawan. Second, the exemption under § 362(b)(4) applies to proceedings "to enforce such governmental unit's ... police and regulatory power, including the enforcement of a judgment *other than a money judgment* ...." (Italics added.) Therefore, any proceedings as may be necessary to enforce Gerawan's compliance with our notice remedies are unaffected by the pending bankruptcy proceedings and exempt from the automatic stay.

**2. Because These Proceedings Are Exempt from the Automatic Stay Provision, No Relief or Permission from the Bankruptcy Court Is Required to Proceed**

Having found further proceedings in this matter exempt from the automatic bankruptcy stay pursuant to § 362(b)(4), regional staff should continue in their efforts to (1) issue a revised bargaining makewhole specification in accordance with our decision in *Gerawan Farming, Inc., supra*, 49 ALRB No. 2, and (2) achieve full effectuation of the notice remedies ordered in *Gerawan Farming, Inc., supra*, 44 ALRB No. 1. Permission from the bankruptcy court is not required to continue with further proceedings in this case.

We acknowledge Gerawan’s assertion in its bankruptcy notice filed with the Board that the bankruptcy court has not entered any order “granting relief from the automatic stay with respect to the above captioned cases.” (Cf. § 362(d).) Whether or not that is true, however, is irrelevant. As the court in *Ampersand Publishing, LLC, supra*, explained, “[t]he conclusion that, because requests to lift the automatic stay must be heard by the bankruptcy court, the NLRB’s motion cannot proceed before this Court, however, misses the point. The NLRB is not seeking to lift the automatic stay; it is arguing that the automatic stay never attached in the first place because this case is excepted from its operation pursuant to [§ 362(b)(4)].” (2023 U.S. Dist. LEXIS 186906, \*8-9.) The Sixth Circuit similarly stated in *Edward Cooper Painting, Inc., supra*, that § 362(b)(4) “provides that governmental actions to enforce police or regulatory powers are automatically excepted from the operation of the automatic stay. There is no occasion therefore to seek relief from a stay which has no application to the proceeding in question.” (804 F.2d at p. 939.)

Such is the case here. The automatic stay described in § 362(a)(1) does not apply to this case, and further proceedings in this matter are exempt from the stay under § 362(b)(4). Because the automatic stay never attached in the first place, no permission from the bankruptcy court under § 362(d) is necessary to proceed.

### **ORDER**

For the foregoing reasons, and pursuant to § 362(b)(4), we find this case exempt from any automatic stay under § 362(a) by virtue of the pending bankruptcy proceedings commenced by MVK FarmCo LLC and its subsidiaries, including, but not

limited to, Gerawan Farming LLC, in the United States Bankruptcy Court for the District of Delaware.

Accordingly, we hereby DIRECT the Regional Director for the Visalia Regional Office of the Agricultural Labor Relations Board, where proceedings to effectuate the remedies ordered by the Board in *Gerawan Farming, Inc., supra*, 44 ALRB No. 1 are pending, to continue the processing of this matter to determine the amount of bargaining makewhole owed by respondent in accordance with our decision in *Gerawan Farming, Inc., supra*, 49 ALRB No. 2, as well as any such efforts as may be necessary to effectuate fully the notice remedies ordered in 44 ALRB No. 1.

IT IS SO ORDERED.

DATED: November 14, 2023

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member