

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,)	Case No.	2015-CL-006-VIS
)		(44 ALRB No. 6)
)		
Respondent,)	ORDER DENYING REGIONAL	
)	DIRECTOR’S REQUEST TO	
and)	MODIFY ORDER	
)		
ANGEL LOPEZ,)		
)		
Charging Party.)	Administrative Order No. 2023-16	
)		
)	(November 14, 2023)	
)		

On October 26, 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 (Lopez)* (2019) 44 ALRB No. 6.¹ For the following reasons, the regional director’s request we modify the scope of the notice remedies we ordered in 44 ALRB No. 6 is DENIED.

¹ While this request was pending with the Board, attorneys for Gerawan Farming, Inc. (Gerawan) filed in several other pending matters a “Notice of Suggestion of Pendency of Bankruptcy for MVK FarmCo LLC and Automatic Stay of Proceedings.” In accordance with our administrative order issued today in *Gerawan Farming, Inc.* (Nov. 14, 2023) 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 44 ALRB No. 6, is exempt from any automatic bankruptcy stay under 11 U.S.C. § 364(b)(4).

BACKGROUND

In this case, the Board found respondent United Farm Workers of America (UFW) violated the Agricultural Labor Relations Act (ALRA or Act), codified at Labor Code section 1140 et seq., when it temporarily excluded Gerawan agricultural employees from a public Board meeting held at the Doubletree Hotel in Fresno. (*Lopez, supra*, 44 ALRB No. 6, pp. 1-3.) The Board ordered several notice remedies, including mailing and reading to Gerawan employees. (*Id.* at pp. 18-19.) According to the regional director, the UFW has complied with the ordered postings, and Gerawan recently stated it will provide a list of employees to effectuate the mailing remedy. The reading remedy (which includes UFW's obligation to compensate employees for wages lost while attending the reading) remains outstanding. The region represents Gerawan refuses to allow effectuation of the readings to its employees.

Based on Gerawan's noncompliance, the region requests the Board modify its order in 44 ALRB No. 6 to provide notice by publication in a Spanish-language newspaper in lieu of the notice remedies directed towards reaching Gerawan's agricultural employees.

DISCUSSION

The notice mailing and reading remedies ordered in this case are neither unusual nor without precedent. (See *United Farm Workers of America (Garcia)* (Nov. 14, 2023) ALRB Admin. Order No. 2023-15, pp. 8-11.) We have ordered similar notice remedies -- including, specifically, mailing and reading -- in cases involving union unfair labor practices in the past. (See *United Farm Workers of America (Garcia)* (2019)

45 ALRB No. 8, pp. 6-8; *United Farm Workers of America (Olvera/Magaña)* (2018) 44 ALRB No. 5, pp. 38-40; *United Farm Workers of America (Corralitos Farms, LLC)* (2014) 40 ALRB No. 6, pp. 11-13; *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 our decision in this case. Over the UFW’s objection that such remedies were “punitive,” the Board found “[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.” (*Lopez, supra*, 44 ALRB No. 6, 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 broad 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 *Lopez, supra*, 44 ALRB No. 6 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 44 ALRB No. 6 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

Cinthia N. Flores, Member