

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,	)	Case No.	2018-CL-003-VIS
	)		(45 ALRB Nos. 4, 8)
	)		
Respondent,	)	ORDER	
	)		
and	)	(1) FINDING CASE EXEMPT	
	)	FROM AUTOMATIC	
AGUSTIN GARCIA,	)	BANKRUPTCY STAY; and	
	)		
Charging Party,	)	(2) DENYING REGIONAL	
	)	DIRECTOR'S REQUEST TO	
and	)	MODIFY ORDER	
	)		
GERAWAN FARMING, INC.,*	)		
	)	Administrative Order No. 2023-15	
Intervenor.	)		
	)	(November 14, 2023)	
	)		

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On October 23, 2023, the regional director for the Visalia Region of the Agricultural Labor Relations Board (ALRB or Board) filed a request to modify our remedial order in *United Farm Workers of America (Garcia)* (2019) 45 ALRB No. 8. While this request was pending with the Board, attorneys for intervenor Gerawan Farming, Inc. (Gerawan) filed a “Notice of Suggestion of Pendency of Bankruptcy for MVK FarmCo LLC and Automatic Stay of Proceedings.”

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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 *Gerawan Farming, Inc.* (Nov. 14, 2023) ALRB Admin. Order No. 2023-12-P, pp. 2-3.)

In accordance with our administrative order issued today in *Gerawan Farming, Inc., supra*, ALRB Admin. Order No. 2023-12-P, this case, including any further proceedings that may be necessary to achieve compliance with the notice remedies we ordered in 45 ALRB No. 8, is exempt from any automatic bankruptcy stay under 11 U.S.C. § 364(b)(4). To the extent Gerawan requests a stay in this matter, that request is DENIED.

For the following reasons, the regional director's request we modify the scope of the notice remedies we ordered in 45 ALRB No. 8 also 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 (ALJ) we issued a remedial order in 45 ALRB No. 8. Pursuant to Labor Code sections 1158 and 1160.8, the UFW sought judicial review of our decertification decision and the underlying unfair labor practice decisions in the Fifth District Court of Appeal. The court issued a writ of review and ultimately affirmed the Board's decisions in an unpublished opinion. (*UFW v. ALRB* (Feb. 18, 2022, F080469) 2022 Cal. App. Unpub. LEXIS 1020.) The UFW did not seek review in the California Supreme Court, and the appellate court issued its remittitur on April 20, 2022. The matter

was released to the region for compliance with the Board's remedial order the next day.

Insofar as is relevant here, the Board's order in 45 ALRB No. 8 includes notice remedies consistent with the Board's usual unfair labor practice remedies.

Specifically, the order directs the UFW to:

- sign the notice attached to the Board's order (§ 2(a));
- post the notice at UFW sites, "as well as at locations provided to [the UFW] by Gerawan Farming, Inc." (§ 2(b));
- arrange for distribution and reading of the notice "to all employees then employed by Gerawan Farming, Inc. at time(s) and place(s) to be determined by the Regional Director," and further to reimburse employees for any wages lost as a result of attending the reading (§ 2(c));
- mail the notice to Gerawan's agricultural employees employed during the time period of November 13, 2018, to November 12, 2019 (§ 2(d)); and
- provide the notice to each agricultural employee hired by Gerawan during the 12-month period after the Board's decision became final (§ 2(e)).

(*Garcia, supra*, 45 ALRB No. 8, pp. 6-7.)

According to the region, the UFW has signed the notice and posted it at its own sites, but the other notice remedies aimed at reaching Gerawan's agricultural employees have not yet been effectuated. Although the region represents Gerawan has stated it will provide a list of employees to effectuate the mailing remedy, Gerawan refuses to cooperate and comply with respect to the other notice remedies, i.e., posting at Gerawan sites, reading to Gerawan employees, and provision to employees hired during the 12-month period after the decision became final.

Based on Gerawan's noncompliance, the region requests the Board modify

its order in 45 ALRB No. 8 to provide notice by publication in a Spanish-language newspaper in lieu of the notice remedies directed towards reaching Gerawan’s agricultural employees.<sup>1</sup>

## **DISCUSSION**

### **1. The Board Has No Authority to Modify Its Prior Order After Enforcement by the Court of Appeal.**

ALRB precedent, as well as precedent under the National Labor Relations Act (NLRA), is clear that the Board “lacks jurisdiction to modify a remedial order that has been enforced by a court of appeal.” (*Gerawan Farming, Inc.* (Feb. 18, 2021) ALRB Admin. Order No. 2021-02, p. 1, citing *Abatti Farms* (1983) 9 ALRB No. 59, pp. 21-22 and *Royal Typewriter Co.* (1978) 239 NLRB 1, 1-2; *Dupuy v. NLRB* (D.C. Cir. 2015) 806 F.3d 556, 564 [“it is ‘obvious[.]’ that the Board ‘cannot modify an order ... that the court has enforced in a final judgment’”], quoting *Scepter, Inc. v. NLRB* (D.C. Cir. 2006) 448 F.3d 388, 390-391; Lab. Code, § 1160.8.) Such is the case here. Accordingly, we lack authority to modify our prior order and deny the region’s request.

### **2. Gerawan Never Objected to the Notice Remedies Ordered by the Board, Despite Multiple Opportunities to Do So.**

While Gerawan now apparently protests our remedial order in 45 ALRB No. 8 and refuses to cooperate with the effectuation of the remedies we ordered, we believe Gerawan’s protests are not well-taken. Indeed, Gerawan had multiple

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<sup>1</sup> We note the region’s modification request cites to remedial language and paragraphs from the ALJ’s recommended decision and not our own order. (Compare *Garcia, supra*, 45 ALRB No. 8, pp. 6-7 with ALJ Dec. pp. 7-8.)

opportunities to object to the notice remedies, but it never asserted any.

Although the general counsel's unfair labor practice complaint did not expressly seek notice remedies, the issue was argued before the ALJ. The ALJ issued a recommended decision ordering a notice posting remedy but concluded that mailing and reading remedies were not appropriate. (*Garcia, supra*, 45 ALRB No. 4, at ALJ Dec. p. 12, fn. 32, p. 13.) The posting remedy recommended by the ALJ required posting at certain union locations, as well as "locations provided to the UFW by Gerawan." (*Id.* at ALJ Dec. p. 13 [¶ 2(b)].)

The UFW did not file exceptions to the ALJ's decision, but Gerawan did. However, Gerawan did not except to the ALJ's recommended notice-posting order. Ultimately, the Board reversed the ALJ's determination regarding the propriety of mailing and reading remedies and additionally ordered the notice to be provided to Gerawan agricultural employees hired after the Board's decision became final. (*Garcia, supra*, 45 ALRB No. 4, pp. 2-3.) In doing so, the Board explained a union's recognitional picketing threat is no less "an offense to employee free choice rights at the core of our Act" than an employer's refusal to bargain, including when done for the asserted purpose of seeking judicial review of a Board order in a representation proceeding. (*Id.* at p. 20.) Thus, the Board ordered the full range of notice remedies for the UFW's unfair labor practice violation, citing an earlier case involving the same type of violation committed by the UFW where the Board ordered the same remedies. (*Ibid.*, citing *United Farm Workers of America (Corralitos Farms, LLC)* (2014) 40 ALRB No. 6.)

While finding the UFW's picketing threat violated Labor Code section

1154, subdivision (h), the Board remanded two other unfair labor practice allegations to the ALJ. (*Garcia, supra*, 45 ALRB No. 4, pp. 20-21.) On remand, the ALJ dismissed those two claims and issued a recommended order consistent with the notice remedies directed by the Board in its earlier decision. (See *Garcia, supra*, 45 ALRB No. 8, at ALJ Dec. pp. 7-8.) The UFW filed a single exception to the ALJ's decision protesting the notice remedies ordered. The Board found the UFW's exception barred because the UFW's proper recourse in challenging such remedies was via a reconsideration motion pursuant to Board regulation 20286, subdivision (c).<sup>2</sup> (*Garcia, supra*, 45 ALRB No. 8, pp. 3-4.) The Board further found the UFW's exception without merit even if not barred. (*Id.* at pp. 4-5.)

Notably, Gerawan did not seek reconsideration of the notice remedies described by the Board in 45 ALRB No. 4 or except to the notice remedies ordered by the ALJ on remand consistent with the Board's direction.

The UFW thereafter sought judicial review of the Board's decision, including the underlying decertification decision (44 ALRB No. 10), by filing a petition for writ of review in the Fifth District Court of Appeal. In its unpublished opinion, the court acknowledged the notice remedies ordered by the Board. (*UFW, supra*, 2022 Cal. App. Unpub. LEXIS 1020, \*16-17.) Although the UFW attempted to challenge those remedies on review, the court found the union forfeited its arguments. (*Id.* at \*30-32.) Gerawan did not file any petition of its own seeking review of the Board's decision or the

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<sup>2</sup> The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

remedies ordered by the Board.

To recount, Gerawan (1) did not object to the ALJ's recommended notice-posting remedy in her original decision, (2) did not seek reconsideration of the Board's decision in 45 ALRB No. 4 where the Board directed the notice remedies it eventually ordered, (3) did not except to the remedies ordered by the ALJ on remand at the Board's direction, and (4) did not seek review of the remedies ordered by the Board in its final decision in 45 ALRB No. 8. On this record, Gerawan's belated complaints now about its obligation to comply with the region's efforts to effectuate the remedies we clearly telegraphed to all parties in 45 ALRB No. 4 and then ordered in 45 ALRB No. 8 are untimely and unpersuasive. Gerawan undoubtedly knew exactly what notice remedies were on the table, and it should not be heard to complain about them now when it chose to remain silent throughout the entire course of the prior administrative and judicial proceedings. Put differently, Gerawan waived all objections to the notice remedies we ordered. (*Ace Tomato Co., Inc.* (2015) 41 ALRB No. 7, p. [argument waived when not raised in party's exceptions to the Board]; *Butte View Farms v. ALRB* (1979) 95 Cal.App.3d 961, 971 ["Petitioner's failure to present the issue to the board precludes judicial review since petitioner failed thereby to exhaust its administrative remedies"]; see also *George Arakelian Farms, Inc. v. ALRB* (1985) 40 Cal.3d 654, 661-662; *Carian v. ALRB* (1984) 36 Cal.3d 654, 668, fn. 6; *Nish Noroian Farms v. ALRB* (1984) 35 Cal.3d 726, 737; *Rivcom Corp. v. ALRB* (1983) 34 Cal.3d 743, 756, fn. 6.)

### **3. The Board's Notice Remedies Serve Important Purposes and Are Consistent with Precedent.**

The notice remedies ordered by the Board in 45 ALRB No. 8 are neither unusual nor without precedent. We have ordered similar remedies in cases involving union unfair labor practices in the past. In fact, the UFW committed a similar “technical” picketing threat only several years before the events of this case after losing an election at a different employer, and the Board ordered the same exact notice remedies (posting, mailing, reading, and provision) as it did in this case. (*Corralitos Farms, LLC, supra*, 40 ALRB No. 6, pp. 11-13.)

In the year before the Board's order in this case, the Board also ordered similar notice remedies against the UFW in two separate cases, one of which involved Gerawan employees. In *United Farm Workers of America (Lopez)* (2018) 44 ALRB No. 6, pages 18-19, the Board ordered mailing and reading of the notice to Gerawan employees (including that the UFW would be required to compensate employees for wages lost while attending the reading). In *United Farm Workers of America (Olvera/Magaña)* (2018) 44 ALRB No. 5, pages 38-39, the Board similarly ordered mailing to Monterey Mushrooms, Inc. employees, reading to Monterey Mushroom employees (to be compensated by UFW), and provision to new employees hired at Monterey Mushrooms after issuance of the Board's order. The Board also ordered similar notice remedies in an early case involving a union-respondent that included posting at the employer's worksite, as well as mailing and reading to the employer's employees. (*Western Conference of Teamsters, Local 946 (Mello-Dy Ranch)* (1977) 3 ALRB No. 52,

pp. 2-5.)

We explained the importance of our notice remedies in *Lopez, supra*, 44 ALRB No. 6. Over the UFW’s objection that such remedies were “punitive,” the Board explained “[p]osting, mailing and reading remedies serve the important functions of informing workers of the outcome of the unfair labor practice proceedings and to answer their questions about the notice and the rights guaranteed to them by the Act.” (*Id.* at p. 15, citing *M. Caratan, Inc.* (1980) 6 ALRB No. 14; *Jasmine Vineyards, Inc. v. ALRB* (1980) 113 Cal.App.3d 968, 979-982.) The Board previously has emphasized the importance of notice-reading remedies as necessary to ensure the broadest dissemination of the notice to employees, including due to literacy challenges and because reading at their worksites ensures “the widest possible dissemination ... and full participation in the reading session by the workers.” (*M. Caratan, Inc., supra*, 6 ALRB No. 14, p. 2.) The mailing remedy also ensures “an appropriate means of informing all interested and affected employees of the results of the [ALRB] proceeding” and serves to “dispel[] any lingering effects” of a respondent’s unfair labor practices which may “tend to inhibit employees in the future exercise of their statutory rights.” (*Jasmine Vineyards, Inc., supra*, 113 Cal.App.3d at p. 979.)

The National Labor Relations Board (NLRB) recently reiterated the importance of certain noticing remedies in *Noah’s Ark Processors, LLC* (2023) 372 NLRB No. 80. With respect to notice-reading, the NLRB described such a remedy as “a way to let in a ‘warming wind of information’ to not only alert employees to their rights but also impress upon them that, as a matter of law, their employer or union must and

will respect those rights in the future.” (*Id.* at \*6.) “This awareness, in turn, means that respondents will be less able to violate the Act unnoticed as a matter of course. ... Notice reading offers employees a chance to hear, in a formal setting and in the presence of other employees and a Board agent, that their rights have value and that the Board takes those rights seriously.” (*Ibid.*) Notice-mailing, on the other hand, “not only reaches employees and former employees who would not see a posted document or be able to attend the reading, but also allows them to ‘privately review the documents free from [a] [r]espondent’s potential scrutiny for as long as necessary to understand their rights and as often as necessary to reinforce their rights in the future.’” (*Id.* at \*7, quoting *HTH Corp.* (2014) 361 NLRB 709, 715.) “A mailed notice that they can keep and refer to in the future also serves as a practical document for employees” to be aware of their rights and the protections afforded them. (*Id.* at \*7.) Finally, distribution of the notice to workers serves to “facilitate employee comprehension as employees will be able to ... retain the documents for future reference and to review them in private free from their employer’s or union’s possible observation should they choose to do so.” (*Ibid.*; *East Brunswick European Wax Ctr. v. NLRB* (3d Cir. 2022) 23 F.4th 238, 253 [recognizing that notice-distribution “has been an essential element of the Board’s remedies for unfair labor practices since the earliest cases under the Act” and “serve[s] several important functions, including counteracting the effect of unfair labor practices on employees by notifying them of their rights and the Board’s role in protecting the exercise of those rights, informing the employees of steps to be taken to remedy violations and provide assurances that future violations will not occur, and deterring future violations”]; *J. Picini Flooring*

(2010) 356 NLRB 11, 12.)

In short, the notice remedies ordered by the Board in this matter are grounded in precedent and serve a critical function towards achieving the ultimate goal of educating workers and ensuring their knowledge and awareness of their rights under our Act. The notice remedies ordered by the Board in this case ensures the broadest dissemination amongst the affected workers, a goal that should be remain constant regardless of whether an employer or labor organization committed the subject unfair labor practices.

### **ORDER**

For the foregoing reasons, the region's request to modify the notice remedies ordered by the Board in *Garcia, supra*, 45 ALRB No. 8 is DENIED. In the event Gerawan's cooperation remains unforthcoming, the region shall explore all available avenues towards securing its compliance and the full effectuation of the remedies we ordered, including seeking authorization from the Board to commence enforcement proceedings pursuant to Labor Code section 1160.8, if necessary.

Pursuant to 11 U.S.C. § 362(b)(4), any such efforts or proceedings as may be necessary to obtain compliance with our order in 45 ALRB No. 8 are exempt from any automatic stay under 11 U.S.C. § 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.

DATED: November 14, 2023

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cynthia N. Flores, Member