



# NEWS FROM UFW

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***Tuesday 10 a.m. farm workers rally, board meets at 1 p.m.***

## **L.A. school board enters farm workers' fight with huge Central Valley grower**

***Tuesday vote regarding Gerawan could involve***

***1,270 LAUSD schools, 907,000 students***

Los Angeles Unified School District's Board of Governors enters an epic battle by farm workers to implement their union contract with a giant Central Valley grower—reminiscent of 1960s farm labor battles—by voting on a resolution Tuesday, Feb. 10 asking LAUSD's procurement office to let it know about Gerawan Farming's compliance with fair labor practices before contracts with them are approved by the board. **The L.A. school board resolution also calls on Gerawan Farming to honor a contract issued in 2013 by a neutral mediator and approved by the state.** LAUSD through its suppliers has purchased Prima-label produce from Gerawan for its 1,270 schools and 907,000 students. Gerawan is avoiding millions of dollars in pay increases and other benefits by refusing to honor the union contract.

***United Farm Workers President Arturo Rodriguez will join Gerawan farm workers traveling by bus from Fresno County for a 10 a.m. march beginning at the Miguel Contreras Learning Complex, corner of 3<sup>rd</sup> & Bixel streets, L.A. 90017 and ending at LAUSD headquarters, 333 So. Beaudry Ave., L.A. 90017. The board meeting starts at 1 p.m. Rodriguez and the workers will present petitions signed by more than 10,000 people backing the LAUSD resolution.***

**The resolution proposed by board member Steve Zimmer would have the school board call upon Gerawan Farming to “comply with state and federal laws, including labor relations...and to immediately implement the agreement issued by the neutral**

mediator and the state of California." Board members will vote to request having the district's "Procurement Services Division report back to the board with an update regarding Gerawan Farming's compliance with fair labor practices in the event any contracts with this vendor are brought to the board for approval." (See Item 26 (Page 10), "Support of Compliance with Fair Labor Practices for Agricultural Vendors (Res-047-14-14) by board member Zimmer: <https://boe.lausd.net/sites/default/files/01-13-15RegBdOBPost.pdf>) For more, see: <http://laschoolreport.com/fruit-companys-battle-utw-examined-lausd-board/>

The Los Angeles City Council unanimously passed a similar resolution on Oct. 22. See: <http://www.latimes.com/local/lanow/la-me-ln-union-fresno-farmworkers-20141022-story.html>

An administrative judge with the Agricultural Labor Relations Board began presiding in September over five months of hearings in Fresno featuring sworn testimony on sweeping complaints or indictments from state prosecutors charging Gerawan with multiple, serious and repeated violations of the law aimed at "prevent[ing] the UFW from ever representing its employees under a [union contract]" and at decertifying, or getting rid, of the UFW, according to the ALRB general counsel, who issued the complaints. See: <http://www.utw.org/board.php?mode=view&b code=gerawan legal&b no=15722&page=1&field=&key=&n=11>

The latest state-issued complaint says, "Gerawan and its supervisors" unlawfully supported workers who "stopped work and engaged in anti-UFW and anti-ALRB protests [to promote] decertification [and that] Gerawan...coerc[ed] workers into participating in protests," and Gerawan closed its fields, directing workers to pro-company demonstrations. Gerawan also engaged in threats, interrogation and surveillance of workers, state prosecutors allege.

Meanwhile, Gerawan reacts to the indicting complaints by claiming, without evidence, that state investigators and prosecutors are biased. A slick PR campaign by radical right-wing groups based in Washington, D.C. and affiliated with Grover Norquist, who is backed by the Koch brothers, has been is being orchestrated on Gerawan's behalf. See: <http://www.huffingtonpost.com/arturo-s-rodriguez/bigmoney-radical-right-gr b 5786868.html>



## Latest 28-page complaint from ALRB chief prosecutor details Gerawan's 'intensive and ongoing' drive since 2013 to prevent workers from 'ever' winning a union contract

*Fifth complaint—tantamount to an indictment—for serious and repeated violations*

In a blistering new 28-page complaint—similar to an indictment—the chief prosecutor for the state Agricultural Labor Relations Board detailed how the United Farm Workers' renewed attempt to win a union contract with Gerawan Farming "in October 2012 sparked an intensive and ongoing campaign by Gerawan to undermine the UFW's status as its employees bargaining representative; to turn it employees against the union; to promote decertification of the UFW; and to prevent the UFW from ever representing its employees under a collective bargaining agreement." (Remember, these aren't charges against Gerawan from the UFW; they are from the state of California following extensive investigations by state agents.)

### • Fifth ALRB general counsel complaint Sept. 9, 2014

The consolidated complaint was issued by ALRB General Counsel Sylvia Torres Guillen, who said in an agency news release that, "No employee in the fields should be coerced by their employers when it comes to deciding whether union representation is best for them."

—New allegations in this complaint involve Sylvia Lopez, "leader" of the drive to decertify, or get rid, of the UFW. "Sylvia Lopez began her involvement in anti-union activities at Gerawan **before** she started working for the company in late June 2013," the complaint states and "**by late June 2013, [she] began to work sporadically for Gerawan** (emphasis added)." The complaint continues:

By mid-July 2013, Sylvia Lopez, [other of her family members] and other employees were actively engaged in a campaign of gathering signatures to support the decertification of the UFW at Gerawan. Sylvia Lopez and other employees, including supervisory personnel, began to approach employees in Gerawan's crews...on a regular basis, during work hours, after work hours, and during breaks, to gather signatures to decertify the UFW. **During this period, Sylvia Lopez rarely worked a full day in her crew** (emphasis added). Several other employees also took significant amounts of time off to engage in decertification signature gathering during work hours.

**Gerawan Crew Boss Reynaldo Vilavicencio allowed employees Sylvia Lopez and Belen Solano [Lopez's daughter] to miss work approximately 75 percent of the time during the period of approximately July 1, 2013 through October 25, 2013, without requiring justification and without employee discipline** (emphasis added).

—"Gerawan supported protest activities to decertify the UFW," the newest complaint alleges. It continues:

In September 2013 and October 2013, **Gerawan...actively recruited and encouraged** employees to join in protests against the ALRB and the UFW. During this period, **Gerawan's supervisory employees cancelled work and directed workers to protests** in Kerman, Visalia and Fresno in support of the decertification effort (emphasis added)...**Gerawan's crew bosses...directed employees to protest against the ALRB and the UFW instead of**



**allowing employees to work...Gerawan made sure that employees would not be able to access fields and work on September 30, 2013, thus coercing them into participating in protests in support of decertification** (emphasis added)...

On October 25, 2013, **Gerawan provided support to a media event** in support of the decertification petition...encourag[ing] several hundred workers to leave work in the middle of the day to attend a protest in Fresno. Upon their return to work, Gerawan paid for the workers who participated in the protest to receive free pizza and tacos (emphasis added)...

**On multiple days...Gerawan employees, with direction and support from Gerawan and its supervisors, stopped work and engaged in anti-UFW and anti-ALRB protests for the purpose of gathering signatures on the decertification petition and gaining support among employees, the public and state government officials for decertification** (emphasis added)."

—Gerawan's directly supported decertification efforts

"During the course of the decertification signature gathering effort...Gerawan, through its owners, supervisors, and crew bosses, regularly made statements that encouraged and assisted in the effort to decertify the union and coerced employees in their ability to choose whether to support decertification," the complaint states. It continues:

...Gerawan set up a website (helpfarmworkers.com) to promote the decertification effort...

Gerawan discriminatorily used attendance policies to support decertification...**Gerawan...regularly allowed employees supporting the decertification effort to arrive late to work, leave early, access Gerawan fields on days the employee did not work, take extended breaks during the work day, and to avoid work altogether to engage in signature gathering, protests and other activities in furtherance of the decertification effort** (emphasis added).

[Meantime,] during the period of Gerawan's negotiations with the UFW in 2013 and during the period of July 2013 through October 25, 2013, **Gerawan applied strict attendance policies for union supporters** and for employees whose absences were unrelated to decertification activities (emphasis added).

#### • Fourth ALRB general counsel complaint April 4, 2014

Alleging that Gerawan broke the law by refusing to implement the union contract issued in 2013 by a neutral state mediator the company helped select and approved by the Agricultural Labor Relations Board.

#### • Third ALRB general counsel complaint Oct. 30, 2013

This 10-page complaint accuses Gerawan of bad faith bargaining and 'intimidating' workers from participating in negotiations. It states the company of **"failing to bargain in good faith with its employees' union," "impeding its employees ability to communicate with their union"** and **"failing to provide relevant and accurate employee information"** to the UFW. Gerawan has **"intimidat[ed] [its employees] in the exercise of their right to participate in negotiations,"** the ALRB general counsel stated in the complaint (emphasis added).

Gerawan also took credit for a “significant” pay hike for its workers **without mentioning the UFW or that the raise was “negotiated with the union,”** according to the complaint (emphasis added).

• **Second ALRB general counsel complaint Oct. 25, 2013**

Accusing Gerawan of illegally “**instigating and encouraging the gathering of signatures for a decertification petition,**” having its supervisors circulate petitions and telling workers to sign them, “**unlawfully interrogating workers about their union activities**” and “**surveiling**” its workers, the farm labor board general counsel stated (emphasis added).

The complaint also states that an attorney for some of Gerawan’s farm labor contractors—and therefore an agent/lawyer of Gerawan—illegally represented the petitioner and other workers behind the decertification effort.

• **First ALRB general counsel complaint May 17, 2013**

It accuses Gerawan of **illegally excluding some of its farm workers “from the benefits of a [union contract]”** because they are supplied by farm labor contractors and of “**insisting that the UFW agree to an unlawful contract proposal** that contravenes the purposes of the [law],” according to the ALRB general counsel. State law clearly provides that the right to bargain is enjoyed by all farm workers, even employees of labor contractors engaged by Gerawan (emphasis added).

\* \* \*

**Rulings by ALRB regional director dismissing decertification petitions Sept. 25, 2013 and Oct. 31, 2013**

In September 2013, ALRB Regional Director Silas M. Shawver dismissed the first Gerawan petition to decertify the UFW after a thorough investigation exposed “**a large number of forged signatures**” and “significant unlawful assistance by the employer in the circulation of the petition,” according to the regional director (emphasis added). He dismissed the second petition in October 2013, citing the outstanding three recent complaints against the company for repeated multiple violations of the law. The regional director concluded that **it is “impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner** (emphasis added).”

- end -



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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

GERAWAN FARMING, INC.,

Respondent,

and

UNITED FARM WORKERS OF AMERICA

Charging Party.

Case Nos.:

2012-CE-041-VIS	2013-CE-041-VIS
2012-CE-042-VIS	2013-CE-042-VIS
2012-CE-046-VIS	2013-CE-043-VIS
2012-CE-047-VIS	2013-CE-044-VIS
2013-CE-007-VIS	2013-CE-045-VIS
2013-CE-009-VIS	2013-CE-055-VIS
2013-CE-025-VIS	2013-CE-058-VIS
2013-CE-027-VIS	2013-CE-060-VIS
2013-CE-030-VIS	2013-CE-062-VIS
2013-CE-038-VIS	2013-CE-063-VIS
2013-CE-039-VIS	

AMENDED CONSOLIDATED  
COMPLAINT

1 The General Counsel of the Agricultural Labor Relations Board, pursuant to Section  
2 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section 1140 *et*  
3 *seq.* ("Act"), and California Code of Regulations, title 8, sections 20220 and 20222, hereby  
4 issues this amended consolidated complaint against Gerawan Farming, Inc. ("Gerawan"). The  
5 General Counsel alleges that Gerawan committed unfair labor practices in violation of the Act as  
6 follows:

7  
8 **JURISDICTION AND PARTIES**

9 1. On December 6, 2012, the United Farm Workers of America ("UFW") properly filed  
10 and served charge 2012-CE-041-VIS, alleging that on or about November 2, 2012 and  
11 continuing thereafter, Gerawan, by its officers, agents, and representatives, including Dan  
12 Gerawan, Mike Gerawan, Ray Gerawan, and others, actively engaged in bad faith bargaining.

13 2. On December 6, 2012, the UFW properly filed and served charge 2012-CE-042-VIS,  
14 alleging that on or about November 2, 2012, and continuing thereafter, Gerawan, by its officers,  
15 agents, and representatives, including Dan Gerawan, Mike Gerawan, Ray Gerawan, and others,  
16 engaged in the unlawful initiation of a decertification campaign.

17 3. On December 18, 2012, the UFW properly filed and served charge 2012-CE-046-  
18 VIS, alleging that on or about November 13, 2012, and continuing thereafter, Gerawan, through  
19 its owner, supervisors, agents and/or representatives, has sought to solicit employee grievances  
20 concerning union representation.

21 4. On December 18, 2012, the UFW properly filed and served charge 2012-CE-047-  
22 VIS, alleging that on or about November 13, 2012, and continuing thereafter, Gerawan, through  
23 its owners, supervisors, agents, and/or representatives, has sought to undermine the UFW's status  
24 as the exclusive bargaining representative of its employees through various written and oral  
25 communications with bargaining unit members.

26 5. On February 26, 2013, the UFW properly filed charge 2013-CE-007-VIS, alleging, in  
27 pertinent part, that on or about February 22, 2013, and continuing thereafter, Gerawan violated  
28 the Agricultural Labor Relations Act in the following ways: (1) Gerawan used identifying

1 information of workers on the UFW's negotiating committee in a manner that was threatening  
2 and coercive; (2) Gerawan engaged in surveillance; (3) Gerawan undermined the UFW's status  
3 as the exclusive bargaining representative of employees; and (4) Gerawan engaged in direct  
4 dealing with employees.

5 6. On March 18, 2013, the UFW properly filed charge 2013-CE-009-VIS, alleging  
6 that on or about February 12, 2013, and continuing thereafter, the employer has refused to  
7 provide accurate employee contact information to the UFW, who is the exclusive bargaining  
8 representative.

9 7. On July 9, 2013, the UFW properly filed charge 2013-CE-025-VIS, alleging that on  
10 or about June 2013, Gerawan, through its supervisors, representatives, and agents, unilaterally  
11 implemented a wage increase for farm labor contractor employees, without providing the UFW  
12 with notice or an opportunity to bargain over this change.

13 8. On July 15, 2013, the UFW properly filed and served charge 2013-CE-027-VIS,  
14 alleging that on or about July 1, 2013, and continuing thereafter, Gerawan's supervisors,  
15 foremen, and/or agents circulated a decertification petition among workers and coerced  
16 employees into signing the decertification petition.

17 9. On August 16, 2013, the UFW properly filed and served charge 2013-CE-030-VIS,  
18 alleging that on or about August 12, 2013, and continuing thereafter, Gerawan, through its  
19 foremen, supervisors, and/or agents, has willfully resisted, prevented, impeded, or interfered with  
20 ALRB agents in the investigation of charges filed with the ALRB.

21 10. On September 12, 2013, the UFW properly filed and served charge 2013-CE-038-  
22 VIS, alleging that on or about August 21, 2013, and continuing thereafter, Gerawan violated the  
23 Act by unlawfully soliciting employee concerns regarding unionization by directing its  
24 supervisors to tell workers that any questions they have about the union should be directed to  
25 José Erevia.

26 11. On September 12, 2013, the UFW properly filed and served charge 2013-CE-039-  
27 VIS, alleging that on or about June 1, 2013, and continuing thereafter, Gerawan violated the Act  
28 by allowing supporters of the effort to decertify the UFW to collect signatures in support of

1 decertification during work hours, while denying pro-UFW employees the opportunity to  
2 circulate petitions during work hours.

3 12. On October 2, 2013, the UFW properly filed and served charge 2013-CE-041-  
4 VIS, alleging that on or about September 30, 2013 and continuing thereafter, Gerawan, through  
5 its owners, supervisors, labor contractors, and others, unlawfully dominated and assisted  
6 decertification efforts by planning and providing material support to anti-UFW protests in and  
7 around its fields and in Sacramento, California.

8 13. On October 2, 2013, the UFW properly filed and served charge 2013-CE-042-VIS,  
9 alleging that on or about September 30, 2013, and continuing thereafter, Gerawan, through its  
10 supervisors, agents, and/or representatives, coerced employees in the exercise of their rights by  
11 blocking ranch entrances to coerce employees into signing a decertification petition; by  
12 canceling work to support anti-UFW and anti-ALRB protests; and by asking or requiring  
13 workers to attend anti-UFW and anti-ALRB protests instead of performing work.

14 14. On October 2, 2013, the UFW properly filed and served charge 2013-CE-043-VIS,  
15 alleging that on or about August 2013, and continuing thereafter, Gerawan, through its  
16 representatives, agents, supervisors, and/or foremen, communicated to workers that if the Union  
17 is successful or obtains a contract, the company will go out of business.

18 15. On October 2, 2013, the UFW properly filed and served charge 2013-CE-044-VIS,  
19 alleging that on or about September 1, 2013, and continuing thereafter, Gerawan, through its  
20 agents, representatives, and attorneys, has continued to refuse to provide correct employee  
21 contact information to the UFW by giving employee contact information that is inaccurate and  
22 failing to correct it.

23 16. On October 2, 2013, the UFW properly filed and served charge 2013-CE-045-VIS,  
24 alleging that on or about September 6, 2013, and continuing thereafter, Gerawan, through its  
25 agents, representatives, and attorneys, continues to refuse to provide relevant and requested  
26 information to the UFW by refusing to provide financial information to the UFW.

27 17. On November 26, 2013, the UFW properly filed and served charge 2013-CE-055-  
28

1 VIS, alleging that on or about October 2013, and continuing thereafter, Gerawan, through its  
2 officers, agents, and representatives, including but not limited to forepersons Martin Elizondo,  
3 Esteban Cruz, Francisco Mendoza, and Supervisor Lucio, interrogated employees about their  
4 union support.

5 18. On November 26, 2013, the UFW properly filed and served charge 2013-CE-058-  
6 VIS, alleging that on or about October 25, 2013, Gerawan, through its supervisors,  
7 representatives, and agents, interfered with, restrained, and coerced its employees by granting an  
8 unlawful wage increase to its packing workers prior to an election.

9 19. On November 26, 2013, the UFW properly filed and served charge 2013-CE-060-  
10 VIS, alleging that on or about October 25, 2103, Gerawan unilaterally implemented wage  
11 increases for its packing workers, without providing the UFW with notice or an opportunity to  
12 bargain over this change.

13 20. On December 11, 2013, the UFW properly filed and served charge 2013-CE-062-  
14 VIS, alleging that on or about July 2013, and continuing thereafter, Gerawan unilaterally  
15 implemented a new "Employee Discount Program" and provided new benefits and/or changed  
16 the medical provider network for its employees, thereby restraining and coercing its employees  
17 in the exercise of their rights.

18 21. On December 11, 2013, the UFW properly filed and served charge 2013-CE-063-  
19 VIS, alleging that on or about July, 2013, and continuing thereafter, Gerawan unilaterally  
20 implemented a new "Employee Discount Program" and provided new benefits and/or changed its  
21 medical provider network for its employees, without providing the UFW with notice or an  
22 opportunity to bargain over this change.

23 22. At all times material herein, the UFW was a labor organization within the meaning of  
24 Section 1140.4 (f) of the Act. At all times material herein, the UFW was the certified bargaining  
25 representative of Gerawan's agricultural employees in California.

26 23. At all times material herein, Gerawan was an agricultural employer within the  
27 meaning of Sections 1140.4 (a) and (c) of the Act. Gerawan is a corporation duly organized and  
28



existing under the laws of California. Gerawan's principal place of business is in Fresno, California. Gerawan is engaged in growing, packing, and shipping fresh fruit.

24. At all times material herein, Sunshine Agricultural Services and R&T Grafting Labor Inc. were farm labor contractors hired by Gerawan and, therefore, are agents of Gerawan.

25. At all times material herein, the following individuals were statutory supervisors employed by Gerawan and/or one of its farm labor contractors: José Erevia, Alfredo Zarate, Benigno Gonzalez, Mayté Serrano, Jesús Pérez, Gabriel Suarez, Ramiro Cruz, Francisco Mendoza, Jorge Rueda, Santos Rios, Juan Berdejo, Rafael Rodriguez, Silvia Arreola, Francisco Maldonado, Jesús Padilla, Sonia Martinez, Candelario Rojas, Mario Montes, Telésforo Mendoza, José Cabello, Antonio Sánchez, Emma Cortez, Israel López, Reynaldo Villavicencio, Benjamin Gallardo, Horacio Gómez, Santiago López, José Evangelista, René Palacios, Eugenio López, Ismael Portillo, Gloria Mendez, Raquel Villavicencio, Gabriel Ruiz, Leonel Nuñez, Martin Elizondo, Julio (Last Name Unknown), Rigoberto Hernandez, Emetrio Gonzalez, Dan Gerawan, and Mike Gerawan.

26. The California Grape and Tree Fruit League (now, California Fresh Fruit Association) is an association of agricultural employers based in Fresno, California. During the relevant period, Gerawan was a dues-paying member of the California Grape and Tree Fruit League and Gerawan's Vice-President George Nickolich served on its Board of Directors.

27. Anthony Raimondo ("Mr. Raimondo") is an attorney who regularly represents agricultural employers and farm labor contractors. During the relevant period, Mr. Raimondo represented two of Gerawan's farm labor contractors: Sunshine Agricultural Services and R&T Grafting Labor, Inc. Mr. Raimondo served as the attorney for these farm labor contractors during the investigation of case 2013-RD-002-VIS and insisted on being present during any interviews of these farm labor contractors' supervisors. While representing these two farm labor contractors, Mr. Raimondo also represented the Gerawan employee who filed decertification petitions 2013-RD-002-VIS and 2013-RD-003-VIS, Silvia Lopez (also referred to as "Petitioner"), and other supervisory and non-supervisory Gerawan employees involved in the effort to gather signatures in support of decertification, including Martina Barba, Rosa Madrigal, Liddeli Gonzalez, Jovita

1 Eligio, Alicia Díaz, Clara Cornejo, Berenice Chavez, Guadalupe Lopez, Lourdes Dominguez,  
2 Rene Palacios, Belen Solano, Angel Lopez, Luccrita Lopez, Maria Maurez, Erica Solano,  
3 Virginia Chairez, Marta Mendez, Felix Eligio, and Rolando Padilla.

#### 4 FACTS

5 28. The Board certified the UFW as the exclusive bargaining representative of Gerawan's  
6 agricultural employees in 1992 after a Board-supervised election in 1990 during which a  
7 majority of Gerawan's agricultural employees voted in favor of representation by the UFW.

8 29. Following certification, the UFW and Gerawan engaged in limited negotiations over  
9 a collective bargaining agreement, but were unsuccessful in reaching an accord. No voluntary  
10 collective bargaining agreement has ever been reached between Gerawan and the UFW.

11 30. In October 2012, the UFW contacted Gerawan and made a request to bargain and a  
12 request for information, including employee addresses. During this same period, the UFW  
13 contacted employees and began to form an employee negotiations committee.

#### 14 **Gerawan Unlawfully Undermined the UFW's Status as the Bargaining Agent**

15 31. The UFW's bargaining request in October 2012 sparked an intensive and ongoing  
16 campaign by Gerawan to: undermine the UFW's status as its employees' bargaining  
17 representative; to turn its employees against the union; to promote decertification of the UFW;  
18 and to prevent the UFW from ever representing its employees under a collective bargaining  
19 agreement.

20 32. On November 13, 2012, Gerawan sent its first notice to field employees about the  
21 UFW. The notice stated that the UFW demanded that Gerawan turn over its employees'  
22 "personal information" and that the UFW demanded that Gerawan start negotiating with them.  
23 Gerawan's notice says, "As your employer, we did not want this to happen but we have no  
24 control over this. The UFW says they represent you, even though you probably did not even  
25 work here 22 years ago..."

26 33. On November 22, 2012, Gerawan issued a notice to all field employees where it  
27 purports to answer questions from employees about the UFW. The questions are, "Will I have to  
28 give the UFW some of the money that I earn?"; "Don't we have a choice in whether we want the

1 UFW to represent us?"; "Do the company's owners want this to happen?"; "What happens if I  
2 refuse to let them represent me or if I refuse to give them money?"; "We already make the  
3 highest wages, so why is the UFW doing this to us?"; and, "This is unfair. I wasn't here 22 years  
4 ago and don't know anyone here that was. It makes no sense that the UFW can claim to represent  
5 me. Who can I talk to about this?" Through these questions, Gerawan told its employees that  
6 collective bargaining is unfair and futile, and directed them to contact the ALRB to express their  
7 concerns about the union or to ask questions.

8 34. On November 30, 2012, Gerawan issued a notice to all field employees, again  
9 purporting to answer questions from employees about the UFW. The first question, posed in  
10 large font is: "When do we vote?" The answer, in bold letters, is that there is no vote planned.  
11 The flyer then states "If you want to know why there is no vote planned, you can call the  
12 ALRB...and have them explain how elections are scheduled and conducted." The next questions  
13 are: "When will I have to give the UFW some of the money I earn?"; "Do Ray, Mike, and Dan  
14 want this to happen?"; "If we already make more money at Gerawan, then why is the UFW  
15 doing this?"; and, "The UFW came to my house. How did they get my address?" Through these  
16 questions, Gerawan told its employees that collective bargaining is unfair and futile. Gerawan  
17 also directed employees to the ALRB to ask why there was no vote planned and to find out "how  
18 elections are scheduled and conducted."

19 35. In early December 2012, Gerawan held captive-audience meetings with all of its  
20 agricultural employees where manager José Erevia told employees that "the UFW says they  
21 represent you, even though you probably did not even work here 22 years ago and some of you  
22 were not even born yet." During his presentation, José Erevia made the following statements:  
23 "Some of you have asked if you will have to give the UFW some of the money you earn";  
24 "Some of you have asked if you have a choice about whether you want the UFW to represent  
25 you"; "Some of you have asked if the company's owners want this to happen"; "Some of you  
26 have asked what happens if you refuse to let the UFW represent you or if you refuse to give the  
27 UFW money"; "Many of you have said that you already make the highest wages, so you asked  
28 us why the UFW is doing this to you"; "Some of you have said (1) this is unfair, (2) you weren't

1 here 22 years ago, (3) you don't know anyone here that was, and (4) you have said that it makes  
2 no sense that the UFW can claim to represent you. Because of that, you have asked who you can  
3 talk to about this"; and "Some of you have asked when you will vote." José Erevia used these  
4 purported employee questions to issue Gerawan's message that collective bargaining is unfair  
5 and futile. José Erevia also told employees to call the ALRB if they wanted to know why there  
6 was no vote planned.

7 36. Later in December 2012, Gerawan distributed another notice to all of its field  
8 employees. The first sentence of the notice states, "The UFW says they represent you even  
9 though they went away 20 years ago and have not done anything at our company since then."  
10 The flyer purports to answer the question, "Why did you bring the union in if we don't want  
11 them?" Gerawan's answer is: **"We did not bring them in."** The workers 22 years ago voted for  
12 the union, but then the union disappeared. Now the union says they still represent you." The flyer  
13 concludes by saying that "if you have any questions about this, you can call the ALRB at 1 (800)  
14 449-3699."

15 37. In February 2013, Gerawan issued a notice to all its employees that said, "You have  
16 told us that the UFW people told you that eventually money would be taken from your paycheck  
17 and that you do not want that to happen. We understand. You can call ALRB to see if they can  
18 help you at 1 (800) 449-3699." In the same flyer, Gerawan attacked the UFW's employee  
19 negotiations committee. The flyer alleged that some members of the committee had not been  
20 confirmed as employees and understated the collective company experience and seniority of the  
21 members of the negotiations committee. Gerawan used this notice to intimidate workers from  
22 participating in contract negotiations and to undermine the union by spreading misinformation  
23 about the negotiations committee.

24 38. In the midst of negotiations with the union in March 2013, Gerawan issued a notice  
25 to its field employees announcing a \$.50 raise to \$9.50 per hour. The notice makes no mention  
26 of negotiating with the union over a new wage. Instead, the flyer states that Gerawan "informed"  
27 the UFW of its plan to give a raise, and assumes the union will not cause any unnecessary delay.  
28 The flyer reinforces the lack of a role for the union in setting wages by stating that just as it has

1 always been done in the past, the decision to give a raise was made by Ray, Mike, and Dan  
2 Gerawan. Shortly after, Gerawan announced that the \$.50 raise would go in to effect by stating  
3 that Gerawan had given the employees another raise.

4 39. Later in March 2013, Gerawan issued another notice to employees announcing  
5 another \$.50 raise to \$10.00. This notice makes no mention of the UFW or its role in the  
6 negotiation process in setting wages. Gerawan claimed that "as always, we want to make sure  
7 that you are paid more than what other employers in our industry pay." Gerawan gave official  
8 notice of the wage increase the next day and undermined the union by avoiding any mention of  
9 the UFW or any negotiation process.

10 40. In April 2013, Gerawan issued a notice to all of its field employees. The notice  
11 purports to answer two questions asked by employees: "If the union gets a contract, will  
12 employees have to give them money for dues?" The answer is: "Probably. At a recent  
13 negotiation session the union told us that they will require you to pay them 3% of your wages.  
14 (They used to charge 2%, but now they want 3%)." The next question is "What happens if an  
15 employee doesn't give the union some of his or her money?" The answer is "The union wants us  
16 to fire you if you don't give them some of your money for dues. We told the union that they  
17 should not force you to give them some of your money, but they disagreed and told us that if you  
18 refuse, they will try to make us fire you." This same flyer says, "As always, our door is open.  
19 José Erevia helps with any questions or problems..."

20 41. During approximately April 2013, Gerawan issued a notice to its field employees  
21 stating at the top of the page "Our Door is Always Open". The flyer also says in bold capital  
22 letters: "What the Union Wants: 'every employee must give money to the union whether they  
23 want to or not. If an employee refuses to give money to the union, the union wants that employee  
24 to be fired.'" Then it states, also in bold, capital letters: "What Gerawan 'La Prima' Wants:  
25 'every employee has the freedom to choose whether to give money to the union or not. If the  
26 employee does not want to give money to the union, he or she does not have to.'"

27 42. On approximately July 15, 2013, Gerawan issued a notice to its employees where it  
28

1 informed them that if they have a problem, suggestions, or wish to file a complaint of an unfair  
2 or unsafe labor practice, or wish to appeal an adverse employment action, that they should talk to  
3 Gerawan management directly. The flier states that if any worker believes that his or her rights  
4 have been violated that he or she should call José Erevia. During the same time, Gerawan began  
5 circulating a business card for manager José Erevia that stated that employees should call him  
6 with questions about union issues. In approximately September 2013 Gerawan issued a notice to  
7 its employees as part of their pay stub. This notice includes a headline saying that thanks to  
8 Gerawan's open door policy, there is no need for an intermediary. Under this headline is a notice  
9 that Gerawan's management will listen, investigate and expeditiously resolve any issue that  
10 employees may bring to them. By inviting direct complaints to management about unfair labor  
11 practices and adverse employment actions, Gerawan deviated from its past practice of handling  
12 employee complaints and concerns.

#### 13 **Gerawan Unilaterally Changed the Terms and Conditions of Employment**

14 43. In approximately June 2013, Gerawan gave a \$1.00 per hour wage increase to its  
15 agricultural employees hired through farm labor contractors. Gerawan did not negotiate with the  
16 UFW over the wage increase, nor did it inform the UFW of its intention of increasing the wages  
17 for employees hired through farm labor contractors until after the increase was put in to effect.  
18 The unilateral wage increase undermined the UFW's status as the bargaining agent by  
19 communicating to employees that collective bargaining was futile and that the employer was  
20 solely responsible for setting the terms and conditions of employment.

21 44. In approximately July 2013, Gerawan unilaterally implemented a new employee  
22 discount program. Gerawan did not negotiate with the UFW over the new employee benefit, nor  
23 did it inform the UFW of its intention to implement the new benefit program. The unilateral  
24 implementation of a new employee benefit undermined the UFW's status as the bargaining agent  
25 by communicating to employees that collective bargaining was futile and that the employer was  
26 solely responsible for setting the terms and conditions of employment.

27 45. On October 25, 2013, Gerawan unilaterally issued an increase to the piece-rate pay  
28

1 for grape packers from \$1.25 to \$1.50 per box. Gerawan provided no notice to the UFW of the  
2 pay increase, nor did it provide the union with an opportunity to bargain over the increase. The  
3 unilateral wage increase undermined the UFW's status as the bargaining agent by  
4 communicating to employees that collective bargaining was futile and that the employer was  
5 solely responsible for setting the terms and conditions of employment.

6 **Gerawan Refused to Provide Relevant Information to the UFW**

7 46. Since the UFW has renewed its effort to bargain, Gerawan has refused to provide the  
8 union with accurate employee contact information. Gerawan's refusal to provide correct  
9 addresses for employees has interfered with the UFW's ability to represent and communicate  
10 with employees and has prevented employees from communicating with their bargaining  
11 representative.

12 47. During the period from November 2012 to January 2013, the UFW documented over  
13 2,000 employee addresses provided by Gerawan that were either non-existent, non-residential or  
14 where the employee did not live. On January 25, 2013 the UFW informed Gerawan that the  
15 employee list contained over 2,000 incorrect addresses and identified the specific addresses that  
16 were not correct. The UFW asked that Gerawan provide it with correct addresses. Gerawan  
17 failed to provide correct employees addresses to the UFW.

18 48. The UFW repeated its request for a corrected address list in March, April, and May,  
19 2013. Despite its multiple requests, Gerawan failed to provide the UFW with corrected addresses  
20 for its employees.

21 49. On July 11, 2013, Gerawan provided the UFW with a new list of direct hire  
22 employee addresses. A large percentage of these addresses were incorrect. On September 18,  
23 2013, the UFW notified Gerawan that the most recent employee list contained 2,994 incorrect  
24 addresses and asked that the addresses be corrected. Gerawan failed to provide correct addresses  
25 to the UFW.

26 50. On September 5, 2013, the UFW requested that Gerawan provide it with various  
27 forms of relevant financial information that would permit the union to respond to statements by  
28 the company that it may go out of business if a collective bargaining agreement were to go into

1 effect. The UFW requested, *inter alia*, accounting reports, copies of filings with the Securities  
2 Exchange Commission, documents regarding possible downsizing, and documents about  
3 expected changes in operation as a result of the implementation of a collective bargaining  
4 agreement. Gerawan refused to provide any of the financial information that the UFW requested.

#### 5 Gerawan Supported the Decertification Effort

6 51. In June 2013, Gerawan hired Petitioner Silvia Lopez. Before returning to Gerawan,  
7 Silvia Lopez had not worked for the company since approximately 2010. At the time that she  
8 returned to work for Gerawan, Silvia Lopez lived with her boyfriend, Mario Montes, a Gerawan  
9 Supervisor, with her daughter, Gerawan employee Lucerita Lopez, and with her son-in-law,  
10 Angel Lopez, also employed by Gerawan.

11 52. Silvia Lopez began her involvement in anti-union activities at Gerawan before she  
12 started working for the company in late June 2013. On June 11, 2013, Silvia Lopez travelled to  
13 Modesto, California with several Gerawan employees and attorney Paul Bauer, an employer  
14 defense attorney who at the time represented Gerawan employee Lupe Garcia in a case against  
15 the UFW. While in Modesto, Silvia Lopez and a group of Gerawan employees unsuccessfully  
16 sought to participate in the Mandatory Mediation and Conciliation ("MMC") process between  
17 Gerawan and the UFW.

18 53. Shortly after travelling to Modesto with Silvia Lopez and the Gerawan employees, in  
19 approximately late June, 2013, Paul Bauer began representing and advising Silvia Lopez as to  
20 how to decertify the UFW as the collective bargaining representative at Gerawan.

21 54. By late June 2013, Silvia Lopez began to work sporadically for Gerawan in Crew  
22 Boss Reynaldo Villavicencio's crew. By mid-July 2013, Silvia Lopez, her daughter, Belen  
23 Solano, her son-in-law, Angel Lopez, and other employees were actively engaged in a campaign  
24 of gathering signatures to support the decertification of the UFW at Gerawan. Silvia Lopez and  
25 other employees, including supervisory personnel, began to approach employees in Gerawan's  
26 crews in Kerman and Reedley on a regular basis, during work hours, after work hours, and  
27 during breaks, to gather signatures to decertify the UFW. During this period, Silvia Lopez rarely  
28



1 worked a full day in her crew. Several other employees also took significant amounts of time off  
2 to engage in decertification signature gathering activities during work hours.

3 55. In August 2013, owner Dan Gerawan called Silvia Lopez, Rolando Padilla and other  
4 Gerawan employees engaged in the decertification signature gathering effort and invited them to  
5 join him on a trip to Sacramento to lobby State Legislators over SB 25 – a bill that would have  
6 amended the Act and, in Dan Gerawan's view, made it more difficult for agricultural employees  
7 to decertify their union. On approximately August 14, 2013, Silvia Lopez, Rolando Padilla and  
8 other employees accompanied Dan Gerawan and the president of the California Grape and Tree  
9 Fruit League, Barry Bedwell, on a trip to Sacramento where they met with legislators to urge  
10 them to vote against SB 25.

11 56. On September 18, 2013, Silvia Lopez, with assistance from attorney Anthony  
12 Raimondo and his associate Joanna McMillan, filed a decertification petition (2013-RD-002-  
13 VIS) in the Visalia Regional Office of the ALRB. On September 22, 2013, the Visalia Regional  
14 Director informed Mr. Raimondo that insufficient signatures had been submitted and that  
15 petitioner could have an additional 24 hours to gather valid signatures for the petition. Silvia  
16 Lopez and attorney Joanna McMillan submitted additional signatures on September 23, 2013.

17 57. On September 25, 2013, the Visalia Regional Director dismissed the decertification  
18 petition. After investigation, the regional staff found that Silvia Lopez, through her attorney,  
19 submitted at least 100 forged signatures in support of the petition. In accordance with the law,  
20 the Regional Director invalidated these forged signatures and the remaining signatures were  
21 insufficient to meet the Act's showing of interest requirement. In addition, the decertification  
22 petition was dismissed based on evidence of employer assistance in filing the decertification  
23 petition.

24 58. The signature gathering effort for a new decertification petition resumed  
25 after petition 2013-RD-002-VIS was dismissed. For the second decertification effort, instead of  
26 relying primarily on signature gathering in the crews to obtain most of the signatures, Gerawan's  
27 pro-decertification employees and supervisors used mass work stoppages and protests. During  
28 the supervisor-supported protests and work stoppages, the Petitioner and those working with her

1 gathered approximately half of the signatures submitted in support of the next decertification  
2 petition, 2013-RD-003-VIS.

3 59. On multiple days, including, but not limited to, September 27, 2013, September 30,  
4 2013, October 2, 2013, October 25, 2013, and November 1, 2013, Gerawan employees with  
5 direction and support from Gerawan and its supervisors, stopped work and engaged in anti-UFW  
6 and anti-ALRB protests for the purpose of gathering signatures on the decertification petition  
7 and gaining support among employees, the public, and state government officials for  
8 decertification.

9 60. On October 25, 2013, Silvia Lopez, through her attorneys, Anthony Raimondo and  
10 Joanna MacMillan, filed decertification petition 2013-RD-003-VIS. The Visalia Regional  
11 Director issued a decision to block the election on October 31, 2013, based on the existence of  
12 outstanding and unremedied unfair labor practice complaints against Gerawan. Notwithstanding  
13 the extensive evidence presented to the Board, the decision to block was overruled by the Board  
14 on November 1, 2013. The ALRB held an election on November 5, 2013 and impounded the  
15 ballots subject to the resolution of multiple unfair labor practice charges.

#### 16 **Gerawan Expressed Its Support for the Decertification Effort**

17 61. During the course of the decertification signature gathering effort from  
18 approximately July 10, 2013 through November 1, 2013, Gerawan, through its owners,  
19 supervisors, and crew bosses, regularly made statements that encouraged and assisted in the  
20 effort to decertify the union and coerced employees in their ability to choose whether to support  
21 decertification.

22 62. During the time of the signature gathering effort in September and October, 2013,  
23 Gerawan set up a website (helpfarmworkers.com) to promote the decertification effort. Gerawan  
24 described the website as Gerawan's employees' "effort to insure that their voices are heard in  
25 Sacramento, and they get to make their own decision." The website featured pro-decertification  
26 messages and regularly updated links to pro-decertification news articles. Visitors to the website  
27 could click on a button and automatically send an electronic mail message to the Visalia

1 Regional Director of the ALRB and to the Members of the Board, urging that employees be  
2 allowed to vote to decertify the UFW.

3 63. Gerawan offered its company website ([www.prima.com](http://www.prima.com)) as a means to provide vocal  
4 support to employees engaged in the decertification effort and to the early effort for employees  
5 to intervene in the ALRB's MMC process. Gerawan's website offered links to pro-  
6 decertification news articles and to pro-decertification statements by the company's owners. One  
7 such statement, released the day the decision to hold an election was issued (November 1, 2013),  
8 called the decision to hold an election a "victory" and said that Gerawan's owners are "humbled  
9 by the perseverance of so many workers who refused to give up in their quest to hold a secret  
10 ballot election."

11 64. During the time of the signature gathering effort, Gerawan's representatives and crew  
12 bosses regularly made statements to encourage decertification and communicate that Gerawan's  
13 employees' jobs would be at risk if the union were successful in obtaining a collective  
14 bargaining agreement.

15 65. In September 2013, owner Dan Gerawan, his wife, Norma Gerawan, and manager  
16 José Erevia held captive-audience meetings in most of the Gerawan crews to promote the  
17 company and purportedly congratulate employees for successfully petitioning for a  
18 decertification election. Also in September 2013, Dan Gerawan was quoted in a Wall Street  
19 Journal article as saying that if a law passed allowing the union to obtain successor contracts  
20 through the MMC process, he did not think the company would survive.

21 66. In July, August, and September 2013 Gerawan's crew bosses, including  
22 Leonel Nuñez, Benigno Gonzalez, Alfredo Zarate, Emma Cortez and others, made statements to  
23 discourage workers from supporting the union and told employees that Gerawan might go out of  
24 business if the union were successful in being able to represent Gerawan's employees.

25 **Gerawan's Supervisors Were Directly Involved in the Decertification Signature Gathering**

26 67. On or about July 28, 2013, Gerawan Crew Boss Leonel Nuñez gathered  
27 approximately 20 members of his crew for a meeting before the start of the work day. During the  
28 meeting, Leonel Nuñez held out a petition to decertify the UFW. Leonel Nuñez told the workers

1 in his crew that they should sign the petition to get rid of the union. Leonel Nuñez added that if  
2 the union were successful, the company would go out of business.

3 68. After telling the members of his crew that they should get rid of the union, Leonel  
4 Nuñez approached one worker who refused to sign the petition after the meeting. Leonel Nuñez  
5 told this worker that he knew that there were two union supporters in his crew and seven in  
6 Francisco Maldonado's crew.

7 69. On approximately July 29, 2013, Leonel Nuñez approached two employees of his  
8 crew and told them that if someone from the Agricultural Labor Relations Board or from  
9 Gerawan management were to come and ask questions that they should say that Leonel Nuñez  
10 was not present during any meeting where the petition was discussed.

11 70. On or about July 29, 2013, Gerawan Crew Boss Sonia Martinez showed a de-  
12 certification petition to employees while giving instructions to her crew for the day. Martinez  
13 told the workers in her crew that they could sign the petition to get rid of the union.

14 71. After explaining the petition and sending the employees to work, Sonia Martinez  
15 went row by row and provided the employees in her crew with the signature sheet for them to  
16 sign in support of the decertification petition.

17 72. On or about July 19, 2013, Gerawan Crew Boss Cirilo Gomez was leaving a field in  
18 Kerman, California at the end of the shift while several women were gathering signatures in  
19 support of decertification. Cirilo Gomez took several signature sheets of the decertification  
20 petition from the women and told employees in his crew that they should sign the petition.

21 73. That same day, after telling workers in his crew to sign the decertification petition,  
22 Cirilo Gomez put several sheets of the petition in his van so that the employees that he drove to  
23 and from work could sign the decertification petition.

24 74. Between approximately July 19, 2013 and September 10, 2013, on multiple  
25 occasions, Gerawan Crew Boss Emma Cortez went to Gerawan crews, other than her own, and  
26 directly asked workers for signatures on the decertification petition.

1           75. In approximately mid-August 2013, Gerawan Crew Boss Jesus Padilla, in the  
2 presence of other employees, provided signature pages in support of decertification to an  
3 employee in his crew during work hours.

4           76. In approximately July 2013, Gerawan Crew Boss Jose Carrillo provided the  
5 signature pages of the decertification petition to employee members of his crew and instructed  
6 them to gather signature from employees.

7           77. In approximately September 2013, Gerawan Crew Boss Santos Rios provided sheets  
8 from the decertification petition to a member of his crew and, in the presence of at least one  
9 other worker, instructed a crew member to gather signatures from members of the crew.

10           78. In approximately August 2013, Gerawan Assistant Crew Boss Rene Palacios assisted  
11 in the decertification effort by signing the petition and asking members of his crew to sign the  
12 petition in support of decertification.

13           79. In approximately August 2013, Gerawan Assistant Crew Boss Benjamin Gallardo  
14 assisted in the decertification effort by signing the petition and making his support visible to  
15 other members of his crew.

16           80. On approximately September 21, 2013, Supervisor Horacio Gomez of Gerawan's  
17 farm labor contractor, R&T Grafting Labor, Inc., provided copies of the petition in support of  
18 decertification to members of Crew Boss Israel Lopez's crew. Horacio Gomez told the workers  
19 who were gathered together to receive their paychecks that Gerawan had given him the sheets for  
20 the workers to sign because Gerawan wanted to get rid of the union.

21           81. On approximately September 21, 2013, Crew Boss Ismael Portillo of Gerawan's farm  
22 labor contractor R&T Grafting Labor, Inc., supported the decertification effort by signing the  
23 petition.

24           82. On approximately September 21, 2013, Gerawan's farm labor contractor, Sunshine  
25 Agricultural Services, unlawfully assisted the decertification effort by providing names of  
26 employees to signature gatherers for the purpose of having employees sign the petition or for  
27 having their signatures forged on the decertification petition.

1 83. In approximately August 2013, Gerawan began a program of free fruit giveaways on  
2 Fridays. During the fruit giveaways, Gerawan owner Dan Gerawan and other top management  
3 would frequently be present to greet employees as they helped themselves to fruit and a variety  
4 of aguas frescas (fresh fruit drinks). Gerawan had provided free fruit to employees during  
5 previous seasons, but the offerings improved significantly during the 2013 season in the midst of  
6 the decertification campaign. On approximately August 30, 2013 and September 6, 2013,  
7 Gerawan supported the decertification effort by allowing signature gathering in the area of the  
8 fruit giveaways and within close distance of the owner. By allowing the signature gathering to  
9 occur during the fruit giveaways, Gerawan communicated to its employees that it sponsored and  
10 supported the effort to decertify the UFW.

11 84. During the period of approximately July 12, 2013, through approximately October 25,  
12 2013, Gerawan, through its owners, managers, supervisors and crew bosses regularly assisted the  
13 decertification effort by discriminatorily allowing decertification signature gathering during  
14 work hours while denying similar access to employees engaged in pro-union activities.

15 85. At various times during the period of approximately July 2013 through October  
16 2013, the following crew bosses and assistant crew bosses knowingly permitted signature  
17 gathering in support of the decertification petition during work hours: Martin Elizondo, Leonel  
18 Nuñez, Raquel Villavicencio, José Cabello, Gloria Mendez, Eugenio Lopez, José Evangelista,  
19 Santiago Lopez, Antonio Sanchez, Telesforo Mendoza, José Carrillo, Sonia Martinez, Jesus  
20 Padilla, Francisco Maldonado, Gabriel Ruiz, Rafael Rodriguez, Juan Berdejo, Jorge Rueda,  
21 Francisco Mendoza, Ramiro Cruz, Jesus Perez, Maité Serrano, and Alfredo Zarate.

22 86. On or about August 27, 2014, several Gerawan crew bosses, including, but not  
23 limited to, Antonio Sanchez, Cirilo Gomez, Martin Elizondo, Rafael Rodriguez, Alfredo Zarate,  
24 and Francisco Maldonado, refused to allow employees to gather signatures for a pro-union  
25 petition during work hours. At no time during the relevant period has Gerawan allowed pro-  
26 union signature gathering during work hours.

27 **Gerawan Discriminatorily Used Attendance Policies to Support Decertification**

28 87. During the period of approximately July 1, 2013 through October 25, 2013,

Gerawan, through its owners, supervisors, crew bosses, assistant crew bosses, and other supervisory staff, applied preferential attendance policies for the benefit of employees engaged in signature gathering for the decertification petition. During this period, Gerawan, through its owners, managers, supervisors, and crew bosses, regularly allowed employees supporting the decertification effort to arrive late to work, leave early, access Gerawan's fields on days the employee did not work, take extended breaks during the work day, and to avoid work altogether to engage in signature gathering, protests and other activities in furtherance of the decertification effort.

88. During the period of Gerawan's negotiations with the UFW in 2013 and during the period of July 2013 through October 25, 2013, Gerawan applied strict attendance policies for union supporters and for employees whose absences were unrelated to decertification activities.

89. Gerawan Crew Boss Reynaldo Villavicencio allowed employees Silvia Lopez and Belen Solano to miss work approximately 75% of the time during the period of approximately July 1, 2013 through October 25, 2013, without requiring justification and without employee discipline. Crew boss Reynaldo Villavicencio applied stricter attendance policies toward employees not involved in the decertification effort, including, but not limited to, informing employees that they could be disciplined for excessive absences from work.

90. During the period of August 2013 through October 2013, Gerawan Crew Boss Jesus Padilla regularly allowed his brother and crew member, Rolando Padilla, to leave his crew to gather signatures for the decertification petition and to participate in protests in support of the decertification effort. During this period, including, but not limited to October 25, 2013, Crew Boss Jesus Padilla paid Rolando Padilla for time that he spent on decertification activities.

#### **Gerawan Supported Protest Activities to Decertify the UFW**

91. In September 2013 and October 2013, Gerawan, through its crew bosses, assistant crew bosses and other supervisory personnel, actively recruited and encouraged employees to join in protests against the ALRB and the UFW. During this period, Gerawan's supervisory employees cancelled work and directed workers to protests in Kerman, Visalia, and Fresno in support of the decertification effort. Approximately one-half of the signatures submitted in

1 support of decertification petition 2013-RD-003-VIS were obtained during protest activities  
2 sponsored by Gerawan against the ALRB and the UFW.

3 92. On Friday, September 27, 2013, with support from Gerawan, hundreds of farm  
4 workers left their crews and travelled to Visalia to protest the ALRB Regional Director's  
5 dismissal of decertification petition 2013-RD-002-VIS. During the course of the protest,  
6 hundreds of signatures were gathered in support of a second decertification petition.

7 93. On Monday, September 30, 2013, Gerawan, through its supervisors, supported the  
8 decertification effort by shutting down Gerawan's operation in Kerman, California for one day.  
9 As workers arrived to work, Gerawan allowed employees to block all access to the fields and  
10 packing areas. Instead of being allowed to enter the fields and work, Gerawan's employees were  
11 presented with the decertification petition and asked to sign. Gerawan's crew bosses then  
12 directed employees to a protest against the ALRB and the UFW instead of allowing employees  
13 to work.

14 94. At approximately 3:00 a.m. that same day, Gerawan supervisory employee Julio,  
15 Last Name Unknown used a trailer to block access to Yard 42 in Kerman where grape packing  
16 activities were occurring, and used one of Gerawan's forklifts to block access to the fields with  
17 crates and other Gerawan equipment. Gerawan's supervisors provided assistance to the protest  
18 effort by refusing to take necessary equipment to the fields, including tools, water, and  
19 restrooms. Gerawan further allowed non-supervisory employees to freely block access to fields  
20 with Gerawan's ladders, tractors and other equipment to coerce employees into stopping work  
21 and signing the decertification petition. Through its actions, Gerawan made sure that employees  
22 would not be able to access fields and work on September 30, 2013, thus coercing them into  
23 participating in protests in support of decertification.

24 95. Gerawan Crew Bosses Emma Cortez, Gloria Mendez, and others, as well as several  
25 of Gerawan's assistant crew bosses, including, but not limited to Gabriel Suarez, assisted in the  
26 effort to gather signatures for decertification by participating with workers in the protest on  
27 September 30, 2013. During this protest, pro-decertification activists gathered over 1,000  
28 signatures for the decertification petition.



1           96. On October 2, 2013, the California Grape and Tree Fruit League provided buses and  
2 food to Gerawan employees to travel to Sacramento and engage in protests and lobbying in  
3 support of the decertification effort. Gerawan allowed the buses to arrive early in the morning at  
4 its packing house to pick up supervisory and non-supervisory employees to travel to Sacramento  
5 for the protest. The League also paid for anti-union T-shirts to be printed and distributed to  
6 Gerawan employees in support of the decertification effort. Various Gerawan supervisory  
7 personnel, including, but not limited to Gerawan Crew Boss Gloria Mendez and Assistant Crew  
8 Boss Gabriel Suarez recruited employees to skip work and travel on the buses to Sacramento to  
9 support the decertification effort.

10           97. During September and October 2013, Gerawan's crew bosses regularly encouraged  
11 employees to participate in protests for the purpose of gaining support for the decertification  
12 petition. The crew bosses who encouraged the decertification protest activities included, but were  
13 not limited to, Crew Boss Gloria Mendez, Assistant Crew Boss Gabriel Ruiz, Crew Boss  
14 Emetrio Gonzalez, Assistant Crew Boss Rafael Rodriguez, Crew Boss Benigno Gonzalez, Crew  
15 Boss Francisco Ginez, Crew Boss José Carrillo, Crew Boss Rigoberto Hernandez, and Crew  
16 Boss Jesus Perez.

17           98. On October 25, 2013, Gerawan provided support to a media event in support of the  
18 decertification petition that was filed that day by Petitioner Silvia Lopez in Visalia. Gerawan,  
19 through its Crew Boss Gloria Mendez and others, encouraged several hundred workers to leave  
20 work in the middle of the day to attend a protest in Fresno. Upon their return to work, Gerawan  
21 paid for the workers who participated in the protest to receive free pizza and tacos.

#### 22           **Gerawan Provided Legal Support to the Decertification Effort**

23           99. In approximately August 2013, employer defense attorney Anthony Raimondo  
24 began to represent Silvia Lopez in furtherance of her efforts to decertify the UFW at Gerawan.  
25 At the time that Mr. Raimondo began to represent Silvia Lopez, Mr. Raimondo represented  
26 Sunshine Agricultural Services, a farm labor contractor, supplying labor to Gerawan. Mr.  
27 Raimondo had represented Sunshine Agricultural Services and its owner for several years. Mr.

1 Raimondo charged Sunshine Agricultural Services for his services and provided free services to  
2 Silvia Lopez.

3 100. On approximately September 20, 2013, Mr. Raimondo informed the ALRB that, in  
4 addition to Silvia Lopez, he was representing Gerawan Assistant Crew Boss Rene Palacios and  
5 non-supervisory workers Rolando Padilla, Guadalupe Lopez, Jovita Eligio, Rosa Madrigal,  
6 Martina Barba, Clara Cornejo, Liddeli Gonzalez, Angel Lopez, and Lourdes Dominguez in the  
7 matter of the decertification of the UFW.

8 101. During the same time that Mr. Raimondo represented Gerawan employees in the  
9 decertification process, Mr. Raimondo represented Gerawan farm labor contractors Sunshine  
10 Agricultural Services and R&T Grafting Labor, Inc., in the same matter and insisted on being  
11 present for the investigative interviews of any Gerawan supervisors employed by R&T Grafting  
12 Labor Services, Inc., or Sunshine Agricultural Services.

13 102. As an attorney for Gerawan's farm labor contractors, Mr. Raimondo provided free  
14 legal services to Silvia Lopez and other employees in support of their effort to decertify the  
15 UFW.

16 103. Through his representation of Ms. Lopez and other Gerawan employees, Mr.  
17 Raimondo, on behalf of Gerawan's agents, Sunshine Agricultural Services and R&T Grafting  
18 Labor, Inc., committed unlawful surveillance of employee union activity by gained access to all  
19 the signatures sheets of the decertification petition and to information about who signed the  
20 decertification petition and who did not sign the decertification petition.

21 **FIRST CAUSE OF ACTION**

22 **California Labor Code § 1153 (a)**

23 *(Instigation and Unlawful Assistance in the Decertification Effort)*

24 104. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor  
25 practices under Section 1153(a) of the Act by coercing, restraining, and interfering with its  
26 employees in the exercise of their rights under Section 1152 of the Act to freely choose whether  
27 to support the UFW or support a decertification petition.

1           105. By instigating and providing material assistance to the decertification effort,  
2 including assisting in signature gathering, providing legal support, engaging in a pro-  
3 decertification messaging campaign, supporting pro-decertification protest efforts, and  
4 discriminating in favor of pro-decertification activities in the application of workplace policies,  
5 as alleged in paragraphs 51 through 103 above, Gerawan unlawfully coerced, restrained, and  
6 interfered with its employees in the exercise of their rights in violation of the Act.

7           106. By unlawfully undermining the UFW's status as the bargaining representative for  
8 Gerawan's employees and causing disaffection with the UFW, as alleged in paragraphs 28  
9 through 50 above, Gerawan unlawfully coerced, restrained, and interfered with its employees in  
10 the exercise of their rights in violation of the Act.

11                           **SECOND CAUSE OF ACTION**

12                           **California Labor Code §1153 (e)**

13                           *(Instigation and Unlawful Assistance in the Decertification Effort)*

14           107. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair  
15 labor practices under Section 1153(e) of the Act by instigating and providing material assistance  
16 to the decertification effort.

17           108. By instigating and providing material assistance to the decertification effort, as  
18 alleged in paragraphs 51 through 103 above, Gerawan failed to bargain in good faith with the  
19 union and unlawfully undermined the UFW's status as Gerawan's employees' bargaining  
20 representative in violation of the Act.

21                           **THIRD CAUSE OF ACTION**

22                           **California Labor Code §1153 (e)**

23                           *(Unilateral Changes)*

24           109. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor  
25 practices under Section 1153(e) of the Act by making unilateral changes to its employees' terms  
26 and conditions of employment and thereby unlawfully undermining the UFW's status as  
27 Gerawan's employees' bargaining representative through its anti-union campaign.

110. By making unilateral changes to the terms and conditions of employment without bargaining with the UFW, as alleged in paragraphs 43 through 45 above, Gerawan violated its duty to bargain in good faith with the union in violation of the Act.

111. By unlawfully undermining the UFW's status as the bargaining representative through its anti-union campaign and through its bad faith bargaining practices, as alleged in paragraphs 28 through 50 above, Gerawan violated its duty to bargain in good faith with the union in violation of the Act.

**FOURTH CAUSE OF ACTION**  
**California Labor Code §1153 (e)**  
***(Refusal to Provide Information)***

112. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor practices under Section 1153(e) of the Act by refusing to provide relevant information to the UFW and thereby unlawfully undermining the UFW's status as Gerawan's employees' bargaining representative.

113. By refusing to provide the UFW with relevant and accurate information, including, but not limited to, employee contact information and Gerawan's financial information, as alleged in paragraphs 46 through 50 above, Gerawan interfered with and limited the UFW's ability to communicate with Gerawan's employees and effectively bargain with the company on their behalf in violation of the Act.

114. By refusing to provide the UFW with relevant and accurate information, including, but not limited to, employee contact information and Gerawan's financial information, as alleged in paragraphs 46 through 50 above, Gerawan unlawfully undermined the UFW's status as Gerawan's employees' bargaining representative and caused disaffection with the UFW in violation of the Act.

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1 **FIFTH CAUSE OF ACTION**  
2 **California Labor Code §1153 (e)**  
3 ***(Solicitation of Grievances)***

4 115. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor  
5 practices under Section 1153(e) of the Act by soliciting grievances by employees and thereby  
6 unlawfully undermining the UFW's status as Gerawan's employees' bargaining representative.

7 116. By soliciting grievances and asking employees to directly contact management to  
8 discuss unfair labor practices and other workplace grievances, as alleged in paragraphs 40  
9 through 42 above, Gerawan has violated its duty to bargain in good faith with the union in  
10 violation of the Act.

11 117. By soliciting grievances, as alleged in paragraphs 40 through 42 above, Gerawan  
12 unlawfully undermined the UFW's status as Gerawan's employees' bargaining representative  
13 and caused disaffection with the UFW in violation of the Act.

14 **SIXTH CAUSE OF ACTION**  
15 **California Labor Code §1153(a)**  
16 ***(Coercion and Restraint through Bad Faith Bargaining)***

17 118. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor  
18 practices under Section 1153(a) of the Act by engaging in bad faith bargaining with the UFW.

19 119. By unlawfully undermining the UFW's status as Gerawan's employees' bargaining  
20 representative through Gerawan's bad faith bargaining practices and anti-union campaign, as  
21 alleged in paragraphs 28 through 50 above, Gerawan unlawfully coerced and restrained its  
22 employees in the exercise of their collective bargaining rights in violation of the Act.

23 **SEVENTH CAUSE OF ACTION**  
24 **California Labor Code § 1153 (a)**  
25 ***(Threats, Interrogation, Interference and Surveillance)***

26 120. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor  
27 practices under Section 1153(a) of the Act by coercing, restraining, and interfering with its  
28 employees in the exercise of their rights under Section 1152 of the Act to freely choose whether  
to support the UFW or to support a decertification petition.

121. By issuing pro-decertification communications and threatening employees with, among other things, the company going out of business if the UFW were to obtain a collective bargaining agreement, as alleged in paragraphs 61 through 66 above, Gerawan unlawfully threatened and coerced its employees in violation of the Act.

123. By engaging in unlawful surveillance and interrogation of Gerawan's employees' union and decertification activities, including allowing supervisors to gather signatures on decertification petitions, as alleged in paragraphs 67 through 86 and 91 through 103 above, Gerawan unlawfully coerced and restrained its employees in the exercise of their rights in violation of the Act.

124. By threatening employees and instructing them to falsify information to the ALRB, as alleged in paragraph 69 above, Gerawan unlawfully interfered with its employees' rights to participate in the ALRB's investigation of Gerawan's unfair labor practices and their right to engage in union and protected concerted activities in violation of the Act.

#### **REQUEST FOR RELIEF**

As the remedy for the unfair labor practices set forth above, the General Counsel seeks an order requiring Respondent, its officers, agents, successors, and assigns to:

- A. Cease and desist from initiating, sponsoring, supporting, approving, encouraging, and circulating a decertification petition among employees;
- B. Cease and desist from interrogating and surveilling its agricultural employees with respect to their support or opposition to the UFW;
- C. Cease and desist from, in any like or related manner, interfering with, restraining, or coercing agricultural employees in the exercise of their rights guaranteed by Labor Code section 1152;
- D. Cease and desist from taking actions to undermine the UFW's status as the collective bargaining representative of Gerawan's employees;
- E. Cease and desist from refusing to bargain in good faith with the UFW by denying its requests for information;

- 1 F. Cease and desist from implementing unilateral changes to the terms and  
2 conditions of employment;
- 3 G. Cease and desist from soliciting grievances from employees;
- 4 H. Cease and desist from intimidating members of the UFW's negotiations  
5 committee;
- 6 I. Provide the UFW with a complete and accurate employee address list for its  
7 2012, 2013, and current employees;
- 8 J. Provide the UFW with relevant financial information in accordance with its  
9 September 5, 2013 request for information directed to Gerawan.
- 10 K. Issue a mailing of a Notice of Agricultural Workers' Rights Under the  
11 Act ("Notice") to all of Gerawan's agricultural employees employed  
12 during the 2013 season;
- 13 L. Grant ALRB agents access to worksites where Gerawan's agricultural  
14 employees are employed to provide a reading of the Notice outside the  
15 presence of supervisory personnel, and to post the Notice at Gerawan's  
16 work sites for a period of 60 days during the period of peak employment.  
17 Following the reading, Gerawan's agricultural employees will have a  
18 reasonable period of time in which to ask questions to the ALRB agents  
19 about the Notice or about their rights under the Act. The time spent  
20 during the reading and question and answer period shall be compensated  
21 by Gerawan at the employees' regular hourly rates, or each employee's  
22 average hourly rate based on their piece-rate production during the prior  
23 pay period;
- 24 M. Provide a copy of the signed Notice to each agricultural employee hired  
25 to work for Gerawan as an agricultural employee during the twelve-  
26 month period following the issuance of a final Board order in this matter;
- 27 N. Grant ALRB agents access to Gerawan worksites to inspect the posting  
28 and ensure compliance for a period of 60 days following the first day of

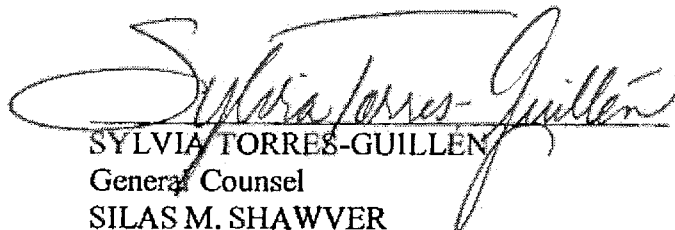
posting;

- O. Provide access to ALRB agents to give a one-hour training to all of Gerawan's statutory supervisors of field labor regarding their responsibilities under the Act to allow employees to engage in protected concerted activity and union activity free from coercion, interference and restraint; and

FURTHER, the General Counsel seeks any other relief that is just and proper to remedy the unfair labor practices alleged herein, including, but not limited to, the destruction of the ballots and the dismissal of the Petition for Decertification in Gerawan Farming, Inc., Case No. 2013-RD-003-VIS.

Dated this 9th day of September, 2014.

AGRICULTURAL LABOR RELATIONS BOARD

  
SYLVIA TORRES-GUILLEN  
General Counsel  
SILAS M. SHAWVER  
Regional Director



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Attorneys for the General Counsel

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case Nos.:	
GERAWAN FARMING, INC.	)	2012-CE-041-VIS	2013-CE-042-VIS
	)	2012-CE-042-VIS	2013-CE-043-VIS
Respondent,	)	2012-CE-046-VIS	2013-CE-044-VIS
	)	2012-CE-047-VIS	2013-CE-045-VIS
and	)	2013-CE-007-VIS	2013-CE-055-VIS
	)	2013-CE-009-VIS	2013-CE-058-VIS
	)	2013-CE-025-VIS	2013-CE-060-VIS
UNITED FARM WORKERS OF AMERICA,	)	2013-CE-027-VIS	2013-CE-062-VIS
	)	2013-CE-030-VIS	2013-CE-063-VIS
Charging Party.	)	2013-CE-038-VIS	
	)	2013-CE-039-VIS	
	)	2013-CE-041-VIS	

ORDER TO CONSOLIDATE CASES

1 Charges were duly filed in the above-captioned cases, pursuant to Labor Code section  
2 1160.2 and California Code of Regulations, title 8, section 20220, *et seq.* As explained below,  
3 the General Counsel has considered the matter and deems it appropriate to consolidate these  
4 charges for hearing to effectuate the purposes of the Act and to avoid unnecessary costs or delay.

5 **A. The General Counsel's Duty to Consolidate Related Cases to Avoid Piecemeal**  
6 **Litigation and Promote Efficiency**

7 Section 20244(a) of the ALRB's Regulations authorizes the General Counsel to  
8 consolidate charges into one complaint for hearing up to 10 days prior to hearing. This authority  
9 is consistent with Section 1149 of the Act, which provides that the General Counsel has final  
10 authority with respect to the issuance of complaints and the prosecution of such complaints  
11 before the Board. Given that this matter is set for hearing on September 29, 2014, consolidation  
12 is well within the General Counsel's authority under the Regulations.

13 The question of consolidating charges is not merely one of discretion based on  
14 considerations of judicial economy. Relevant precedent from the National Labor Relations Board  
15 states that piecemeal litigation against Respondents and re-trying facts under distinct legal  
16 theories may be barred. *Jefferson Chemical* (1972) 200 NLRB 992. A failure to consolidate  
17 factually related charges into a single complaint for hearing may result in a subsequent complaint  
18 being dismissed. *Id.*; *Service Employees Int'l Union* (1997) 324 NLRB 774, 774-75. The key  
19 consideration supporting a requirement for consolidation is whether the facts involved in the  
20 separate complaints are intertwined. *Service Employees Int'l Union, supra*, at 775. Failure to  
21 fully litigate the facts in the initial proceeding may bar the General Counsel from re-litigating the  
22 same facts in a separate proceeding. *Id.*; *Jefferson Chemical* at 995. Here, the closely intertwined  
23 relationship between the facts of each of the consolidated charges prevents them from being  
24 separately litigated without substantial risk of later charges being dismissed.

25 ///

26 ///

27 ///

1           **B. All of the Consolidated Charges Involve Related Facts That Militate Against**  
2           **Piecemeal Litigation**

3           Where a petition for either representation or decertification is tainted, it must be  
4 dismissed because there is no *bona fide* question of representation. Lab. Code §1156.3(b). Each  
5 of the charges consolidated in this complaint involves facts relevant to the material issue of  
6 whether the employer committed unfair labor practices which would taint the entire  
7 decertification petition itself, rendering it invalid as the basis for an election. *Penn Tank Lines,*  
8 *Inc.* (2001) 336 NLRB 1066. Additionally, apart from the commonality of the facts as  
9 independent bases for unfair labor practices, each individual charge provides relevant and  
10 admissible background with respect to each of the other inextricably intertwined charges.  
11 *D'Arrigo Bros.* (2013) 39 ALRB No. 4 at 15-16.

12           1. The Unfair Labor Practices Alleged All Relate to Gerawan's Unlawful Taint of the  
13           Decertification Petition.

14           Generally, under the Act, a decertification petition is only valid where the process is  
15 untainted by an employer's unfair labor practices. *Gallo Vineyards* (2004) 30 ALRB No. 2; *Penn*  
16 *Tank Lines, Inc., supra*, 336 NLRB 1066. It is well-established under the Act that an employer  
17 commits an unfair labor practice by providing any non-ministerial assistance to employees in the  
18 decertification process. *Gallo Vineyards* at 16. Such assistance is considered coercive and tends  
19 to give the impression to employees that the employer is sponsoring or supporting the effort to  
20 obtain signatures for the decertification petition. *D'Arrigo Bros.* at 15. Under the National Labor  
21 Relations Act ("NLRA"), it is also clear that a decertification petition is unlawfully tainted where  
22 the employer commits unfair labor practices that cause its employees to become disaffected with  
23 the union. *Penn Tank Lines* at 1066. The NLRB, in relevant precedent, has refused to permit an  
24 employer to withdraw recognition from a union based on a decertification petition that resulted  
25 from its unremedied unfair labor practices. *Id. citing Olson Bodies* (1973) 206 NLRB 779, 780.  
26 Unfair labor practices that have been found to unlawfully cause disaffection with the union and  
27 thereby to taint a decertification petition include: (1) unilateral changes to terms and conditions  
28 of employment; (2) threats of plant closure or discharge; and (3) discrimination based on union  
activities. *Penn Tank Lines* at 1068; *Olson Bodies, supra*, at 780. As explained in *Penn Tank*

1 Lines, with respect to unilateral increases, "by unilaterally changing the employees' terms and  
2 conditions of employment, the Respondent minimized the influence of organized bargaining and  
3 emphasized to the employees that there is no necessity for a collective-bargaining agent." *Id.*  
4 *citing May Department Stores Co. v. NLRB*, (1945) 326 U.S. 376, 385. In this case, Gerawan  
5 Farming has fatally tainted the entire decertification petition process by engaging in the  
6 following unfair labor practices: making unilateral changes to the terms and conditions of  
7 employment; repeatedly failing to provide the union with relevant information; solicitation of  
8 employee grievances; publically campaigning to undermine the union's authority;  
9 communicating the futility of collective bargaining to its employees; and unlawful assistance and  
10 discrimination in the decertification signature gathering process. As such, all of these charges go  
11 directly to the question of the validity of the decertification petition—a question that, by its  
12 nature, should precede a ballot count. *Cattle Valley Farms* (1982) 8 ALRB No. 24.

13 2. The Facts at Issue in the Consolidated Charges Constitute Relevant Background in  
14 Determining the Respondent's Role in Sponsoring and Supporting the Decertification  
15 Petition.

16 The Board has recognized the importance and relevance of background information  
17 about the bargaining relationship between the union and the employer prior to filing a  
18 decertification petition and of statements by an employer about the union, even when they do not  
19 constitute unfair labor practices, in and of themselves. In *D'Arrigo*, as in this case, "evidence of  
20 conduct that is time-barred or is otherwise not subject to adjudication on the merits may be  
21 admissible as background to shed light on the character of the events that properly are being  
22 litigated." *D'Arrigo Bros.*, *supra*, 39 ALRB No. 4 at 15-17; *M. Caratan* (1983) 9 ALRB No. 33  
23 at 10-11. In *D'Arrigo Bros.*, the ALJ properly considered broader evidence of employer support  
24 for the decertification petition than what was alleged in the complaint. *Id.* In *M. Caratan*, the  
25 Board stated that a series of employer statements in the course of a decertification process,  
26 "overwhelmingly presented" a general scheme of interference with Section 1152 rights. *M.*  
27 *Caratan*, *supra*, at 10-11. Here, the facts underlying the unfair labor practice charges, in addition  
28 to what is alleged in charges 2013-CE-027-VIS and 2013-CE-039-VIS, also constitute highly  
relevant background information to the charges that Gerawan Farming unlawfully assisted in the

1 decertification effort and generally show a scheme of interference with its employees' Section  
2 1152 rights. These facts would necessarily be a part of the record and are, therefore, rightfully  
3 included in the consolidated complaint. For these reasons, and in the interests of efficiency and  
4 fairness to the parties and witnesses, the General Counsel finds that consolidation of the charges  
5 is warranted.

6  
7 IT IS HEREBY ORDERED, for the above reasons and pursuant to section 20244(a) of  
8 the ALRB's Regulations, that the above-captioned charges be consolidated for hearing.

9 Dated this 9th day of September 2014.

11 AGRICULTURAL LABOR RELATIONS BOARD

12  
13   
14 SYLVIA TORRES-GUILLEN

15 General Counsel

16 SILAS M. SHAWVER

17 Regional Director  
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State Of California  
Agricultural Labor Relations Board  
**PROOF OF SERVICE BY MAIL**  
(8 Cal.Code Regs. Sec. 20164)

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 within entitled action. My business address is: 1325 J Street, Suite 1900 A, Sacramento, CA 95814.

On September 9, 2014, I served the within **ORDER TO CONSOLIDATE AND AMENDED CONSOLIDATED COMPLAINT, GERAWAN FARMING, INC., Case No: 2013-CE-027-VIS, et al.**, on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

CERTIFIED MAIL AND FAX

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Barsamian and Moody  
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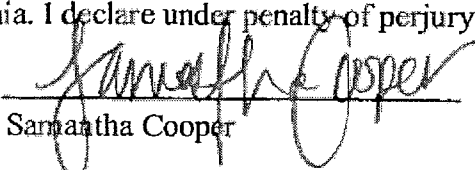
VIA HAND DELIVERY

Sylvia Torres-Guillén, General Counsel  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900 A  
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Hon. Mark Soble, ALJ  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900 B  
Sacramento, CA 95814

J. Antonio Barbosa, Executive Secretary  
Agricultural Labor Relations Board  
1325 J St. Suite 1900 B  
Sacramento, California 95814

Executed on September 9, 2014, at Sacramento, California. I declare under penalty of perjury that the foregoing is true and correct.

  
Samantha Cooper





# NEWS FROM UFW

UNITED FARM WORKERS OF AMERICA  
LA PAZ, KEENE, CA 93531 661-822-5571  
<http://www.ufw.org>

Sept. 10, 2014

Contact: Luz Peña, UFW Communications Coordinator, 661.332.1074

## **New 28-page complaint from ALRB chief prosecutor details Gerawan's 'intensive and ongoing' drive since 2012 to prevent workers from 'ever' winning a union contract**

*Decertification "leader" Sylvia Lopez's anti-union role began before starting work at Gerawan in June 2013; complaint details that she missed 75 percent of work over the next four months without penalty in company-spawned bid to get rid of the UFW*

In a blistering new 28-page complaint—tantamount to an indictment—the chief prosecutor for the Agricultural Labor Relations Board detailed how the UFW's renewed attempt to negotiate a union contract with Gerawan Farming "in October 2012 sparked an intensive and ongoing campaign by Gerawan to: undermine the UFW's status as its employees bargaining representative; to turn it employees against the union; to promote decertification of the UFW; and to prevent the UFW from ever representing its employees under a collective bargaining agreement."

The consolidated complaint, the fifth since last year, was issued on Tuesday, Sept. 9, 2014, by ALRB General Counsel Sylvia Torres Guillen, who said in a news release that, "No employee in the fields should be coerced by their employers when it comes to deciding whether union representation is best for them. The Agricultural Labor Relations Act ensures that agricultural employees can select a collective bargaining representative free from employer interference."



The complaint specifies a long chronology of serious, multiple and repeated violations of California farm labor law that have been outlined in the four earlier complaints, three from 2013 and one issued in April 2014.

### **New revelations about Sylvia Lopez**

Among new allegations resulting from state investigations that are contained in the new complaint are those involving Sylvia Lopez, "leader" of the drive to decertify, or get rid, of the UFW.

"Sylvia Lopez began her involvement in anti-union activities at Gerawan before she started working for the company in late June 2013," the complaint states. **"By late June 2013, Sylvia Lopez began to work sporadically for Gerawan (emphasis added)"** The complaint continues:

By mid-July 2013, Sylvia Lopez, [other of her family members] and other employees were actively engaged in a campaign of gathering signatures to support the decertification of the UFW at Gerawan. Sylvia Lopez and other employees, including supervisory personnel, began to approach employees in Gerawan's crews in Kerman and Reedley on a regular basis, during work hours, after work hours, and during breaks, to gather signatures to decertify the UFW. **During this period, Sylvia Lopez rarely worked a full day in her crew (emphasis added).** Several other employees also took significant amounts of time off to engage in decertification signature gathering during work hours.

In August 2013, owner Dan Gerawan called Sylvia Lopez [and other] employees engaged in the decertification signature gathering effort and invited them to join him on a trip to Sacramento to lobby state legislators over SB 25—a bill that would have amended the Act and, in Dan Gerawan's view, made it more difficult for agricultural employees to decertify their union...

**Gerawan Crew Boss Reynaldo Villavicencio allowed employees Sylvia Lopez and Belen Solano [Lopez's daughter] to miss work approximately 75 percent of the time during the period of approximately July 1, 2013 through October 25, 2013, without requiring justification and without employee discipline (emphasis added).**

**Gerawan 'actively recruited' and supported anti-UFW and anti-ALRB protests**

“Gerawan supported protest activities to decertify the UFW,” the complaint alleges. It continues:

In September 2013 and October 2013, Gerawan...actively recruited and encouraged employees to join in protests against the ALRB and the UFW. During this period, **Gerawan’s supervisory employees cancelled work and directed workers to protests** in Kerman, Visalia and Fresno in support of the decertification effort (emphasis added)...On Monday, September 30, 2013, Gerawan...[shut] down Gerawan’s operation in Kerman, California for one day. [All access to the fields and packing areas were blocked and] Gerawan’s employees were presented with the decertification petition and asked to sign. **Gerawan’s crew bosses then directed employees to protest against the ALRB an the UFW instead of allowing employees to work** (emphasis added)...**Gerawan made sure that employees would not be able to access fields and work on September 30, 2013, thus coercing them into participating in protests in support of decertification** (emphasis added). During September and October 2013, Gerawan’s crew bosses regularly encouraged employees to participate in protests for the purpose of gaining support for the decertification petition.

On October 25, 2013, Gerawan provided support to a media event in support of the decertification petition...encourag[ing] several hundred workers to leave work in the middle of the day to attend a protest in Fresno. Upon their return to work, Gerawan paid for the workers who participated in the protest to receive free pizza and tacos...

**On multiple days, including, but not limited to, September 27, 2013, September 30, 2013, October 2, 2013, October 25, 2013, and November 1, 2013, Gerawan employees, with direction and support from Gerawan and its supervisors, stopped work and engaged in anti-UFW and anti-ALRB protests for the purpose of gathering signatures on the decertification petition and gaining support among employees, the public and state government officials for decertification** (emphasis added).”

#### Gerawan’s directly supported decertification efforts

“During the course of the decertification signature gathering effort from approximately July 20, 2013 through November 1, 2013, Gerawan, through its owners, supervisors, and crew bosses, regularly made statements that encouraged and assisted in the effort to decertify the union and coerced employees in their ability to choose whether to support decertification,” the complaint states. It continues:

During the time of the signature gathering effort in September and October 2013, Gerawan set up a website (helpfarmworkers.com) to promote the decertification effort...Gerawan [also] offered its company website...as a means to provide vocal support to employees engaged in the decertification effort...

[The complaint presents detailed evidence that] Gerawan supervisors were directly involved in the decertification signature gathering...

Gerawan discriminatorily used attendance policies to support decertification...[from July 1, 2013 through October 25, 2013]. **Gerawan**, through its owners, managers, supervisors and crew bosses, **regularly allowed employees supporting the decertification effort to arrive late to work, leave early, access Gerawan fields on days the employee did not work, take extended breaks during the work day, and to avoid work altogether to engage in signature gathering, protests and other activities in furtherance of the decertification effort** (emphasis added).

[Meantime,] during the period of Gerawan's negotiations with the UFW in 2013 and during the period of July 2013 through October 25, 2013, **Gerawan applied strict attendance policies for union supporters** and for employees whose absences were unrelated to decertification activities (emphasis added).

###



## Gerawan-UFW Chronology

Updated 8-25-14

Gerawan Farming - which markets its fruits under the Prima brand - is a multi-million dollar company employing over 5,000 farm workers in the San Joaquin Valley. The United Farm Workers (UFW), with the participation of a 25 member negotiating committee obtained a legally binding union contract through the Mandatory Mediation Process of the State of California calling for improved wages, benefits and additional rights but Prima has illegally refused to implement.

*May 4, 1990* — At the request of Gerawan farm workers and in a drive led by Cesar Chavez and Dolores Huerta, the United Farm Workers of America intervened in the Gerawan Farming Inc. union representation election—organizing workers and demonstrating enough support to get on the ballot—after another union, the Independent Union of Agricultural Workers/International Brotherhood of Painters and Allied Trades, AFL-CIO initially files for an election at the huge Fresno-based grape and tree fruit company. Gerawan insisted on including its packinghouse workers in the balloting in an effort to swing the election against the unions.

*May 9, 1990* — The Gerawan election is conducted by the state Agricultural Labor Relations Board. The choices on the ballot are the Independent Union of Agricultural Workers, the UFW and no union. (ALRB case 16 90-RC-2-VI) The results are:

IUAW	178
UFW	479
No Union	581
Challenged Ballots	55
Total	1,293

*May 10, 1990* — The state of California (ALRB general counsel) accuses Gerawan of illegally laying off farm workers in 32 crews in order to prevent the workers from voting for the UFW, all in an effort to affect the outcome of election. Gerawan is later ordered to pay all the laid-off workers lost wages with interest to make them whole for the economic losses they suffered as a result of unlawful Gerawan's actions. (ALRB case 90-CE-15-VI)

*May 15, 1990* — A run-off election is held between the two top vote getters (Gerawan and the UFW), but challenged ballots will determinative the outcome. (ALRB case 16 90-RC-2-VI) The results are:

UFW	536
No Union	374
Challenged Ballots	211
Total	1,121

*June 1990* — The state of California (ALRB general counsel) accuses Gerawan of illegally firing crew boss Pedro Lopez's crew because its members are union supporters.

*June 29, 1990* — The ALRB makes a decision on which of the challenged ballots should be counted, resulting in UFW election victory. (ALRB case 16 90-RC-2-VI)

*July 8, 1992* — After rejecting lengthy legal challenges to the election results by Gerawan, the ALRB certifies the UFW as the Gerawan employees' union representative.

*July 21, 1992* — Cesar Chavez sends a letter to Gerawan requesting negotiations.

*August 13, 1992* — Gerawan agrees to negotiate, but then never makes a legal contract proposal.

*November 1992* — In an effort to delay bargaining for a union contract, Gerawan reverses its position and files a petition with the National Labor Relations Board Oakland office asking its regional director to determine that Gerawan's packinghouse workers were subject to the NLRB's jurisdiction and therefore ineligible to be represented by the UFW under California's farm labor law. In May 1990, Gerawan had previously insisted that the packinghouse workers were eligible to vote and should be included in the state-held election under California law. (NLRB case No. 32-RM-700).

*December 30, 1992* — Gerawan is found guilty by the state of California (ALRB) of closing down six farm labor camps in retaliation for workers' support of the UFW and the company is ordered to compensate workers for their loss of housing.

*March 9, 1993* — The NLRB regional director issues a decision, determining that the Gerawan packinghouse workers are commercial rather than agricultural employees and therefore ineligible to be represented by the UFW, even though Gerawan had previously argued they should be included in the vote.

*April 23, 1993* — Cesar Chavez passes away.

*July 6, 1994* — UFW President Arturo Rodriguez (who succeeds Cesar Chavez) sends Gerawan a letter once again requesting negotiations on behalf of Gerawan workers.

*Summer and fall 1994* — UFW organizers and negotiators work with the elected union negotiating committee composed of worker leaders at the massive company and extensively consult with workers in Gerawan's many crews to re-organize the employees and involve them in formulating a complete UFW bargaining proposal.

*November 22, 1994* — UFW Central Valley Regional Manager Tanis Ybarra submits the comprehensive bargaining proposal to Gerawan and proposes ground rules for the negotiations. Shortly thereafter, the UFW's Ybarra meets with the company attorney and Mike Gerawan, taking them through the union bargaining proposal. The company agrees to prepare a counter-proposal. It is never received.

*Early 1995* — The Union's Ybarra, UFW President Rodriguez and union executive board member Cecilia Ruiz meet with Mike Gerawan to discuss negotiations. During the meeting, Gerawan says, "I don't want the union and I don't need the union." Gerawan signals it will never sign a contract acceptable to UFW. That ends the session. No more meetings are held.

*1995 - 2002* — Gerawan workers and UFW continue working to improve their working conditions, all while the ALRB stops enforcing the law and provides no support for continued organizing.

2001-2002 — UFW works with farm workers from across the state, including Gerawan workers, for development and passage of Mandatory Mediation law. Farm workers from across the state, including Gerawan workers, march on the state capitol, urging the Governor to sign the bill into law.

January 1, 2003 — The 2002 UFW-sponsored Mandatory Mediation law goes into effect. This law permits neutral state mediators to hammer out union contracts when growers refuse to sign them.

July 2003 — UFW begins testing mediation law at various farms, including at Pictsweet Mushroom Farms

November, 2003 — First grower challenges constitutionality of mediation law in the Third District Court of Appeal (Hess Collection Winery v. Agricultural Labor Relations Board)

March, 2004 — Several grower organizations, included many supported by Gerawan, file amicus briefs asking that the Court of Appeal rule that the Mediation law is illegal

April, 2004 — UFW files amicus brief and assists other unions in support of upholding the constitutionality of Mediation law before the Third District Court of Appeal

May 2004 — At the urging of Gerawan workers, the UFW launches a new campaign to re-organize Gerawan workers and opens a union office in the Fresno County town of Reedley to aide in that effort.

July 2004 — Briefing is completed in the Court of Appeals in the Hess case

August 5, 2004 — Farm workers receive a wave of nasty anti-UFW leaflets that are mailed out to farm worker communities where Gerawan employees live, threatening workers with job loss if they support the union. UFW and workers believe Gerawan is responsible for the "anonymous" mailings.

2002-2006 — UFW tests out Mandatory Mediation Law and awaits courts of appeal to uphold the law in the face of grower challenges.

2005 — With the help of Gerawan workers and other workers across the state, UFW urges Governor Schwarzenegger to sign emergency heat regulations requiring growers like Gerawan to provide shade and cool water to employees.

August, 2011 — UFW and workers from Gerawan and other farms stage a 150 mile march to Sacramento to secure additional rights for farm workers to organize.

January 1, 2012 — Another law takes effect that is crafted in 2011 by Governor Jerry Brown creating new remedies for workers when their employers break the law during union organizing or election campaigns.

October 12, 2012 — The UFW sends another request for negotiations to Gerawan.

January 17 - July 29, 2013 — Despite numerous negotiating sessions, Gerawan refuses to agree to a collective bargaining agreement with the union and the worker leader negotiating committee.

*March 29, 2013* — The UFW files for Mandatory Mediation under provisions of the 2002 binding mediation law.

*May 17, 2013* — The first new complaint—tantamount to an indictment—is filed by the state of California (ALRB general counsel) against Gerawan because the company illegally proposes to exclude some of its farm workers from the protections of a union contract because they are supplied by farm labor contractors and because Gerawan is “insisting that the UFW agree to an unlawful contract proposal that contravenes the purposes of the [law],” according to the complaint. (ALRB case 2013-CE-10-VIS)

*August 15, 2013* — A second complaint is filed by the state of California (ALRB general counsel), accusing Gerawan supervisors of illegally circulating petitions to decertify the UFW. California and national labor laws make it patently illegal for an employer to have any involvement in a campaign by its workers to decertify the union. (ALRB case 2013-CE-27-VIS)

*August 21, 2013* — Fresno Superior court judge issues a temporary restraining order (TRO) against Gerawan for the August 15, 2013 complaint.

*September 16, 2013* — Fresno Superior court judge issues injunction against Gerawan.

*September 18, 2013* — The first illegal petition for a decertification election is filed at Gerawan, with the unlawful assistance of Gerawan crew bosses.

*September 25, 2013* — The ALRB regional director dismisses the Gerawan decertification petition after a thorough investigation reveals widespread forgery, illegal company support for the decertification drive and because the petition does not contain enough worker signatures to qualify for an election.

*September 28, 2013* — The neutral state mediator issues an official report to the three-member ALRB board (amounting to a union contract) that is appealed by Gerawan.

*October 25, 2013* — The second complaint filed by the state of California (ALRB general counsel) against Gerawan is amended. It now accuses Gerawan of “instigating and encouraging the gathering of signatures for a decertification petition,” having supervisors circulate petitions and telling workers to sign them, “unlawfully interrogating workers about their union activities,” threatening employees with job loss if they support the UFW, and “surveiling” its workers. It also states that an attorney for some of Gerawan’s farm labor contractors—and therefore an agent of Gerawan—illegally represents the petitioner and other workers behind the decertification effort. (ALRB case 2013-CE-27-VIS)

*October 25, 2013* — Despite having the authority to issue a final ruling, Governor Brown’s appointees to the three-member ALRB board promote further delay by sending the mediator’s decision back to him in order for him to revise six very minor issues that are quickly and easily resolved. No decertification petition would have been permitted once the ALRB board had implemented the union contract.

*October 25, 2013* — The ALRB’s delay in implementing the mediator’s decision allows time for a second illegal Gerawan decertification petition to be filed, the first one having been dismissed the previous month.



*October 30, 2013* — A third complaint is filed by the state of California (ALRB general counsel) against Gerawan, accusing the company of “failing to bargain in good faith with its employees’ union,” “impeding its employees ability to communicate with their union” and “failing to provide relevant and accurate employee information” to the UFW so it can communicate with union members. Gerawan has “intimidat[ed] [its employees] in the exercise of their right to participate in negotiations,” the complaint states. Gerawan has also taken credit for a “significant” pay hike for its workers without mentioning the UFW or that the raise was “negotiated with the union,” according to the complaint. (ALRB cases 2012-CE-41; 2012-CE-47; 2013-CE-07; 2013-CE-09; 2013-CE-25)

*October 31, 2013* — The ALRB regional director dismisses the second decertification petition at Gerawan, citing the outstanding three complaints issued against the company over repeated multiple violations of the law in the last five months. The regional director states that it is “impossible” to conduct a free and fair election given Gerawan’s lawbreaking.

*November 1, 2013* — In an unprecedented action, the governor’s three appointees on the ALRB board ignore California law and quickly vacate the regional director’s dismissal of the second decertification election and order the election held anyway despite numerous blatant violations of the law by Gerawan and Gerawan crew boss involvement in the request for the election. The ballots are impounded and not counted so that the Board can investigate the extent of Gerawan’s violations of the ALRA.

*November 19, 2013* — The Gerawan workers’ long-awaited union contract is finalized by the ALRB, but the company refuses to implement it in violation of the law.

*December 23, 2013* — The UFW files unfair labor practice charges with the ALRB over Gerawan’s failure to recall a number of worker leaders, including members of the union negotiating committee, in retaliation for their support of the UFW and for engaging in union activities protected by California law.

*April 4, 2014* — 4th Complaint filed by State of California against Gerawan Farming (2014-CE-003) for Bad Faith Bargaining and Unlawful Restraint and Interference by illegally refusing to implement the legally binding contract ordered by the neutral mediator and approved by the ALRB.

*April 9, 2014* — ALRB General Counsel takes Gerawan to court for violating the law and refusing to implement the collective bargaining agreement ordered by the State of California.

*June 23, 2014* — LM10 reports filed with the Department of Labor reveal that Gerawan paid anti-union labor consultant \$3,000 a day plus travel and other expenses to campaign against the UFW.

*August 4, 2014* — Gerawan fires a worker leader for taking a photograph at work. Charges are filed with the ALRB.

*August 12, 2014* — Anti-Union and far right Republican group, Center for Worker Freedom, launches a billboard campaign against UFW along Highway 99 near Delano.

Prepared by the United Farm Workers of America, August, 2014.



## **Background: Gerawan Farming's refusal to implement a state mandated contract with UFW Public Help Needed**

Giant Fresno, California based Gerawan Farming, with over 5000 workers at peak harvest season, sells peaches, nectarines, plums, apricots and grapes under its **Prima** label.

The California Agricultural Labor Relations Act (ALRA) provides California farm workers legal protections to organize and bargain for union contracts. Yet entrenched industry opposition to farm workers' exercising their rights under the ALRA, including industry violations of the law, remains a major challenge. Gerawan is a prime example.

The United Farm Workers (UFW) won an election to represent the workers at Gerawan twenty four years ago. At that time, Gerawan attempted unsuccessfully to have the election thrown out and the State of California found that Gerawan illegally fired a crew of workers for supporting the union and unlawfully closed down six of its farm labor camps in retaliation for workers backing the UFW.

After numerous attempts to negotiate a contract with Gerawan, in 2013 the UFW invoked California's Mandatory Mediation Law which provides for a neutral mediator to work out the terms of a contract when growers cannot reach agreement with union representatives. (Gerawan, for example, rejected basic proposals from the workers' negotiating team regarding wage increases, a seniority system, or a "just cause" requirement for termination.) The state appointed mediator issued a UFW/Gerawan contract that was finalized by the Agricultural Labor Relations Board in November of 2013, with wage increases retroactive to July, 2013. Yet, per a recent complaint filed by the ALRB's General Counsel, Gerawan illegally refuses to implement the contract.

In 2013 and '14 the State of California issued complaints against Gerawan that include accusing the grower of illegally instigating and supporting drives to get rid of the UFW; illegally interrogating and spying on workers; illegally proposing to exclude its Farm Labor Contractor workers from receiving union contract benefits; illegally intimidating workers exercising their right to participate in negotiations; failing to bargain in good faith; and illegally refusing to implement the state-issued contract.

Gerawan continues to engage in an expensive campaign to discredit the union, including paying \$3,000 plus per day for anti-union labor consultants! Yet in light of the complaints against Gerawan by the state and more, Gerawan's campaign rings hollow. Gerawan's refusal to abide by the law and to implement the contract has deprived Gerawan farm workers of millions of dollars in wage increases and other benefits established by the state mediator in the contract.

Gerawan is able to carry on business without penalty thus far as the legal process is slow! Gerawan workers are now turning for justice to concerned consumers and the court of public opinion.



## **Big-money radical right groups help huge grower to avoid paying millions already owed its farm workers**

*By Arturo S. Rodriguez*

Well-financed anti-labor groups related to America's radical right are coming to the aid of giant Fresno, Calif.-based Gerawan Farming to avoid implementing a union contract under which it already owes millions of dollars to thousands of its grape and tree fruit workers. Gerawan, with more than 5,000 workers at peak harvest season, sells peaches, nectarines, plums, apricots and grapes under its Prima label.

Gerawan refuses to implement a contract with the United Farm Workers issued in 2013 by a state mediator and affirmed by the California Agricultural Labor Relations Board under a state law letting workers call in neutral mediators to hammer out contract provisions after failed attempts at traditional bargaining.

Gerawan's refusal to implement the contract is the latest in a long history of labor law violations that began in 1990, when its workers voted to be represented by the UFW in the last major union organizing drive under Cesar Chavez's leadership. The mammoth employer was soon found guilty of unlawfully firing a crew of workers and closing six labor camps in retaliation for employees supporting the union. Since workers brought in the state mediator in 2013, the state of California has issued a new series of complaints—tantamount to indictments—against Gerawan, alleging serious, multiple and repeated violations of the law. They include illegally refusing to bargain in good faith, instigating and supporting drives to get rid of the UFW; interrogating and spying on workers; intimidating employees exercising their right to participate in negotiations; and refusing to implement the state-issued union contract.

After heavily spending on an array of law firms, public relations firms and anti-union consultants (some of whom have been paid \$3,000 a day), Gerawan is benefiting from slick media campaigns including billboards on Central Valley highways apparently orchestrated and underwritten by national chieftains of the radical right, which includes Grover Norquist and the billionaire Koch brothers (David and Charles). Behind the pro-Gerawan blitz is the Center for Worker Freedom, a project of Americans for Tax Reform and led by the anti-government activist Norquist, architect of last fall's Republican shutdown of the federal government. Norquist's Americans for Tax Reform has reportedly received significant financial support from the Koch brothers.

Now Gerawan Farming is a beneficiary of the radical right's war on unions and workers. The Americans for Tax Reform-sponsored "Center for Worker Freedom" have fought workers trying to organize with the United Auto Workers in Tennessee. Norquist also led the campaign that killed labor law reform in Congress and he has mounted drives in a number of states to cripple union members' right to participate in the political process.

In its paid media drives, Center for Worker Freedom complains that "big labor" is trying to take over farm workers' lives at Gerawan. What's really at issue is the *big money* that Gerawan owes its workers under the union contract that the Norquist and Koch brothers-financed group is helping the giant grower avoid paying.

Under contract terms set by the state mediator—not the UFW—as of September 2, 2014, most Gerawan employees would have received approximately \$1,591 each, retroactive to July 2013. This was to cover paid holidays and regular wage increases, reflecting a 54-hour workweek. The contract also would have handed other Gerawan workers (including irrigators, tractor drivers, and pesticide sprayers) a 2.5 percent wage increase, also retroactive to July 2013, plus 5 percent pay hikes in 2014 and 2015.

For approximately 5,000 farm workers, those back wages and benefits would have conservatively translated into many millions of dollars, just covering July 2013 to September 2014. Going forward, the contract would produce many millions of dollars more for workers over its duration.

In February 2014, workers at Gerawan filed a federal class-action lawsuit accusing the company of not paying many workers minimum wage, overtime and paid rest breaks guaranteed under state law.

Gerawan, an agricultural industry behemoth, is directly spending big money, and the billionaire fair right is coming to its aid, all to avoid paying millions of dollars that the state of California says its workers are owed under terms of the union contract the grower refuses to implement. Gerawan workers are asking the public and major retailers to encourage the company to obey the law and implement the contract. To participate and keep up with Gerawan and other farm worker campaigns, sign up for the UFW's free list serve at [www.ufw.org](http://www.ufw.org).

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*Arturo S. Rodriguez is president of the United Farm Workers of America.*





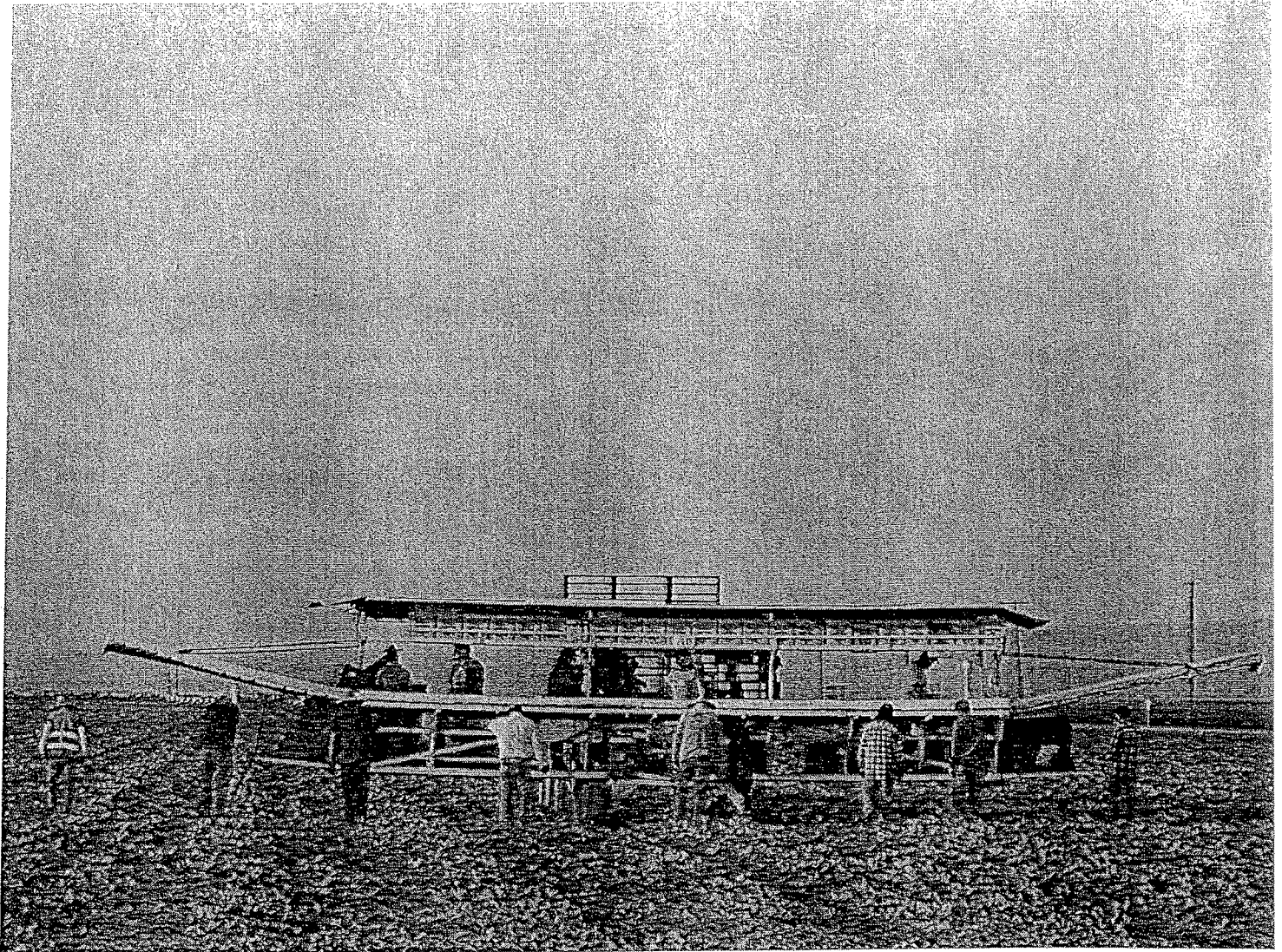




Photo courtesy of United Farm Workers

## The Long Road to Justice for California Farmworkers

*By Cruz Reynoso and Arturo S. Rodriguez*

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With the recent nationwide release of the first feature film and a new full-length documentary about the life of Cesar Chavez, we are celebrating Cesar's legacy of fighting for farmworkers' rights and the continuing progress of the United Farm Workers of America.

However, even today, farm workers in the U.S. continue to be excluded from national labor laws that granted basic rights to industrialized workers in 1935 and 1938. California

As with other good laws that protect California's agricultural workers, poor enforcement of the state's farm labor law means that workers often must battle long and hard to win union contract protections.

is the only state with a law—the 1975 Agricultural Labor Relations Act—allowing those who labor in the fields to organize and bargain for better pay, decent conditions and job security. California workers have those protections only because of Cesar Chavez and the workers he and his movement organized.

But, as with other good laws that protect California's agricultural workers, poor enforcement of the state's farm labor law means that workers often must battle long and hard to win union contract protections.

Fresno-based Gerawan Farming, one of America's largest grape and tree fruit growers, epitomizes the agricultural industry's ongoing, entrenched resistance to unionization. Gerawan's grapes, peaches, plums, nectarines and apricots are sold in major grocery stores across the country under its Prima label, but the workers who grew and harvested that fruit have been denied even the most basic of labor protections.

Just last year, 23 years after voting for the UFW in a state-conducted, secret ballot election, Gerawan workers finally got what they voted for: a union contract that the state ordered the company to implement. California lets workers call in neutral state mediators to hammer out contracts when growers refuse to sign them. Under the contract terms set by the mediator—not the UFW—as of May 2014, the majority of Gerawan employees would have received approximately \$1,074 each, retroactive to July 2013. This was to cover paid holidays and regular wage increases, reflecting a 54-hour workweek.

The new contract also would have handed other Gerawan workers (including irrigators, tractor drivers and pesticide sprayers) a 2.5 percent wage increase, also retroactive to July 2013, plus five percent pay hikes in 2014 and 2015.

For approximately 5,000 farmworkers, those back wages and benefits would have conservatively translated into millions of dollars, covering July 2013 to May 2014. Going forward, the contract would produce many millions of dollars more for workers over its duration.

We say Gerawan farmworkers *would* receive the money they are owed; Gerawan refuses to implement the contract. Instead, Gerawan has used appeals and endless legal motions to avoid paying the compensation their workers are owed. A series of complaints issued by state officials describes a long history of egregious labor law violations by Gerawan. Let's examine some of them.

Culminating the union's last major organizing drive under Cesar Chavez's leadership, Gerawan workers voted in favor of the UFW in May 1990. It took more than two years after that vote for the California Agricultural Labor Relations Board (ALRB) to dismiss Gerawan's appeals of the election results.

Meanwhile, the state of California found that Gerawan illegally fired a crew of workers for supporting the union [i] and unlawfully closed down six of its farm labor camps in retaliation for workers backing the UFW.[ii]

A 1994 UFW drive that involved thousands of Gerawan workers produced a complete bargaining proposal. But the company never submitted a counterproposal. In 2004, the UFW launched a new campaign to organize Gerawan workers and opened a union office in the Fresno County town of Reedley to aide in that effort.

The UFW sent another request for negotiations to Gerawan in October 2012. However, numerous bargaining sessions failed to produce much movement by the company or a union contract.

After workers brought in a state mediator, the ALRB general counsel filed three complaints against Gerawan from May to October 2013. The state of California accused Gerawan of:

- "Illegally excluding some of its farmworkers from the benefits of a [union contract]."[iii]
- Having company supervisors illegally "instigat[e] and encourag[e] the gathering of signatures" on petitions to decertify (or get rid of) the UFW. California and national labor laws make it patently illegal for employers to get involved in campaigns to

decertify unions.[iv]

- “Unlawfully interrogating workers about their union activities” and “surveiling” workers.[v]
- “Failing to bargain in good faith with its employees’ union” and “impeding its employees’ ability to communicate with their union.” Gerawan has “intimidat[ed] [its employees] in the exercise of their right to participate in negotiations.”

The ALRB in 2014 issued a fourth complaint against Gerawan over its failure to implement the contract.[vi] The state agency also is investigating charges that Gerawan failed to recall workers in retaliation for their union activities.

In September 2013, the ALRB regional director dismissed the first Gerawan petition to decertify the UFW after a thorough investigation exposed “a large number of forged signatures” and “significant unlawful assistance by the employer in the circulation of the petition,” according to the regional director. He dismissed the second petition in October 2013, citing the outstanding three recent complaints against the company for repeated multiple violations of the law. The regional director concluded that it is “impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner.”

Nevertheless, Governor Brown’s three appointees on the ALRB vacated the regional director’s dismissal of the second decertification election and ordered that the balloting be held anyway. The ballots were impounded and not counted. Governor Jerry Brown recently appointed a new ALRB chairman, and the Legislature has approved SB 25, a UFW-sponsored bill extending the binding mediation process.

In February 2014, Gerawan workers filed a federal class-action lawsuit accusing the company of not paying workers the minimum wage, overtime and paid rest breaks guaranteed under state law. And, workers are asking the public and major retailers to encourage Gerawan to obey the law and implement the contract.

Too often what is lost amidst these legal battles are the human consequences. Farmworkers are among the poorest workers in the country and the state, often live in grossly substandard housing and rarely get health and workers’ compensation insurance, despite laboring in unsafe conditions.

Cesar Chavez showed that farmworkers could bring about transformational change in their lives and the lives of their families. The greatest legacy he left behind is seen in the continuing work of his movement through the United Farm Workers of America and the thousands who are aggressively organizing, negotiating union contracts and advocating for new legal protections.

As new generations learn about what Cesar achieved, we must continue the movement he led and rally strong public and consumer support for the farmworkers to whom he dedicated his life. California's farmworkers are not giving up the fight for fairness and justice.

*To learn more about Cesar Chavez and his union, watch the major motion picture Cesar Chavez by director Diego Luna as well as the documentary Cesar's Last Fast by director Richard Ray Perez. To participate and keep up with farmworker campaigns, sign up for the UFW's free list serve at [www.ufw.org](http://www.ufw.org) (<http://www.ufw.org>)*

[i] Case 18 ALRB No. 5.

[ii] Case 18 ALRB No. 16.

[iii] Case 2013-CE-10.

[iv] 4 Cases 2013-CE-27 and 2013-CE-27.

[v] Case 2013-CE-27.

[vi] Case 2014-CE-003-VIS.

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Attorneys for Moving Party

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

GERAWAN FARMING, INC.,

Respondent,

and

UNITED FARM WORKERS OF AMERICA

Charging Party.

Case No. 2013-CE-027-VIS

**FIRST AMENDED COMPLAINT**



1 The General Counsel of the Agricultural Labor Relations Board, ("ALRB"), pursuant to  
2 Section 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section  
3 1140 *et seq.* ("Act") and California Code of Regulations, title 8, section 20220, hereby issues this  
4 first amended complaint against Gerawan Farming, Inc. ("Gerawan"). The General Counsel  
5 alleges as follows:

6 **JURISDICTION AND PARTIES**

7 1. On July 15, 2013, the UFW properly filed charge 2013-CE-027-VIS alleging that  
8 on or about July 1, 2013 and continuing, Gerawan committed an unfair labor practice by having  
9 its supervisors circulate and coerce its agricultural workers into signing a petition to decertify the  
10 UFW as the collective bargaining representative of Gerawan's employees. The UFW properly  
11 served Gerawan via certified mail with a true copy of the charge on July 15, 2013.

12 2. At all times material herein, the UFW was a labor organization within the meaning of  
13 Section 1140.4 (f) of the Act.

14 3. At all times material herein, Gerawan was an agricultural employer within the  
15 meaning of Sections 1140.4 (a) and (c) of the Act. Gerawan is a corporation duly organized and  
16 existing under the laws of California. Gerawan's principal place of business is in Fresno,  
17 California. Gerawan is engaged in growing, packing, and shipping fresh fruit.

18 4. At all times material herein, Sunshine Agricultural Services ("Sunshine") and R&T  
19 Grafting Labor Inc. ("R&T") were farm labor contractors hired by Gerawan and therefore,  
20 agents of Gerawan.

21 **FACTS**

22 5. At all times material herein, the United Farm Workers of America ("UFW") was the  
23 certified bargaining representative of Gerawan's agricultural employees in California.

24 6. Cirilo Gomez ("Gomez") is a foreman for Gerawan and is a statutory supervisor under  
25 the Act. Gomez has the authority to responsibly direct the work of agricultural workers in his  
26 crew and to effectively recommend discipline. Gomez has been a statutory supervisor and an  
27 agent of Gerawan during the entire relevant period.

28 7. Leonel Nuñez ("Nuñez") is a foreman for Gerawan and is a statutory supervisor under  
the Act per Labor Code Section 1140.4. Nuñez has the authority to responsibly direct the work

1 of agricultural workers, effectively recommend discipline, and effectively recommend the hiring  
2 of agricultural workers for Gerawan. Nuñez has been a statutory supervisor and an agent of  
3 Gerawan during the entire relevant period.

4 8. Sonia Martinez ("Martinez") is a forewoman for Gerawan and is a statutory  
5 supervisor under the Act. Martinez has the authority to responsibly direct the work of  
6 agricultural workers and to effectively recommend the discipline of agricultural workers for  
7 Gerawan. Gerawan has been a statutory supervisor and an agent of Gerawan during the entire  
8 relevant period.

9 9. Emma Cortez ("Cortez") is a forewoman for Gerawan and is a statutory supervisor  
10 under the Act. Cortez has the authority to responsibly direct the work of agricultural workers  
11 and to effectively recommend the discipline of agricultural workers for Gerawan. Cortez has  
12 been a statutory supervisor and an agent of Gerawan during the entire relevant period.

13 10. Jose Cabello ("Cabello") is a foreman for Gerawan and is a statutory supervisor  
14 under the Act. Cabello has the authority to responsibly direct the work of agricultural workers  
15 and to effectively recommend the discipline of agricultural workers for Gerawan. Cabello has  
16 been a statutory supervisor and an agent of Gerawan during the entire relevant period.

17 11. Anthony Raimondo ("Raimondo") is an attorney who represented Sunshine and  
18 R&T for several years until he withdrew his representation of these employers on or about  
19 September 23, 2013. Mr. Raimondo has also represented Gerawan agricultural employee Silvia  
20 Lopez since on or about August 30, 2013 to the present and other Gerawan agricultural  
21 employees from on or about September 20, 2013 to the present.

22 12. On or about July 19, 2013, Gomez was leaving a field in Kerman, California at the  
23 end of the shift while several women were gathering signatures for a petition to decertify the  
24 UFW. Gomez took several signature sheets of the decertification petition from the women and  
25 told members of his crew that they should sign the petition.

26 13. That same day, after telling workers from his crew to sign the de-certification  
27 petition, Gomez put several sheets of the petition in his van so that the crew workers that he  
28 drove to and from work would sign the de-certification petition.

1           14. On or about July 28, 2013, Nuñez gathered approximately 20 members of his crew,  
2 held out a petition to de-certify the UFW and told the workers that they should sign it. Nuñez  
3 told the workers in his crew that they should sign the petition to get rid of the union. Nuñez  
4 told the workers in his crew that if the union was around, the company would go out of  
5 business.

6           15. After telling the members of his crew that they should get rid of the union, Nuñez  
7 approached one worker who refused to sign the petition after the meeting. Nuñez told this  
8 worker that he knew that there were two union supporters in his crew and seven in Francisco  
9 Maldonado's crew.

10           16. On or about July 29, 2013, Martinez held up a de-certification petition while giving  
11 instructions to her crew for the day. Martinez told the workers in her crew that they could sign  
12 the petition to get rid of the union.

13           17. After explaining the petition and sending the employees to work, Martinez went row  
14 by row to each employee to ask for signatures on the de-certification petition. In approaching at  
15 least one worker with the de-certification petition, Martinez interrogated the worker about his  
16 union sympathies by asking him if he supported the union.

17           18. On or about August 10, 2013, Cabello allowed four women to enter the ranch  
18 property after the lunch break to solicit signatures from his employees for a decertification  
19 petition during work hours.

20           19. At the end of the work day on August 10, 2013, while he distributed pay checks,  
21 Cabello put copies of the decertification petition on the hood of his van for workers to sign and  
22 told the members of his crew that the company wanted the workers' signatures on the petition to  
23 get rid of the union.

24           20. Between approximately July 19, 2013 and September 10, 2013, on multiple  
25 occasions, forewoman Cortez travelled to Gerawan crews, other than her own, and directly  
26 asked workers for signatures on the decertification petition.

27           21. On approximately August 30, 2013 and September 6, 2013, Gerawan encouraged  
28 and supported the gathering of signatures on a petition for decertification by providing an  
opportunity for workers to gather signatures within feet of the Dan Gerawan, Norma Gerawan

1 and other upper management while Gerawan gave away free fruit and beverages to Gerawan  
2 employees.

3 22. On approximately August 30, 2013, Sunshine and R&T's attorney, Raimondo, took  
4 on the representation of Silvia Lopez in furtherance of her efforts to decertify the UFW as the  
5 exclusive bargaining representative for Gerawan's agricultural employees.

6 23. On approximately September 20, 2013, Raimondo took on the representation of Rene  
7 Palacios, Rolando Padilla, Guadalupe Lopez, Jovita Eligio, Rosa Madrigal, Martina Barba,  
8 Clara Cornejo, Liddeli Gonzalez, Angel Lopez, Lourdes Dominguez and other Gerawan  
9 employees to assist them in the decertification process.

10 24. During the period of August 30, 2013 through the September 23, 2013, Raimondo  
11 provided material assistance to the decertification effort by assisting Silvia Lopez and other  
12 employees in the process of gathering signatures, filing the decertification petition with the  
13 ALRB, and representing her before the ALRB while her decertification petition was being  
14 investigated.

15 25. Through his representation of Ms. Lopez, Sunshine and R&T's attorney, Raimondo,  
16 gained access to all the signatures sheets of the decertification petition and to information from  
17 the workers about who signed the decertification petitioner, who did not sign the decertification  
18 petition, where support for the union was strongest among Gerawan's workforce and where  
19 support for decertification was strongest.

20 **FIRST CAUSE OF ACTION**  
21 **California Labor Code § 1153 (a)**  
22 ***(Coercion and Interference)***

23 26. As set forth in paragraphs 4 through 25 above, Gerawan has committed an unfair  
24 labor practice under Section 1153(a) of the Act by coercing its employees and interfering in the  
25 exercise of their rights under Section 1152 of the Act to freely choose whether they support the  
26 UFW or support the effort to de-certify the UFW at Gerawan.

27 27. In providing assistance, instigating and encouraging the gathering of signatures for a  
28 de-certification petition as set forth above, Gerawan has unlawfully coerced, interfered with and

1 restrained its agricultural employees in the exercise of their collective bargaining and concerted  
2 activity rights under the Act.

3  
4 **SECOND CAUSE OF ACTION**  
5 **California Labor Code § 1153 (a)**  
6 *(Interrogation and Surveillance)*

7 28. As set forth in paragraphs 4 through 25 above, Gerawan has committed an unfair  
8 labor practice by unlawfully interrogating workers about their union activities and support.

9 29. As set forth above, Gerawan has committed an unfair labor practice by surveilling its  
10 agricultural employees' union and de-certification-related activities.

11 30. Through its acts of interrogation and surveillance, Gerawan has unlawfully coerced,  
12 interfered and restrained its agricultural employees in the exercise of their collective bargaining  
13 and concerted activity rights under the Act.

14 **REQUEST FOR RELIEF**

15 As the remedy for the unfair labor practices set forth above, the General Counsel seeks an  
16 order requiring Respondent, its officers, agents, successors and assigns to:


- 17 A. Cease and desist from initiating, sponsoring, supporting, approving,  
18 encouraging and circulating a decertification petition among employees;
- 19 B. Cease and desist from interrogating and surveilling its agricultural  
20 employees with respect to their support or opposition to the union;
- 21 C. Cease and desist from, in any like or related manner, interfering with,  
22 restraining or coercing agricultural employees in the exercise of their  
23 rights guaranteed by Labor Code section 1152;
- 24 D. Issue a mailing of a Notice of Agricultural Workers' Rights Under the  
25 Act ("Notice") to all of Respondent's agricultural employees and grant  
26 access to ALRB Agents to provide a reading, and to post the Notice at  
27 Respondent's work sites, and to inspect the posting to ensure compliance  
28 for a period of 60 days, where Gerawan's agricultural employees are  
employed to inform agricultural employees of their rights under the

1 Agricultural Labor Relations Act and of their rights as a result of the  
2 decision in this case.

3 FURTHER, the General Counsel seeks any other relief that is just and proper to remedy  
4 the unfair labor practices alleged herein.  
5

6 Dated this 25th of October, 2013 at Salinas, California.  
7

8 AGRICULTURAL LABOR RELATIONS BOARD  
9 SYLVIA TORRES-GUILLÉN  
10 General Counsel

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12 \_\_\_\_\_  
13 SILAS M. SHAWYER  
14 Regional Director  
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## EXCERPTS FROM ALRB REGULATIONS

### WHAT TO INCLUDE IN AN ANSWER

#### **Section 20230 – Answer; Time for Filing**

The respondent shall file an answer within 10 days of the service of the complaint or any amendment to the complaint. If a hearing is set sooner than 10 days after the service of the complaint, the answer shall be filed no later than the day of the hearing. All allegations in amended complaints served after an answer is filed are deemed denied except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

#### **Section 20232 – Contents of Answer**

The answer shall state which facts in the complaint are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. The answer may make any appropriate explanation of the circumstances surrounding the facts set forth in the complaint. Any allegation not denied shall be considered admitted.

#### **Section 20234 – Filing**

The answer shall be filed with the Executive Secretary and the regional office that issued the complaint. The answer shall be filed and served as required by sections 20160 and 20166. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240.

### MANNER IN WHICH PAPERS ARE TO BE FILED AND SERVED

#### **Section 20164 – Service of Papers by the Board or on the Board**

All papers filed by the Board or any of its agents shall be served, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party either (i) personally, by leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (ii) by registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served, together with an appropriate proof of service. All papers filed by a party with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, may be filed in accordance with any of the methods prescribed above with a certificate of mailing, or by deposit with a common carrier promising overnight delivery.

Service need only be made at one address of a party, or attorney or representative of a party and only to one attorney or representative of each party. Service shall be established by a written declaration under penalty of perjury, setting forth the

name and address of each party, attorney or representative served and the date and manner of their service. The Board or the party shall retain the original proof of service.

#### **Section 20166 – Service on Others of Papers Filed with the Board**

Whenever a party files papers with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, it shall serve the same, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party in the same manner as set forth in section 20164, with the exception of an unfair labor practice charge, which, in accordance with section 20206, must be served personally or by a method that includes a return receipt. Service need only be made at one address of an unrepresented party or an attorney or representative of a party and to only one attorney or representative of each party.

(a) Service on other parties shall be made prior to, or simultaneously with, the filing with the Board, and proof of such service shall be attached to the papers when filed with the Board. Service shall be proven by means of written declaration signed under penalty of perjury, setting forth the name and address of each unrepresented party, attorney or representative of a party served and the date and manner of service.

(b) No proof of service will be required when papers are served by one party on another at the hearing when the fact of such service is stated on the record and in the presence of the party being served, or his or her attorney or representative of record.

### RIGHTS OF THE PARTIES TO A HEARING

#### **Section 20269 – Rights of Parties to a Hearing**

Any necessary party and any person granted party status pursuant to section 20268 shall have the right to appear at the hearing in person, or by counsel or other representative; to call, examine, and cross-examine witnesses; to introduce all relevant and material evidence, except that the participation of any intervening party may be limited by the administrative law judge.

### HOW HEARINGS ARE SET

#### **Section 20224 – Notice of Hearing**

(a) When a case is ready to proceed to hearing, the general counsel will notify the chief administrative law judge, who will cause a notice of hearing to issue, specifying the time and place of hearing. In the alternative, the general

counsel may arrange with the chief administrative law judge to include the time and place of hearing in the complaint.

(b) Except where circumstances warrant an expedited hearing, no hearing shall be scheduled to commence less than fifteen (15) days after the issuance of the complaint, and no prehearing conference shall be scheduled to commence less than ten (10) days after the issuance of the complaint.

## **DISCOVERY RIGHTS**

### **Section 20235 – Request for Particulars.**

Where a complaint lacks specificity as to the time, place or nature of the alleged conduct, or the identity of the persons who engaged in it, or fails sufficiently to identify the individual or group against whom the conduct was specifically directed, a written request for particulars may be made by the respondent in accordance with section 20237 to obtain such information; provided, however, that in responding the general counsel need not disclose the identity of any potential witness whose primary source of income is non-supervisory employment in agriculture.

### **Section 20236 – Matters Discoverable**

(a) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the names, addresses and any statements (as defined in section 20274(b)) of all witnesses, other than those whose primary source of income is non-supervisory employment in agriculture; provided, however, that any portion of a statement likely to identify a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised.

(b) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the name, address, field of expertise, qualifications, and a brief description of expected testimony of any expert whom it intends to call as a witness. The responding party shall also make available any report prepared for it by such expert concerning the subject matter of the testimony to be given. The failure, without good cause, to comply with the requirements of this subsection shall be grounds for excluding such expert testimony.

(c) Upon written request, a party to a hearing shall be afforded a reasonable opportunity to examine, inspect and copy, and, where appropriate, to photograph and/or test, any writing or physical evidence in the possession or control of the party to the hearing to whom the request is directed which that party intends to introduce into evidence at hearing; provided, however, that any portion of a writing which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised, except that this proviso shall not apply to otherwise unprotected or unprivileged business records. Where the writing or physical evidence to be introduced is not yet in the

possession or control of the responding party, it shall be identified with reasonable specificity.

(d) Upon written request, general counsel shall disclose to respondent any evidence which is purely and clearly exculpatory.

(e) In compliance proceedings, the general counsel shall, upon written request, make available to the requesting party to the hearing all information in its files, which tends to verify, clarify or contradict the items and amounts alleged in the backup or bargaining makewhole specification unless the information is absolutely privileged, e.g., income tax returns, form W-2 (wage and tax statement), . . . etc.

### **Section 20237 – Requests for Discovery**

(a) Requests pursuant to sections 20235 and 20236 shall be in writing and directed to the party from whom the information is sought. Copies need not be served on the Board.

(b) Requests shall be made no later than 15 days following service of the answer, and responses shall be due 15 days after receipt of the request; except that, for good cause shown, the chief administrative law judge or the executive secretary, as appropriate in accordance with sections 20240 and 20241, may extend or shorten the time to request or respond.

(c) Requests shall be deemed continuing. Any requested information which becomes available or is discovered after the initial response is to be provided as soon as reasonably possible.

### **Section 20238 – Order Compelling Discovery Sanctions**

(a) A requesting party who believes that the responding party has failed, in whole or part, to comply with a proper request pursuant to sections 20235, 20236, or 20237 may apply in writing to the chief administrative law judge for an order requiring compliance. No application will be entertained unless the applying party establishes that it first made a reasonable effort to resolve the matter by contacting or attempting to contact the responding party. The application shall include copies of the request and any response received, and shall be served on the responding party. If the responding party desires to oppose the application, he or she shall immediately notify the office of the chief administrative law judge. Depending on the proximity to hearing, the chief administrative law judge shall determine whether the opposition will be written or oral, when it will be due, and whether to assign the matter to an administrative law judge. When the dispute concerns the propriety of excising or failing to turn over a statement containing the name of a potential witness whose primary income is from non-supervisory agricultural employment, the privilege created



by Evidence Code Section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexecuted document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of section 20235, 20236, or 20237, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

### EXTENSIONS OF TIME AND CONTINUANCES

#### **Section 20190 – Continuances of Hearing Dates**

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference will be finalized unless the executive secretary receives a written communication within ten (10) days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or prehearing is mutually agreed to and communicated to the executive secretary within the ten day period, that date will be finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or prehearing, the objecting party may submit a written request to the executive secretary within the ten day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select

other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or prehearing in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing three additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and prehearing and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter

promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to two working days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. Requests for continuances for periods longer than two working days shall be in writing directed to the executive secretary with proof of service on all parties. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for continuance, all matters relevant to a proper determination of the motions will be taken into consideration, including:

- (1) The official case file and any supporting declaration submitted with the motion.
- (2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.
- (3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.
- (4) The proximity of the hearing date.
- (5) The condition of the hearing calendar.
- (6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.
- (7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.
- (8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

- (1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.
- (2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.
- (3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.
- (4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

(1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which that counsel did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.

(2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.

(3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.

(4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.

(5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.

(6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

### **Section 20192 – Extensions of Time**

(a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.

(b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, the grounds for the extension, and the position of the other parties, in the same manner as required for continuances in subsection 20190(c)(2) above.

(c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

### **RIGHT TO APPEAR**

### **Section 20370 – Investigative Hearings--Types of Hearings and Disqualification of IHE's**

#### *Investigative Hearings--Powers of IHE's*

(b) The parties shall have the right to participate in such investigative hearing as set forth in Labor Code Sections 1151, 1151.2, and 1151.3. Any party shall have the right to appear at such investigative hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses and to introduce into the record documentary evidence, except that participation of any party shall be limited to the extent permitted by the investigative hearing examiner, and provided further, that documentary evidence shall be submitted in duplicate. The investigative hearing examiner shall have the duty to inquire fully into all matters in issue and to obtain a full and complete record. In furtherance of this obligation, the investigative hearing examiner shall have all of the powers that an administrative law judge has in an unfair labor practice proceeding as enumerated in section 20262, where applicable.

### **Section 20402 – Evaluation of the Declaration and Answer**

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:

(1) Notice of hearing shall be served in the manner required by Section 20164.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.

(B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 and 20168. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b)

1 State Of California

2 Agricultural Labor Relations Board

3 PROOF OF SERVICE BY MAIL

4 (8 Cal.Code Regs. Sec. 20164)

5 I am a citizen of the United States and a resident of the County of Monterey. I am over the age  
6 of eighteen years and not a party to the within entitled action. My business address is: ALRB,  
7 342 Pajaro Street, Salinas, CA 93901.

8 On October 25, 2013, I served the within AMENDED COMPLAINT, GERAWAN  
9 FARMING, INC., Case No. 2013-CE-027-VIS, on the parties in said action, by placing a true  
10 copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United  
11 States mail at Salinas, California, addressed as follows:

11 CERTIFIED MAIL

12 Ronald H. Barsamian  
13 Barsamian and Moody  
14 1141 W. Shaw Avenue, Suite 104  
15 Fresno, California 93711-3704

16 Mario Martinez  
17 United Farm Workers of America  
18 Legal Department  
19 1227 California Avenue  
20 Bakersfield, California 93304

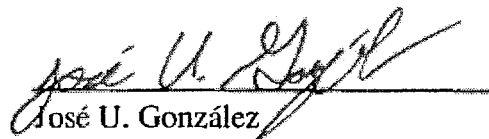
CERTIFIED MAIL

Antonio Barbosa, Executive Secretary  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900  
Sacramento, California 95814-2944

ELECTRONIC DELIVERY

Sylvia Torres-Guillén, General Counsel  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900  
Sacramento, California 95814-2944

21 Executed on October 25, 2013, at Salinas, California. I declare under penalty of perjury  
22 that the foregoing is true and correct.

23   
24 José U. González  
25  
26  
27  
28



AGRICULTURAL LABOR RELATIONS BOARD  
Visalia Regional Office  
1642 W. Walnut Avenue  
Visalia, CA 93277  
(559) 627-0995  
FAX (559) 627-0985  
Internet: www.alrb.ca.gov



*First-Class Mail and Electronic Mail*

October 31, 2013

Paul Bauer, Esq.  
Walter & Wilhelm Law Group  
205 E. River Park Circle, Suite 410  
Fresno, CA 93720

Anthony Raimondo, Esq.  
McCormick Barstow LLP  
5 River Park Place East  
Fresno, CA 93720-1501

Attorneys for Petitioner Silvia Lopez

**Re: Case Name: Gerawan Farming, Inc.**  
Case No. 2013-RD-003-VIS

Dear Counsel:

I am writing to inform you that after investigating the above-referenced decertification petition ("Petition"), it has been determined that it is necessary to block the election because the outstanding unfair labor practice complaints against Gerawan Farming, Inc. ("Gerawan") make it impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner.

Our review of the Petition has shown that an adequate showing of interest has been made pursuant to the California Code of Regulations, title 8, section 20390(b). The Petitioner has submitted sufficient signatures to meet the showing of interest requirement. Furthermore, based on the information available to us, we have determined that the peak requirement has been met per Labor Code section 1156.3(a)(1). Lastly, the Board, in its October 30, 2013 Order in case 2013-MMC-003 denying the United Farm Workers' ("UFW") request to implement those approved portions of the mediator's report, has essentially determined that there is no contract bar to the holding of the election. *Gerawan Farming, Inc.*, Admin. Order No. 2013-15.

The reasons for blocking the decision, namely the existence of serious unremedied unfair labor practices that preclude the holding of a free and fair election (particularly as alleged in Complaint 2013-CE-027-VIS), would also prevent the Regional Director from finding that there is a bona fide question of representation. Unlawful employer assistance was one of the bases for a decision to dismiss a petition involving this same employer (2013-RD-002-VIS) on September 25, 2013 and these same violations

would tend to permeate the decertification process that followed shortly after<sup>1</sup>. In addition, the General Counsel has not yet completed her investigation of numerous outstanding and recently filed charges against the employer alleging discrimination against union supporters (2013-CE-047 and 048-VIS), unlawful support and assistance in the de-certification petition (2013-CE-041, 042-VIS), a failure to provide employee contact information to the union (2013-CE-044-VIS), and the issuance of unlawful threats that the company will go out of business if the union obtains a contract (2013-CE-043-VIS). The General Counsel has continued to investigate the issues of fraud and forgery, but has been met with extremely obstructionist tactics. For example, after the General Counsel requested W-4s from Sunshine Agricultural Services, counsel for that company replied that the day before the documents were due, the office had been broken into and all of the W-4s, I-9s and computers had been stolen. Upon further investigation, Sunshine could produce no police report or notice to employees of the theft of their confidential and personal information. Our inquiry with the police has shown that there was never a police report filed nor is there evidence that the police were ever called to investigate.

The General Counsel's investigation of the pending ULP charges against Gerawan as well as her investigation of prior relevant charges, including, but not limited to 2013-CE-039-VIS, raise serious doubt as to whether a bona fide question of representation exists that would merit the holding of an election. Were there not a compelling basis for blocking the election based on the outstanding complaints, the Regional Director would contemplate dismissing the petition because of the detrimental effect of the employer's unfair labor practices on its employees' ability to exercise free choice during the decertification petition process.

In this case it is most appropriate to promptly block this potential election, thereby providing the parties the opportunity to seek expedited review with the Board, if they wish. During the pendency of the review, the General Counsel will expeditiously continue her investigation of all pending charges that may affect the finding of a bona fide question of representation in order to reach final conclusions on this matter as soon as possible. By issuing a prompt decision to block the election while continuing the investigation, the impact of any potential delay on the petition process will be minimal. It is our understanding from communications with counsel for the employer and with individual employees that the peak requirement will be met for several additional weeks.

Under Board precedent, upon the filing of a petition, the Regional Director "shall immediately investigate and determine whether any unfair labor practices alleged in an outstanding complaint against the employer(s) or union(s) involved in the representation proceeding will make it impossible to conduct an

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<sup>1</sup> Well-established Board precedent states that the filing of a new petition does not cure the unremedied effects of unlawful employer involvement in the prior petition, particularly when there are charges that employer assistance and support for the petition has continued. See *Gallo Vineyards, Inc.* (2000) 30 ALRB No. 2 (stating that employer assistance, even with respect to a minority of the signature gathering effort will cause the employer to control and taint the entire process because news of the employer's position will spread through the workforce); *S&J Ranch, Inc.* (1992) 18 ALRB No. 10 (finding that unremedied employer instigation of a decertification effort, even two years after such unlawful action takes place, will still permeate the decertification process and nullify the possibility of a fair and free election.) Gerawan has identified one case from 1944, where the effects of supervisor support for an election petition were ostensibly cured in one month. *Toledo Stamping & Manufacturing Co.* 56 NLRB No. 1291. However, in that case no party, neither the employer nor a competing union, questioned the signatures or the method by which they obtained and so there was no issue raised as to the bona fide question of representation. *Id.* at 1293. Here, the UFW has disputed the legality of the decertification effort and filed numerous charges alleging unlawful employer involvement in the effort. The General Counsel's ongoing investigation of these charges has shown that there is evidence supporting the UFW's contentions.

election in an atmosphere where employees can exercise their choice in a free and uncoerced manner.” *Cattle Valley Farms* (“Cattle Valley”), (1982) 8 ALRB No. 24 at 14. The purpose of the blocking rule established in *Cattle Valley* is to preserve the integrity of the election process and the stability of an already-existing bargaining relationship. *Id.* at 11. In applying the *Cattle Valley* rule, the Board has endorsed a “probable effect” standard in determining whether an election should be blocked. *Conagra Turkey Company* (1993) 10 ALRB No. 11. In other words, the Regional Director must determine whether “the probable impact of the unremedied unfair labor practices alleged in the complaint would be to deprive the employees of a free and uncoerced choice in the election.” *S&J Ranch* (1992) 18 ALRB No. 10 at 3. If the Regional Director makes such a determination, the election must be blocked. *Id.*

In this case, the probable effect of the unremedied unfair labor practices alleged in three different outstanding unfair labor practice complaints against Gerawan would be to make it impossible to conduct an election in an atmosphere where employees can exercise their choice in a free and uncoerced manner. Because these unremedied unfair labor practices foreclose the possibility of a free and fair election, the election must be blocked until these outstanding matters are resolved and effectively remedied. *S&J Ranch, supra*, 18 ALRB No. 10.

#### Outstanding Allegations of Unlawful Employer Assistance in the Decertification Effort

The First Amended Complaint in the case *Gerawan Farming, Inc.* 2013-CE-027-VIS alleges, after an extensive investigation by the General Counsel, that Gerawan engaged in a significant and wide-spread effort to assist in the effort to de-certify the UFW as the exclusive bargaining representative for its employees. The complaint alleges that five different crew bosses from the company directly supported the decertification effort by encouraging workers to sign the decertification petition (§§ 12, 14, 16, 19), by directly soliciting signatures on the decertification petition (§§ 17, 20), by placing the petition in their vehicle or on the hood of the vehicle to assist in obtaining signatures by the workers (§§ 13, 19), and by issuing a threat and engaging in surveillance and interrogation related to Gerawan’s employees’ union activities (§§ 14, 15, 17). In addition, this complaint alleges that Gerawan encouraged and supported the decertification effort by allowing signature gathering within a few feet of the owner and other management employees while they were giving away free fruit and beverages to Gerawan employees<sup>2</sup>. (§ 21). The complaint alleges that Gerawan unlawfully assisted in the decertification effort by providing legal assistance and representation to employees pursuing decertification through the attorney that represents Gerawan’s farm labor contractors. (§§ 22-24). Finally, the complaint alleges that through his representation of the employees who were most active in the decertification effort, the employers’ attorney engaged in unlawful surveillance of employee union and decertification activity. (§ 25). It should be noted that this same attorney continues to represent the petitioner in this matter<sup>3</sup>.

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<sup>2</sup> The evidence will show that the fruit giveaway process was changed and broadened from past practice during the period of the decertification campaign.

<sup>3</sup> There is evidence that Mr. Raimondo continues to represent other farm labor contractors, including T-Rod, Inc., who regularly provide labor to Gerawan. In its position statement, Gerawan misreads the holding of *Merritt v. Reserve Ins. Co.*, (1973) 34 Cal.App.3d 858 that states that an entity cannot be held vicariously liable for the legal malpractice of its independent trial counsel. *Id.* at 880. In this case, Mr. Raimondo had a long standing relationship with the farm labor contractors who have a direct economic interest in the outcome of this matter and whom he has sought to represent in the same matter (insisting on being present during interviews of the FLC supervisors and of the petitioner and other employees who he represents), while providing what may be free or subsidized legal representation to the Petitioner and numerous employees involved in the decertification process. Gerawan’s position ignores Mr. Raimondo’s representation of the employer and the employee in the



Labor Code section 1153(a) prohibits an agricultural employer from interfering with, restraining or coercing agricultural employees in the exercise of their rights to “self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining...” It is well established under the Act that “any employer assistance greater than ministerial in the solicitation of signatures for a decertification petition is a violation of Labor Code Section 1153(a). *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2.

Employer assistance that affirmatively encourages employees to engage in a decertification effort or employer activities that actively support or assist a decertification effort are illegal. *Id.* Employer assistance in a decertification effort is recognized as inherently coercive because of the unequal power dynamics between the employer who has the power to hire and fire workers, and agricultural workers—considered the most vulnerable of the workforce—who rely on seasonal employment for subsistence. *Id.* at 18. When an employer has unlawfully instigated or assisted workers in a decertification campaign, it has interfered with its employees’ free exercise of their rights and has invalidated the potential election as a measure of employees’ free choice. *Peter D. Solomon and Joseph R. Solomon d/b/a Cattle Valley*, (1983) 9 ALRB No. 65, at 8, *citing Gold Bond, Inc.* (1954) 107 NLRB 1059 and *Bond Stores, Inc.* (1956) 116 NLRB 1929. A decertification petition which has been initiated or sponsored by an employer “cannot be said to have raised a question concerning representation.” *Sperry Gyroscope Co.* (1962) 136 NLRB 294, 297.

Here, as in *S&J Ranch, supra*, where an employer’s acts of instigation and assistance in a decertification campaign had not been fully remedied<sup>4</sup> prior to the filing of a subsequent decertification petition, the Petition must be and is hereby blocked.

#### Outstanding Allegations of Bad Faith Bargaining

There are two outstanding complaints alleging bad faith bargaining by Gerawan, including 2013-CE-010-VIS (filed on May 17, 2013 and set for hearing for November 5, 2013) and 2012-CE-041,047-VIS /2013-CE-007,009,025-VIS (“2012-CE-041 et al”) (filed on October 30, 2013 after an extensive investigation).

Complaint 2013-CE-010-VIS (CE-010) alleges that Gerawan failed to bargain in good faith with the union by proposing and insisting throughout its negotiations that the terms of any collective bargaining agreement (“CBA”) be inapplicable to Gerawan’s employees hired through a farm labor contractor.

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same matter, as evidenced by his open attempts to represent both sides. Gerawan also ignores that its attorney freely shared information with Mr. Raimondo as an attorney for multiple parties, during the course of the General Counsel’s investigation of petition 2013-RD-002-VIS. The General Counsel has never taken the position that the FLC’s attorney is an agent of the grower for “all purposes” as Gerawan claims. Gerawan misstates the General Counsel’s position and the record in this case.

<sup>4</sup> Contrary to Gerawan’s assertions, the allegations of Complaint 027 have not been fully remedied by the issuance of a TRO and preliminary injunction by the Superior Court or by Gerawan’s cooperation with the ALRB to allow informational noticing to workers about their rights. There has not been a notice a reading stating that the employer has been found to be in violation of the law, nor has the employer ever admitted or accepted responsibility for its actions. Our ongoing investigation of employer involvement in the decertification effort, as alleged in several charges, has revealed continued employer involvement. In one instance, for example, a forewoman identified in the CE-027-VIS complaint as amended was seen and identified by a Board agent as a participant in the Gerawan worker protests against the ALRB and the UFW in Kerman, CA. According to some employees, this was the day when many of the signatures for the pending decertification petition were gathered.

Based on past representations from Gerawan, during various times of the year, these employees make up a significant number of Gerawan's workforce. By seeking to exclude employees of farm labor contractors from the CBA, Gerawan has committed an unlawful refusal to bargain over the terms and conditions of these employees. *Paul W. Bertuccio, dba Bertuccio Farms* (1984) 10 ALRB No. 16, ALJD at 21. A refusal to bargain with the Union over the terms and conditions of employment for undisputed bargaining unit members is an act that would tend to unlawfully undermine the Union's status as the bargaining representative and unlawfully communicates to workers that the collective bargaining process and union representation itself is futile. *See Cardinal Distributing Co. v. ALRB* (1984) 159 Cal.App.3d 758, 770; *Parkway Center Inn* (1979) 240 NLRB No. 192. The Board has previously held that an outstanding allegation that an employer has refused to bargain with the Union may be considered as a basis for blocking an election under *Cattle Valley. Arnaudo Bros. LP, supra*, 39 ALRB No. 9 at 9.

Complaint 2012-CE-041 *et al* alleges numerous unfair labor practices by Gerawan including a failure to provide the UFW with accurate employee contact information (§§ 12-20); the implementation of unilateral changes to the terms and conditions of employment (§ 32); intimidation and coercion of employees in the bargaining committee (§§ 28-30); and the engagement in an effort to undermine the UFW's status as the certified bargaining representative *vis a vis* Gerawan's employees (§§ 11, 21-26, 31, 33).

It is well established that unfair labor practices by an employer in the form of bad faith bargaining tend to have an effect on employee sentiment and make a fair election impossible. *NLRB v. Big Three Industries, Inc.* (1974) 497 F. 2d. 43, 53 citing *NLRB v. Kaiser Agricultural Chemicals*, (1973) 473 F.2d 374, 384. In *Cattle Valley*, the Board also recognized that bad faith bargaining may be the basis for a petition being dismissed and therefore a basis for blocking. *Cattle Valley, supra*, at 4-5. The Board has recently recognized that a failure to provide employee contact information to the union is a serious violation because it would impact the union's ability to communicate with employees. *Arnaudo Bros. LP, supra*, at 8-9. In that case, the Board upheld a decision to block an election.

In this case the unremedied unfair labor practices contained in complaint 2012-CE-041 *et al.* go far beyond what was alleged in *Arnaudo Bros. LP*. Apart from constraining the union's ability to communicate with workers, the complaint alleges that Gerawan has violated its duty to bargain with the UFW and undermined the UFW's status as the bargaining representative by implementing unilateral changes to the wages of its employees. Gerawan has also engaged in a series of actions and communications that have implicitly and explicitly denied to its employees the UFW's status as their collective bargaining representative for purposes of undermining the union and leading Gerawan's employees to believe that union-related and collective bargaining activities would be futile. Gerawan's actions, which have not been remedied, would make it impossible to have a fair and free election for Gerawan's employees. Gerawan's employees have been inevitably impacted by Gerawan's repeated efforts to undermine the union's status as its employees' bargaining representative and to intimidate and discourage employees from participating in the negotiation process. Furthermore, as noted earlier, the UFW has been impeded from fully communicating with Gerawan's employees because they have not been provided with accurate employee contact information. Under these circumstances, it is not possible to have a free and fair election until these violations are resolved and remedied.

Because Gerawan's actions have created an atmosphere where its employees cannot exercise their choice in a free and fair way, the election is hereby blocked until the outstanding complaints are resolved and remedied. You may seek review with the Board within five days of service of this dismissal. Lab. Code § 1142(b); 8 CCR §20393.

Sincerely,

A handwritten signature in cursive script, appearing to read "Silas M. Shawver".

Silas M. Shawver  
Regional Director

Cc: Ron Barsamian  
David Schwarz  
Mario Martinez  
Antonio Barbosa  
Sylvia Torres-Guillén



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16 sshawver@alrb.ca.gov  
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18 Attorneys for Moving Party

19 STATE OF CALIFORNIA

20 AGRICULTURAL LABOR RELATIONS BOARD

21 In the Matter of:

22 Case No. 2013-CE-010-VIS

23 GERAWAN FARMING, INC.,

24 Respondent,

25 and

26 UNITED FARM WORKERS OF AMERICA

27 Charging Party.

28 COMPLAINT

1 The General Counsel of the Agricultural Labor Relations Board, ("ALRB"), pursuant to  
2 Section 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section  
3 1140 *et seq.* ("Act") and California Code of Regulations, title 8, section 20220, hereby issues this  
4 complaint, in the name of the ALRB, and on behalf of the United Farm Workers of America  
5 ("UFW"). The complaint is issued against Gerawan Farming, Inc. ("Gerawan"). The General  
6 Counsel alleges as follows:

7 **JURISDICTION AND PARTIES**

8 1. On March 20, 2013, the UFW properly filed charge 2013-CE-010-VIS alleging that  
9 on or about January 28, 2013 and continuing, Gerawan committed an unfair labor practice by  
10 proposing and insisting on excluding agricultural employees hired through farm labor contractors  
11 ("FLC employees") from the terms of the collective bargaining agreement. The UFW properly  
12 served Gerawan via certified mail with a true copy of the charge on March 20, 2013.

13 2. At all times material herein, the UFW was a labor organization within the meaning of  
14 Section 1140.4 (f) of the Act.

15 3. At all times material herein, Gerawan was an agricultural employer within the  
16 meaning of Sections 1140.4 (a) and (c) of the Act. Gerawan is a corporation duly organized and  
17 existing under the laws of California. Gerawan's principal place of business is in Fresno,  
18 California. Gerawan is engaged in growing, packing, and shipping fresh fruit.

19 **FACTS**

20 4. At all times material herein, the United Farm Workers of America ("UFW") was the  
21 certified bargaining representative of Gerawan's agricultural employees in California.

22 5. From approximately January, 2013 to approximately April, 2013, the UFW and  
23 Gerawan engaged in negotiations over the terms of a collective bargaining agreement ("CBA")  
24 to apply to Gerawan's agricultural employees.

25 6. On or about January 17, 2013, the UFW proposed contract language that would  
26 include Gerawan's FLC employees in the bargaining unit and apply all terms of any CBA to  
27 such employees.

28 7. On or about January 18, 2013, Gerawan communicated to the UFW its intention to  
exclude FLC employees from the terms of the CBA.

1. 8. Throughout the bargaining sessions from January, 2013 to April, 2013, Gerawan has  
2 persisted in seeking to exclude FLC employees from the CBA and has communicated this  
3 intention to the UFW and to Gerawan's agricultural employees.

4 9. During bargaining sessions with the UFW from January, 2013 to April, 2013,  
5 Gerawan has informed its agricultural employees, including those who are regularly hired  
6 through FLCs, that it intends to exclude FLC employees from the terms of the CBA.

7 10. Throughout the bargaining sessions from January, 2013 to April, 2013, Gerawan has  
8 insisted that the terms of any CBA reached with the UFW be inapplicable to FLC employees.

9 **FIRST CAUSE OF ACTION**  
10 **California Labor Code § 1153 (a)**  
11 ***(Interference and Restraint)***

12 11. As set forth in paragraphs 4 through 10 above, Gerawan has committed an unfair  
13 labor practice under Section 1153(a) of the Act by seeking and proposing to exclude agricultural  
14 employees from the benefits of a CBA on the basis that they were hired through a farm labor  
15 contractor.

16 12. In seeking to exclude FLC employees from the benefits of the CBA and telling its  
17 agricultural employees that it wants them to be excluded from all provisions of the CBA based  
18 on their FLC employee status, Gerawan has unlawfully interfered with and restrained its  
19 agricultural employees in the exercise of their collective bargaining and concerted activity rights  
20 under the Act.

21 13. By insisting that the UFW agree to an unlawful contract proposal that contravenes  
22 the purposes of the Agricultural Labor Relations Act, Gerawan has unlawfully restrained and  
23 coerced its agricultural employees in the exercise of their collective bargaining rights.

24 **SECOND CAUSE OF ACTION**  
25 **California Labor Code § 1153 (e)**  
26 ***(Failure to Bargain in Good Faith)***

27 14. As set forth in paragraphs 4 through 10 above, Gerawan has committed an unfair  
28 labor practice by proposing and insisting that agricultural employees included in the Board  
certification be excluded from the terms of any collective bargaining agreement based on being  
hired through a farm labor contractor.

1           15. The Act deems Gerawan to be the agricultural employer of all FLC employees that it  
2 engages. In proposing and insisting that the UFW agree to exclude FLC employees from the  
3 terms and benefits of any CBA, Gerawan has violated its duty to bargain over terms and  
4 conditions of employment for its bargaining unit employees.

5           16. By proposing and insisting that the UFW agree to unlawful contract terms that  
6 contravene the fundamental tenet of the Agricultural Labor Relations Act that all agricultural  
7 workers be protected by the Act, Gerawan has violated its duty to bargain in good faith with the  
8 UFW, as required by the Act.

9  
10                                   **REQUEST FOR RELIEF**

11           As the remedy for the unfair labor practices set forth above, the General Counsel seeks an  
12 order requiring Respondent, its officers, agents, successors and assigns to:

- 13           A.       Cease and desist from seeking to exclude agricultural employees hired  
14                   through a farm labor contractor from the benefits and terms of any  
15                   collective bargaining agreement negotiated with the UFW.
- 16           B.       Issue a mailing of a Notice of Agricultural Workers' Rights Under the  
17                   Act ("Notice") to all of Respondent's agricultural employees and grant  
18                   access to ALRB Agents to provide a reading, and to post the Notice at  
19                   Respondent's work sites, and to inspect the posting to ensure compliance  
20                   for a period of 60 days, where agricultural employees, including FLC  
21                   employees, are employed to inform agricultural employees of their rights  
22                   under the Agricultural Labor Relations Act and of their rights as a result  
23                   of the decision in this case.

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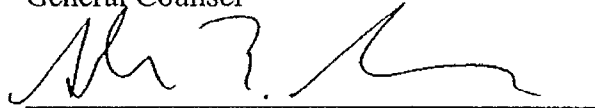
28           ///



1 FURTHER, the General Counsel seeks any other relief that is just and proper to remedy  
2 the unfair labor practices alleged herein.

3 Dated this 17th of May, 2013 at Visalia, California.  
4

5 AGRICULTURAL LABOR RELATIONS BOARD  
6 SYLVIA TORRES-GUILLÉN,  
7 General Counsel

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9 SILAS M. SHAWVER  
10 Acting Regional Director  
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## EXCERPTS FROM ALRB REGULATIONS

### WHAT TO INCLUDE IN AN ANSWER

#### **Section 20230 – Answer; Time for Filing**

The respondent shall file an answer within 10 days of the service of the complaint or any amendment to the complaint. If a hearing is set sooner than 10 days after the service of the complaint, the answer shall be filed no later than the day of the hearing. All allegations in amended complaints served after an answer is filed are deemed denied except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

#### **Section 20232 – Contents of Answer**

The answer shall state which facts in the complaint are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. The answer may make any appropriate explanation of the circumstances surrounding the facts set forth in the complaint. Any allegation not denied shall be considered admitted.

#### **Section 20234 – Filing**

The answer shall be filed with the Executive Secretary and the regional office that issued the complaint. The answer shall be filed and served as required by sections 20160 and 20166. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240.

### MANNER IN WHICH PAPERS ARE TO BE FILED AND SERVED

#### **Section 20164 – Service of Papers by the Board or on the Board**

All papers filed by the Board or any of its agents shall be served, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party either (i) personally, by leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (ii) by registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served, together with an appropriate proof of service. All papers filed by a party with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, may be filed in accordance with any of the methods prescribed above with a certificate of mailing, or by deposit with a common carrier promising overnight delivery.

Service need only be made at one address of a party, or attorney or representative of a party and only to one attorney or representative of each party. Service shall be established by a written declaration under penalty of perjury, setting forth the

name and address of each party, attorney or representative served and the date and manner of their service. The Board or the party shall retain the original proof of service.

#### **Section 20166 – Service on Others of Papers Filed with the Board**

Whenever a party files papers with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, it shall serve the same, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party in the same manner as set forth in section 20164, with the exception of an unfair labor practice charge, which, in accordance with section 20206, must be served personally or by a method that includes a return receipt. Service need only be made at one address of an unrepresented party or an attorney or representative of a party and to only one attorney or representative of each party.

(a) Service on other parties shall be made prior to, or simultaneously with, the filing with the Board, and proof of such service shall be attached to the papers when filed with the Board. Service shall be proven by means of written declaration signed under penalty of perjury, setting forth the name and address of each unrepresented party, attorney or representative of a party served and the date and manner of service.

(b) No proof of service will be required when papers are served by one party on another at the hearing when the fact of such service is stated on the record and in the presence of the party being served, or his or her attorney or representative of record.

### RIGHTS OF THE PARTIES TO A HEARING

#### **Section 20269 – Rights of Parties to a Hearing**

Any necessary party and any person granted party status pursuant to section 20268 shall have the right to appear at the hearing in person, or by counsel or other representative; to call, examine, and cross-examine witnesses; to introduce all relevant and material evidence, except that the participation of any intervening party may be limited by the administrative law judge.

### HOW HEARINGS ARE SET

#### **Section 20224 – Notice of Hearing**

(a) When a case is ready to proceed to hearing, the general counsel will notify the chief administrative law judge, who will cause a notice of hearing to issue, specifying the time and place of hearing. In the alternative, the general

by Evidence Code Section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexcused document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of section 20235, 20236, or 20237, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

### EXTENSIONS OF TIME AND CONTINUANCES

#### **Section 20190 – Continuances of Hearing Dates**

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference will be finalized unless the executive secretary receives a written communication within ten (10) days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or prehearing is mutually agreed to and communicated to the executive secretary within the ten day period, that date will be finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or prehearing, the objecting party may submit a written request to the executive secretary within the ten day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select

other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or prehearing in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing three additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and prehearing and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter

promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to two working days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. Requests for continuances for periods longer than two working days shall be in writing directed to the executive secretary with proof of service on all parties. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for continuance, all matters relevant to a proper determination of the motions will be taken into consideration, including:

- (1) The official case file and any supporting declaration submitted with the motion.
- (2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.
- (3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.
- (4) The proximity of the hearing date.
- (5) The condition of the hearing calendar.
- (6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.
- (7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.
- (8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

- (1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.
- (2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.
- (3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.
- (4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

(1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which that counsel did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.

(2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.

(3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.

(4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.

(5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.

(6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

### **Section 20192 – Extensions of Time**

(a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.

(b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, the grounds for the extension, and the position of the other parties, in the same manner as required for continuances in subsection 20190(c)(2) above.

(c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

### **RIGHT TO APPEAR**

### **Section 20370 – Investigative Hearings--Types of Hearings and Disqualification of IHE's**

#### ***Investigative Hearings--Powers of IHE's***

(b) The parties shall have the right to participate in such investigative hearing as set forth in Labor Code Sections 1151, 1151.2, and 1151.3. Any party shall have the right to appear at such investigative hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses and to introduce into the record documentary evidence, except that participation of any party shall be limited to the extent permitted by the investigative hearing examiner, and provided further, that documentary evidence shall be submitted in duplicate. The investigative hearing examiner shall have the duty to inquire fully into all matters in issue and to obtain a full and complete record. In furtherance of this obligation, the investigative hearing examiner shall have all of the powers that an administrative law judge has in an unfair labor practice proceeding as enumerated in section 20262, where applicable.

### **Section 20402 – Evaluation of the Declaration and Answer**

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:

(1) Notice of hearing shall be served in the manner required by Section 20164.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.

(B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 and 20168. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b)

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State Of California

Agricultural Labor Relations Board

PROOF OF SERVICE BY MAIL

(8 Cal.Code Regs. Sec. 20164)

I am a citizen of the United States and a resident of the County of Kern. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 1642 W. Walnut Avenue, Visalia, California 93277.

On May 17, 2013, I served the within COMPLAINT, GERAWAN FARMING, INC., Case No. 2013-CE-010-VIS and FACT SHEET (re requirements for an Answer, the right to a hearing, and the manner in which hearings are scheduled) including EXCERPTS FROM ALRB REGULATIONS, 8 Cal. Code Regs., Sections 20232, 20166, 20164, 20224, 20235-20238, 20192, 20190, on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Visalia, California, addressed as follows:

CERTIFIED MAIL

Ron Barsamian, Esq.  
Barsamian and Moody  
1141 W. Shaw Avenue, Suite 104  
Fresno, California 93711-3704

CERTIFIED MAIL

Antonio Barbosa, Executive Secretary  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900  
Sacramento, California 95814-2944

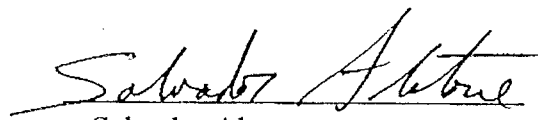
CERTIFIED MAIL

Mario Martinez, Esq.  
United Farm Workers of America  
Legal Department  
1227 California Avenue  
Bakersfield, California 93304

ELECTRONIC DELIVERY

Sylvia Torres-Guillén, General Counsel  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900  
Sacramento, California 95814-2944

Executed on May 17, 2013, at Visalia, California. I declare under penalty of perjury that the foregoing is true and correct.

  
Salvador Alatorre



AGRICULTURAL LABOR RELATIONS BOARD  
Visalia Regional Office  
1642 W. Walnut Avenue  
Visalia, CA 93277  
(559) 627-0995  
FAX (559) 627-0985  
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**First-Class Mail and Electronic Mail**

September 25, 2013

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Fresno, CA 93720

Anthony Raimondo, Esq.  
McCormick Barstow LLP  
5 River Park Place East  
Fresno, CA 93720-1501

Attorneys for Petitioner Silvia Lopez

**Re: Case Name: Gerawan Farming, Inc.**  
**Case No. 2013-RD-002-VIS**

Dear Counsel:

The evidence and information gathered during the course of our investigation into the above-referenced Petition for Decertification ("Petition") requires that this Petition be dismissed. This Petition is invalid because it has not been accompanied by an adequate showing of interest. The showing of interest has not been met because a determinative number of the signatures submitted were of questionable authenticity. After removing the identified false signatures from consideration, the Petitioner has not met the showing of interest requirement as provided by the Agricultural Labor Relations Board's Regulations ("Regulations"). Cal. Code Regs., tit. 8 §20390(b). The evidence in support of this determination will be explained in detail below.

In addition, the Petition is being dismissed because there is no reasonable cause to find that the Petition presents a genuine question of representation. Lab. Code § 1156.3(b). Our investigation has revealed that there has been significant unlawful assistance by the employer in the circulation of the Petition, by gathering of signatures for the Petition and by providing other material assistance to employees in the decertification process. The employer's unlawful assistance, as described below, forecloses the finding of a genuine question of representation. *Gallo Vineyards* (2000) 30 ALRB No. 2.

This decision is made after an extensive investigation and careful analysis of all of the evidence that we have obtained. It is disturbing that this Petition, which was of great interest to many employees, must be dismissed based on, *inter alia*, the submission of a large number of forged signatures. There is no doubt that there are Gerawan workers who genuinely want to de-certify the union at their workplace. These Gerawan Farming, Inc. ("Gerawan") workers have been led to believe by the Petitioner that a strong



majority of the workers have signed the petition and have shown sufficient support for such an election.<sup>1</sup> However, it is clear that signatures have been forged and the workers have been deceived about the showing of support for the Petition. There were simply not enough legitimate signatures submitted and the workers opposed to the union will surely be bitterly disappointed and may wrongly blame the ALRB who discovered the forgery. Despite claims of majority support for decertification, the evidence shows that a majority of the current employees at Gerawan have not expressed interest in decertifying the union. The decertification petition must be dismissed because of a lack of a support, and because of substantial misconduct and that has created a situation where it is impossible to truly determine the wishes of the employees based on the signatures submitted. For these reasons, the law requires that this petition be dismissed.

A detailed explanation of this decision is merited because of the large number of affected employees at Gerawan who have an interest in this outcome and who have expressed their desire to understand the ALRB investigation process related to this petition. The Petitioner organized a protest and invited press to cover and scrutinize this decision. For these reasons I have decided to set forth the basis of this decision and describe a significant amount of the evidence on which it is based.

### **I. The Minimum Showing of Interest Has Not Been Met**

Section 20390 of the Regulations states that “where the incumbent union presently does not have a collective bargaining agreement with the employer, the petition....shall be accompanied by a majority of the employees currently employed in the bargaining unit.” In this case, the requirement of a majority showing of interest has not been met.

The filing of the Petition was completed at 5:00 p.m. on Wednesday, September 18, 2013. At that time, the petitioner submitted sheets containing names, signatures and dates from purported Gerawan employees seeking to no longer be represented by the United Farm Workers (“UFW”). Upon receiving the Petition, we notified the employer and asked to be provided with a list of bargaining unit employees from the pay period preceding the filing of the petition, and we asked for underlying payroll records. The next day, upon receiving the employer records, we immediately began a review process to verify the accuracy of the employee list, based on the underlying payroll records, and then to compare names and signatures on the petition with the names of verified employees based on the information provided by Gerawan. Consistent with our regular business practices for determining the showing of interest for all representation and decertification petitions, we recognized that there can often be distinctions between the manner in which a name is written and signed and how it may be registered with the employer. We resolve situations of ambiguity in favor of validating a signature because of our concern for not disqualifying an eligible signer.

Our thorough and careful review of the signatures was completed on Saturday, September 21, 2013. Upon completion, I called counsel for the Petitioner, Anthony Raimondo, to inform him of the status of the count as soon as it was completed. Despite the requirement that the petition be filed with an adequate showing of interest, I exercised my discretion to provide the Petitioner with an additional 24 hours to meet the showing of interest requirement, the maximum additional time allowed by law. Cal. Code Regs., tit. 8, § 20304(j)(4).

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<sup>1</sup> See <http://www.thebusinessjournal.com/news/agriculture/8864-alrb-gerawan-farmworker-signatures-invalid>

That evening, our office received a report from a non-supervisory agricultural employee that the crew boss of a Farm Labor Contractor ("FLC") of Gerawan (R&T) had presented the decertification petition to workers on Saturday afternoon at the end of the shift while distributing paychecks. This seemed to indicate that the employer was encouraging and coercing employees into signing the petition. This information immediately put us on alert that there may be unlawful employer assistance in the gathering of the additional signatures.

On Sunday, September 22, 2013, the Petitioner, through counsel Joanna MacMillan of McCormick Barstow, submitted additional signature sheets slightly before the expiration of the 24-hour period. Again, the verification process was commenced immediately to determine if an adequate showing of interest had been made per the requirements of the Regulations.

During our review of the signatures, we discovered numerous fraudulent signatures. Exhibit ("Exh.")<sup>2</sup> 1 contains seven (7) pages of forged signatures submitted to our office on September 22, 2013 in support of the Petition. The names on each of these pages were printed in the exact same handwriting in blue ink in the left column. Not only were the names written in the same handwriting, but all 88 names on these pages were written down in alphabetical order by first name, with the exception of two names added at the end of the sequence. The middle column contains the signature lines for the names on the petition. Without exception, each of the names was accompanied by what appeared to be a signature. Finally, on the right side there is a narrow column for the date of the signature. The date "9-21-13" is handwritten in the top box of the column, and then a scribbly line fills all the remaining boxes until the bottom box which also contains the date "9-21-13". These pages invited immediate scrutiny, particularly after the report of supervisor collection of signatures on September 21, 2013. The signatures submitted were consistent with this report of illegal activity that one person may have written down 86 names in alphabetical order and then apparently had a 100% success rate in obtaining the sought after signatures. All of these sheets were purportedly obtained from workers who were employed by Gerawan FLC Sunshine Agriculture.

There were other signatures submitted on September 22, 2013 that also invited scrutiny. They were contained on a sheet with nine consecutive signatures that all appeared to be from the same handwriting. Exh. 2. The page on which these signatures appear contain the same handwriting for at least nine of the ten signatures and nine of the ten dates. The signatures are not legible, but they all contain a semblance of at least the first or second letters of the handwritten name in the far left column and are all drafted in the same style. All of the "signatures" on the page were dated September 21, 2013. Our investigation showed that all of these signatures were purportedly gathered from workers who were employed by Gerawan FLC R&T Grafting.

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<sup>2</sup> All exhibits provided to the parties will be redacted to remove the identities of non-supervisory agricultural workers who have participated in the ALRB's investigation or whose union or decertification activities are discussed in this letter, except for Silvia Lopez who has publicly identified herself as the Petitioner. An unredacted copy of all exhibits have been filed with the Board, who is charged with protecting the identities of agricultural employees and the secrecy of their choice regarding representation. *Giumarra Vineyards Corporation* (1977) 3 ALRB No. 21; *Nishikawa Farms, Inc. v. Mahony* (1977) 66 Cal.App.3d 781, 791; *NLRB v. National Survey Services, Inc.*, (7th Cir. 1960) 301 F.2d 199, 206. The Petitioner has access to unredacted copies of several of the exhibits because they are documents that the Petitioner filed with the office and she retained photocopies.

Finally, the discovery of these suspicious signatures submitted on September 22, 2013 raised questions about some of the signatures that were filed with the petition on September 18, 2013. Among the signature pages reviewed, for example, one page stood out particularly because it contained three successive names in the same handwriting. In the signature line next to each of the names, the names were simply written again in the exact same handwriting that was used to write the name. (Exh. 3). These signatures were purportedly gathered from workers who were employed by Gerawan farm labor contractor RJL in July, 2013.

In response to the discovery of these one hundred suspicious signatures, which were determinative as to the adequacy of the showing of interest, our staff immediately contacted the Petitioner's counsel to request interviews of the signature gatherers (whom he also represents) and Gerawan's counsel to interview crew bosses for the crews from which the signatures came. At this time, we discovered that Anthony Raimondo, counsel for the signature gatherers, not only represented the Petitioner in this matter, but also the two Farm Labor Contractors that the ALRB had identified as being implicated with the suspicious signatures, Sunshine Agriculture and R&T Grafting. Exh. 4. Mr. Raimondo insisted on being present during interviews of both the employee signature gatherers AND of the crew bosses from this farm labor contractor, Sunshine Agriculture. *Id.* Mr. Raimondo's representation of both the employer and the employee in this matter raised serious concerns in protecting the secrecy of employee protected activity. *Id.*

The ARLB Regional Office ("Region") also investigated the suspicious signatures by meeting with workers whose signatures were purportedly contained in the document. In carrying out this investigation, the Region spoke with 13 of the workers whose names and purported signatures appear on the sheets in question. Out of the 13 workers who we were able to contact, all 13 denied that they had ever signed a petition to decertify the union. Nine (9) of these workers provided a signature with which to compare to the sheet submitted by the Petitioner. For each worker, it was clear that the signature did not match the one on the petition filed with our office. Of these workers, six have provided declarations under penalty of perjury attesting to the fact that they did not sign the petition to decertify the union. Exhibits 5, 6, 7, 8, 9.

The declarations are attached and speak for themselves. One worker includes in his declaration that he was not working on September 21, 2013, the date that he purportedly signed the petition. Exh. 5. This worker states that he was asked to sign a petition to "get rid of the union" but that he declined to sign it. *Id.* Nonetheless his name and signature appear on the petition filed by the Petitioner. Exh. 1 p. 1. The signature on the declaration is markedly different from that on the petition that was filed. It is evident that the signature has been forged.

A second employee declares that he has never signed a petition to have an election while working for Gerawan. Exh. 6. This explains that on or about September 19, 2013, the worker was speaking to other workers in the crew about the union when the crew boss told them that it was "done" because they had already signed "the list" and it had been submitted. Still, this worker's purported signature appears on the list submitted by the Petitioner. Exh. 1. The signature on the declaration is markedly different from that on the petition that was filed. It is evident that the signature has been forged.

A third worker states in her declaration that during her employment with Gerawan, she has never signed a petition about the union. Exh. 7. Despite the claim that she never signed the petition, unless it was by

deception, her purported signature appears on the sheets submitted by the Petitioner, dated September 21, 2013. Exh. 1. The signature on the declaration is markedly different from that on the petition that was filed. It is evident that the signature has been forged.

A fourth worker's testimony is largely similar to that of the worker whose declaration is contained in Exhibit 7. Exh. 8. Despite the claim that he never signed the petition, unless it was by deception, his purported signature appears on the sheets submitted by the Petitioner. Exh. 1. The signature on the declaration is markedly different from that on the petition that was filed. It is evident that the signature has been forged.

A fifth worker declares that his last day of work for Gerawan was September 14, 2013. Exh. 9. Nonetheless, his purported signature appears on the sheets submitted by the Petitioner. (Exh. 2) The signature on the declaration is markedly different from that on the petition that was filed. It is evident that the signature has been forged.

A sixth worker describes in her declaration that while employed with Gerawan, she has never signed a petition to get rid of the union. Exh. 11. She describes that in August, 2013 a woman approached her at work and asked her to sign a petition to get rid of the union. *Id.* The worker said no and the woman then asked for her name so that she could sign for her. The declarant said no. Regardless, her name and purported signature were filed as evidence of support for the Petition. (Exh. 3). It is evident that the signature has been forged.

The evidence of forgery and fraud was not limited to the declarations that are described above and in the attached exhibits. For example, the agency also obtained evidence of forged signatures presented for a worker who allegedly signed the petition but was not on the eligibility list (Exh. 11) and Regional staff spoke with six (6) additional workers whose signatures appear on the showing of interest document filed by the Petitioner, but who informed us that they had never signed any such document. There are other signatures submitted with the Petition that appear suspicious. Our office has requested W-4 forms for employees of Sunshine Agriculture and intends to continue investigating the extent of the forgeries and possible fraud in this case.

At this stage of our investigation of the forgery and fraudulent submission of signatures, we have not reached a conclusion as to who committed the forgery or under whose direction. I do not accuse nor have I reached any conclusion that the Petitioner Ms. Lopez or her attorneys have knowingly or intentionally filed forged signatures in order to obtain approval of their otherwise inadequate Petition. What is clear is that all of the known forgeries submitted on September 22, 2013, the day after the Petitioner's attorney was informed of the shortage of signatures, came from crews hired by the farm labor contractors who were clients of the Petitioner's attorney. The undersigned hopes and expects that this is mere coincidence and not the result of any improper communication or direction between Petitioner's counsel and his other clients, Gerawan's FLCs.

We will be carrying out a full review of the authenticity of the signatures and intend to further investigate the extent of the forgeries submitted to this office. However, even if only the identified signatures are false, the result would still be that the Petition must be dismissed because it has not been accompanied by a sufficient showing of interest.

## **II. There Is No Reasonable Cause to Believe That a Bona Fide Question of Representation Exists**

Section 20300(i)(1) of the Regulations states that a petition "shall be dismissed by the regional director whenever...the administrative investigation of the petition disclose(s) the absence of reasonable cause to believe that a bona fide question concerning representation exists..." Here, our investigation has uncovered that there is no bona fide question of representation because substantial numbers of signatures submitted were forged, and because our investigation of the petition and of unfair labor practice charges has revealed that the employer has engaged in significant unlawful assistance in the circulation and filing of the decertification petition.

### **A. The Petitioner Submitted Dozens of Forged Signatures in Support of Decertification**

As detailed above, after being informed that more signatures were needed to meet the showing of interest requirements, the Petitioner submitted additional signatures, including eight (8) pages containing 97 signatures that were undeniably suspicious. Exhs. 1 and 2. In addition, there was another sheet submitted on September 18, 2013, containing three falsified signatures. Our investigation of these signatures confirmed our suspicion that they were not legitimately obtained. In fact, as demonstrated by the declarations, these 97 signatures submitted in support of the Petition were evidently the result of forgery. Exhs. 1, 2, 5, 6, 7, 8, 9, 10. Our discovery of this forgery prompted us to review other suspicious signatures that were submitted with the original petition on September 18, 2013; again, we found clear evidence of forged signatures (Exh. 3, 10). In total, the Region found compelling evidence of the submission of one hundred falsified signatures from across different contractors and crews as evidence of support for the Petition. There are indications that the forgeries may have been more widespread than what the Region has confirmed during our short investigation and the Region will continue to investigate the authenticity of other signatures filed with this office.

The existence of so many forged signatures identified across different crews, contractors and time periods precludes the Petitioner from meeting the minimal showing of interest requirements in the Regulations and, at the same time, forecloses the possibility of finding reasonable cause to believe that there is a bona fide question of representation. From observation and experience with workers, it is certainly true that there is some support for a decertification effort by Gerawan employees. However, there is no way to legally measure the amount of support in favor or against decertification without the showing of support required by the Act in the form of authorization cards or signatures on a petition. Here, the existence of widespread forgery casts a shadow of doubt on all of the signatures submitted as a measure of the bargaining unit employees' wishes. The filing of fraudulent signatures with the ALRB for the purpose of obtaining an election is simply disgraceful and patently unlawful. These signatures cannot truly represent Gerawan workers' expression of their desire against representation by the UFW - a bona fide question of representation - because they are inherently unreliable.

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## **B. The Employer Engaged in Unlawful Assistance and Instigation in the Gathering of Signatures for the Decertification Petition**

Labor Code section 1153(a) prohibits an agricultural employer from interfering with, restraining or coercing agricultural employees in the exercise of their rights to “self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining...” It is well established under the Act that “any employer assistance greater than ministerial in the solicitation of signatures for a decertification petition is a violation of Labor Code Section 1153(a). *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2.

Employer assistance that affirmatively encourages employees to engage in a decertification effort or employer activities that actively support or assist a decertification effort are illegal. *Id.* Employer assistance in a decertification effort is recognized as inherently coercive because of the unequal power dynamics between the employer who has the power to hire and fire workers, and agricultural workers—considered the most vulnerable of the workforce—who rely on seasonal employment for subsistence. *Id.* at 18. When an employer has unlawfully instigated or assisted workers in a decertification campaign, it has interfered with its employees’ free exercise of their rights and has invalidated the potential election as a measure of employees’ free choice. *Peter D. Solomon and Joseph R. Solomon d/b/a Cattle Valley*, (1983) 9 ALRB No. 65, at 8, *citing Gold Bond, Inc.* (1954) 107 NLRB 1059 and *Bond Stores, Inc.* (1956) 116 NLRB 1929. A decertification petition which has been initiated or sponsored by an employer “cannot be said to have raised a question concerning representation.” *Sperry Gyroscope Co.* (1962) 136 NLRB 294, 297.

Our investigation of the Petition and several unfair labor practice charges has revealed that there has been unlawful assistance by the employer that has defeated the petition as a measure of Gerawan’s employees’ free choice. The evidence, as described below, shows that a significant number of Gerawan’s crew bosses have supported the decertification effort by circulating the decertification petition, encouraging workers to sign the petition, and providing assistance to signature gatherers. Furthermore, an attorney who represents two of Gerawan’s farm labor contractors provided material assistance to employees in the decertification effort. The evidence described below will likely be the basis of an amended unfair labor practice complaint against Gerawan in ALRB case 2013-CE-027-VIS. The facts, as alleged here, would have the probable effect of making it impossible to have a free and fair election for Gerawan’s employees until the unfair labor practices are fully remedied.

### **1. Gerawan Supervisor Assistance in the Circulation of the Decertification Petition**

In the course of our investigation into the validity of the Petition and unfair labor practice charges 2013-CE-027-VIS and 2013-CE-039-VIS, we uncovered substantial evidence of direct employer assistance in the decertification effort in a number of Gerawan’s crews. The evidence described below is not exhaustive of what our investigation revealed, but shows the existence of reasonable cause to believe that there has been substantial employer assistance, thereby defeating the petition as a measure of the employees’ desire to decertify the UFW.

Our investigation has revealed that crew boss Leonel Nuñez gathered twenty members of his crew in late July, 28, 2013 to listen to a presentation about why they should sign the decertification petition. Exh. 12.

Mr. Nuñez went on to tell the employees who he supervises that they should sign the petition because the company could go out of business if the union stayed. *Id.* Nuñez was interviewed by Board staff, but he was not credible in his explanation of the meeting. It was later revealed that Mr. Nuñez made up a false story about the events and directed his own employees to repeat this false story to the ALRB and even to Gerawan's human resource manager. Exh. 13. Based on our investigation, there is reasonable cause to believe that crew boss Nunez unlawfully supported and encouraged the decertification efforts.

Our investigation revealed that crew boss Sonia Martinez held a training session in July, 2013 for employees in her crew where she held a petition for decertification in her hand and asked workers to sign "if they wanted to rid of the union." Exh. 14. After the training session, Ms. Martinez went from row to row asking workers to sign the petition. *Id.* Ms. Martinez was interviewed and denied that the events took place. However, our agency conducted additional interviews and found that the facts stated in the declaration were corroborated. Based on our investigation, there is reasonable cause to believe that crew boss Martinez unlawfully supported and encouraged the decertification efforts.

Our investigation revealed that crew boss Cirilo Gomez encouraged employees from his crew to sign a petition for decertification in July, 2013. Exh. 15. Mr. Gomez then took the petition and placed it in his van that he used to transport members of his crew to and from work. *Id.* Mr. Gomez was interviewed and admitted to taking sheets of the petition in his van, but claimed that he did not intend to encourage employees to sign. However, additional witnesses were interviewed and corroborated the version of the events as described in a worker's sworn declaration. Based on our investigation, there is reasonable cause to believe that crew boss Gomez unlawfully supported and encouraged the decertification efforts.

Our investigation revealed that crew boss Emma Cortez visited multiple Gerawan crews and asked employees to sign the petition for decertification in July for 2013. Various farm worker witnesses who we interviewed explained that Ms. Cortez visited their crews at the end of their shifts, which was particularly feasible since her grape crews ended earlier in the day than the peach crews where she solicited signatures. Exh. 16. Ms. Cortez was interviewed and was not credible. She became extremely nervous when questioned about her visits to peach crews. Several of Ms. Cortez' statements to Board Agents were contradictory and inconsistent. *Id.* ¶ \_\_. Based on our investigation, there is reasonable cause to believe that crew boss Cortez unlawfully supported and encouraged the decertification efforts.

Our investigation revealed that crew boss Raquel Villavisencio supported the decertification efforts by permitting an agricultural worker to solicit signatures from her co-workers to sign a petition to decertify the union during work hours in July 2013. Exh. 16. Ms. Villavisencio was interviewed and she denied any involvement in the petition or knowledge of the petition. However, Ms. Villavisencio's testimony was not credible, as it was contradicted by three farm workers from her crew. Based on our investigation, there is reasonable cause to believe that crew boss Villavisencio unlawfully supported and encouraged the decertification efforts.

Our investigation revealed that crew boss Gloria Mendez supported the decertification efforts by permitting workers on her crew to circulate a decertification petition during work hours in July, 2013. Exh. 18. Mendez supported the decertification effort by allowing the women to gather signatures during paid work time and by making anti-union comments while the women circulated signatures. *Id.* Ms. Mendez was interviewed and denied the allegations. Ms. Mendez' denials were not credible in light of

Our investigation revealed that crew boss Jose Cabello also asked workers to sign a petition to get rid of the union at the work site on or about August 10, 2013. Exh. 19. Mr. Cabello took six pages of the decertification petition being circulated and put them on the hood of his van for workers to sign. Mr. Cabello then told his crew members that they should sign the petition. *Id.* Mr. Cabello was interviewed and denied the allegations. However, his denial of the allegations was not credible. Based on our investigation, there is reasonable cause to believe that crew boss Cabello unlawfully supported and encouraged the decertification efforts.

## 2. Unlawful Assistance by Employer Counsel in Support of the Decertification Petition

Mr. Raimondo represents numerous farm labor contractors (FLCs), including at least two, Sunshine Agricultural Services and R&T Grafting, who perform services for Gerawan Farming, Inc. Exh. 4. It is apparent from correspondence with Mr. Raimondo that his representation of the FLCs is a long-standing relationship and that he has represented their interests in a number of matters. *Id.* The financial interests



of the FLCs that supply labor to Gerawan are directly affected by the outcome of the Petitioner's decertification efforts. Gerawan's owner, Dan Gerawan, has stated publicly that if the Union is able to obtain a contract and is not ousted by the employees that the company "may not survive."<sup>3</sup> Independent of Mr. Gerawan's speculative statements, a union contract may well have financial implications for the FLCs. They may be required to pay higher wages, provide additional benefits and comply with new requirements in a possible collective bargaining agreement between Gerawan and the UFW.

On August 30, 2013, Mr. Raimondo informed our office that he had been retained by Silvia Lopez, an agricultural employee and the Petitioner in this case. Mr. Raimondo joined Paul Bauer as co-counsel in representing the Petitioner who had already filed several documents related to the Petition with the Region. In informing us that he represented the Petitioner, Mr. Raimondo did not mention that he concurrently represented farm labor contractors at Gerawan, who employ Gerawan employees. Mr. Raimondo was treated as the attorney for an agricultural employee and given access to information about Gerawan's agricultural employees and their union-related activities that we would only provide to an attorney representing an employee, including information about the numbers of signatures that were missing to make an adequate showing of interest.

Mr. Raimondo has provided substantial assistance to Ms. Lopez in this matter. An attorney from his office assisted Ms. Lopez in filing the petition on September 18, 2013 and since that time, Mr. Raimondo and Ms. MacMillan from his office have actively represented Ms. Lopez and assisted her by advocating on her behalf in the decertification process. As Mr. Raimondo demanded in his August 30, 2013 emails, all communications from our office to Ms. Lopez have gone through him, and occasionally, his co-counsel Mr. Bauer, who has been much less active on the case.

The Region was not made aware of Mr. Raimondo's dual representation of an employer directly tied to this matter and the Petitioner until the evening of Sunday, September 22, 2013. This came about because the Region asked Mr. Barsamian for an opportunity to interview crew bosses for Sunshine Agriculture related to the potential forgery of signatures. Exh. 27. Shortly after our request, Mr. Raimondo informed us that he also represented Sunshine Agriculture and insisted on being present for any interviews of their supervisors. *Id.*

It is well-settled under the Act that FLCs are agents of the growers who contract them. *Giannini Packing Corp* (1983) 19 ALRB No. 16; *Frudden Produce, Inc.* (1978) 4 ALRB No. 17. In assessing liability for unfair labor practices, the actions of the FLC are imputed to the grower, in the same way that unlawful employment-related actions of a supervisor would be. *Vista Verde Farms v. ALRB* (1981) 29 Cal.3d 307, 312. In this case, Gerawan is responsible for the actions of its FLCs, and their agents and representatives, in supporting and materially assisting in an effort to decertify the UFW.

Under the law an employer may not provide material assistance in a decertification campaign. Any such decertification efforts must be the result of the independent and uncoerced choice of the employees. *Sperry Gyroscope Co., supra*, 136 NLRB 294. The Board has found that the provision of legal services by the employer to the employees seeking to decertify the union constitutes employer instigation and unlawful assistance in the decertification effort. *Cattle Valley, supra*, 9 ALRB No. 65. In *Cattle Valley*,

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<sup>3</sup> "California's Union-Sponsored War on Farmers." *Wall Street Journal* September 2, 2013.  
<http://online.wsj.com/article/SB10001424127887324463604579040781488196964.html>

the employer's attorney did not actually take on the representation of the workers seeking decertification, but made arrangements for them to receive free legal assistance by another attorney. *Id.* The employer's attorney's action of making a phone call and finding legal representation for the workers was sufficient to merit a finding that the employer instigated the decertification efforts of its employees. *Id.* The Board states in *Cattle Valley* that it does not matter whether or not the employer is aware that its attorney is arranging or providing free legal representation. It is responsible for those acts because the attorney is the employer's representative and agent. *Id.* at fn. 5.

Mr. Raimondo has alleged that the Region's position is an effort to deprive agricultural employees of counsel. This is patently false. Well before the Petition was filed and through this process, the Region has fully respected the Petitioner's relationship with counsel, and fully respected Mr. Raimondo's representation of the Petitioner until it was revealed that Mr. Raimondo is also counsel for an employer of many of the bargaining unit members and therefore an agent of the Agricultural Employer as defined by the Act. Ms. Lopez is entitled to the counsel of her choice and we have no intention of interfering with that choice, but due to the sensitive nature of information in this matter and our duty to protect the secrecy of employee union activity, her counsel cannot concurrently represent an employer with a direct interest in this matter. Cite.

In sum, our investigation has found that Gerawan has directly assisted the Petitioner and others in the decertification effort by providing legal assistance. The FLC's counsel, Mr. Raimondo, has refused to provide information about the payment of his fees and costs. Exh. 22. However, based on the significant amount of work on this matter by Mr. Raimondo, and information provided by Ms. Lopez in the presence of counsel, it is fair to conclude that the Petitioner, a farm worker, is not paying full attorney fees. Our investigation has not yet determined whether Gerawan directed or requested that Mr. Raimondo provide legal services to help its employees with the decertification effort. However, that is not a determinative factor. As the Board recognized in *Cattle Valley*, even if the employer (Gerawan or its agents, Sunshine Agricultural Services and R&T Grafting) were not aware of Raimondo's actions in providing free legal representation in the decertification effort, they are nonetheless legally responsible because he is their attorney and agent. *Id.* Based on all of the above, there is reasonable cause to believe that the decertification effort has been fundamentally and pervasively supported by Gerawan, through its agents, FLC Sunshine and FLC R&T Grafting and their agent and attorney, Anthony Raimondo. Decertification efforts initiated or sponsored by an employer "cannot be said to have raised a question concerning representation." *Sperry Gyroscope Co.* (1962) 136 NLRB 294, 297. As the FLC's attorney, Mr. Raimondo's legal services on behalf of Ms. Lopez, rather than truly assisting her in furthering her goal of decertifying the union, has invalidated this process by turning her Petition into an employer-sponsored effort.

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Based on all of the above, this petition is dismissed. If you wish to seek review of any part of this decision, as permitted by law, you may seek such review with the Board within five days of service of this dismissal. Lab. Code §1142(b); 8 CCR §20393.

Sincerely,

A handwritten signature in black ink, appearing to read 'Silas M. Shawver', written over a horizontal line.

Silas M. Shawver  
Regional Director

Cc: Ron Barsamian,  
Mario Martinez  
David Schwarz  
Antonio Barbosa  
Sylvia Torres-Guillén



<b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b> <b>Civil Department - Non-Limited</b>		Entered by:
TITLE OF CASE: <b>State of California vs Gerawan Farming</b>		
<b>LAW AND MOTION MINUTE ORDER</b>		Case Number: <b>13CECG02594 MWS</b>

Hearing Date: 09/16/2013

Department: 402

Court Clerk: M.Santana

Hearing Type: From Chambers

Judge/Temporary Judge: Jeffrey Y. Hamilton

Reporter/Tape: Not Reported

**Appearing Parties:**

Plaintiff: **Not Present**

Defendant: **Not Present**

Counsel:

Counsel:

☒ Matter previously taken under advisement, the court now rules; Respondents shall cease and desist from approving, encouraging, and circulating a decertification petition among its employees; shall cease and desist from interrogating employees about their union sympathies; and shall cease and desist from threatening employees with job loss for supporting the Union. It is further ordered that Order will remain in effect until the ALRB's final adjudication of the case on its merits; provided, however, that is conditions which led to the injunction being found just and proper materially change, either party may move the court to terminate or modify this injunction, by way of a regularly noticed motion. Respondent's ex parte application for expedited discovery is denied. See attached copy of Preliminary Injunction Order After Hearing.

☐ Continued to ☐ Set for \_\_\_\_\_ at \_\_\_\_\_ Dept. \_\_\_\_\_ for \_\_\_\_\_

☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.

☐ Upon filing of points and authorities.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

☐ Taken under advisement

☐ Demurrer ☐ overruled ☐ sustained with \_\_\_\_\_ days to ☐ answer ☐ amend

☐ Tentative ruling becomes the order of the court. No further order is necessary.

☐ Pursuant to CRC 391(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

☐ Service by the clerk will constitute notice of the order.

☐ Time for amendment of the complaint runs from the date the clerk serves the minute order.

☐ Judgment debtor \_\_\_\_\_ sworn and examined.

☐ Judgment debtor \_\_\_\_\_ failed to appear.

Bench warrant issued in the amount of \$ \_\_\_\_\_

**Judgment:**
☐ Money damages ☐ Default ☐ Other \_\_\_\_\_ entered in the amount of:  
Principal \$ \_\_\_\_\_ Interest \$ \_\_\_\_\_ Costs \$ \_\_\_\_\_ Attorney fees \$ \_\_\_\_\_ Total \$ \_\_\_\_\_

☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$ \_\_\_\_\_ per \_\_\_\_\_

**Further, court orders:**
☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.

☐ \$ \_\_\_\_\_ to be released to judgment creditor and balance returned to judgment debtor.

FILED

SEP 15 2013

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPT. 402

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

STATE OF CALIFORNIA AGRICULTURAL	)	No. 13CECG02594
LABOR RELATIONS BOARD,	)	
	)	PRELIMINARY INJUNCTION ORDER
Petitioner,	)	AFTER HEARING
	)	
v.	)	Hearing Date: September 11, 2013
	)	Dept. 402
GERAWAN FARMING, INC.	)	Judge: Honorable Jeffrey Y. Hamilton, Jr.
	)	
Respondent.	)	

On the above date, appearing for PETITIONER ALRB were Silas Shawver, Silvia Torres-Guillen and Vivian Velasco Paz; appearing for RESPONDENT Gerawan Farming, Inc. were David Schwarz, C. Russell Georgeson, Ronald Barsamian and Michael Mallery; appearing for the United Farmworkers of America was Mario Martinez.

After review of the pleadings filed in conjunction with this motion, and all other pleadings in the file, and considering all oral argument made at the hearing, and upon good cause showing, the court orders as follows:

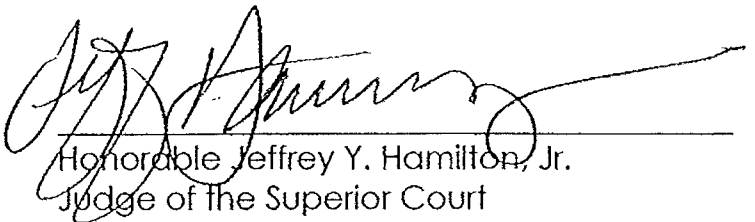
Respondents, its partners, officers, agents, representatives, and all other persons acting under the direction of or in concert with Respondents, with the understanding that this does not enjoin non-supervisory employees, shall cease and desist from approving, encouraging, and circulating a decertification petition

1 among its employees; shall cease and desist from interrogating employees about  
2 their union sympathies; and shall cease and desist from threatening employees with  
3 job loss for supporting the Union.

4 It is further ordered that this order will remain in effect until the ALRB's final  
5 adjudication of the case on its merits; provided, however, that if conditions which  
6 led to the injunction being found just and proper materially change, either party  
7 may move the court to terminate or modify this injunction, by way of a regularly  
8 noticed motion.

9 Respondent's ex parte application for expedited discovery, also heard on  
10 this same date, is denied.

11 DATED this 16<sup>th</sup> day of September, 2013

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15 Honorable Jeffrey Y. Hamilton, Jr.  
16 Judge of the Superior Court  
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO</b> <b>Civil Department - Non-Limited</b> 1130 "O" Street Fresno, CA 93724-0002 (559)457-1900	FOR COURT USE ONLY
TITLE OF CASE: <b>State of California vs Gerawan Farming</b>	
<b>CLERK'S CERTIFICATE OF MAILING</b>	CASE NUMBER: <b>13CECG02594 MWS</b>

Name and address of person served:

**Mario Martinez**  
**1227 California Avenue**  
**Bakersfield, CA 93304**

### CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the 09/16/2013 Minute Order and copy of Preliminary Injunction Order After Hearing was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at Fresno, California, on:

Date: **September 16, 2013**

Clerk, by \_\_\_\_\_

  
 M. Santana

, Deputy

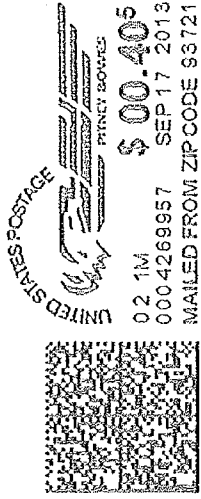
Silas Shawver, California Rural Legal Assista, 2115 Kern Str, #370, Fresno CA 93721  
 David A. Schwarz, Irell & Manella LLP, 1800 Ave. of the Stars, Ste 900, Los Angeles CA 90067-4276  
**Mario Martinez, 1227 California Avenue, Bakersfield CA 93304**



Superior Court of California  
County of Fresno  
1130 "O" Street  
Fresno, California 93724-0002

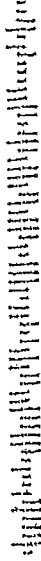
RETURN SERVICE REQUESTED

PRESORTED  
FIRST CLASS



SEP 18 2013

33 VERMONT





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Attorneys for Moving Party

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

Case No. 2013-CE-027-VIS

GERAWAN FARMING, INC.,

Respondent,

and

UNITED FARM WORKERS OF AMERICA

Charging Party.

**COMPLAINT**

1 The General Counsel of the Agricultural Labor Relations Board, ("ALRB"), pursuant to  
2 Section 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section  
3 1140 *et seq.* ("Act") and California Code of Regulations, title 8, section 20220, hereby issues this  
4 complaint, in the name of the ALRB, and on behalf of the United Farm Workers of America  
5 ("UFW"). The complaint is issued against Gerawan Farming, Inc. ("Gerawan"). The General  
6 Counsel alleges as follows:

7 **JURISDICTION AND PARTIES**

8 1. On July 15, 2013, the UFW properly filed charge 2013-CE-010-VIS alleging that on  
9 or about July 1, 2013 and continuing, Gerawan committed an unfair labor practice by having its  
10 supervisors circulate and coerce its agricultural workers into signing a petition to decertify the  
11 UFW as the collective bargaining representative of Gerawan's employees. The UFW properly  
12 served Gerawan via certified mail with a true copy of the charge on July 15, 2013.

13 2. At all times material herein, the UFW was a labor organization within the meaning of  
14 Section 1140.4 (f) of the Act.

15 3. At all times material herein, Gerawan was an agricultural employer within the  
16 meaning of Sections 1140.4 (a) and (c) of the Act. Gerawan is a corporation duly organized and  
17 existing under the laws of California. Gerawan's principal place of business is in Fresno,  
18 California. Gerawan is engaged in growing, packing, and shipping fresh fruit.

19 **FACTS**

20 4. At all times material herein, the United Farm Workers of America ("UFW") was the  
21 certified bargaining representative of Gerawan's agricultural employees in California.

22 5. Cirilo Gomez ("Gomez") is a foreman for Gerawan and is a statutory supervisor under  
23 the Act. Gomez has the authority to responsibly direct the work of agricultural workers in his  
24 crew and to effectively recommend discipline. Gomez has been a statutory supervisor and an  
25 agent of Gerawan during the entire relevant period.

26 6. Leonel Nuñez ("Nuñez") is a foreman for Gerawan and is a statutory supervisor under  
27 the Act per Labor Code Section 1140.4. Nuñez has the authority to responsibly direct the work  
28 of agricultural workers, effectively recommend discipline, and effectively recommend the hiring

1 of agricultural workers for Gerawan. Nuñez has been a statutory supervisor and an agent of  
2 Gerawan during the entire relevant period.

3 7. Sonia Martinez ("Martinez") is a forewoman for Gerawan and is a statutory  
4 supervisor under the Act. Martinez has the authority to responsibly direct the work of  
5 agricultural workers and to effectively recommend the discipline of agricultural workers for  
6 Gerawan. Gerawan has been a statutory supervisor and an agent of Gerawan during the entire  
7 relevant period.

8 8. On or about July 19, 2013, Gomez was leaving a field in Kerman, California at the  
9 end of the shift and several women were gathering signatures for a petition to decertify the  
10 UFW. Gomez took several signature sheets of the decertification petition from the women and  
11 told members of his crew that they should sign the petition.

12 9. That same day, after telling workers from his crew to sign the de-certification petition,  
13 Gomez put several sheets of the petition in his van so that the crew workers that he drove to and  
14 from work would sign the de-certification petition.

15 10. On or about July 28, 2013, Nuñez gathered approximately 20 members of his crew,  
16 held out a petition to de-certify the UFW and told the workers that they should sign it. Nuñez  
17 told the workers in his crew that they should sign the petition to get rid of the union. Nuñez  
18 told the workers in his crew that if the union was around, the company would go out of  
19 business.

20 11. After telling the members of his crew that they should get rid of the union, Nuñez  
21 approached one worker who refused to sign the petition after the meeting. Nuñez told this  
22 worker that he knew that there were two union supporters in his crew and seven in Francisco  
23 Maldonado's crew.

24 12. On or about July 29, 2013, Martinez held up a de-certification petition while giving  
25 instructions to her crew for the day. Martinez told the workers in her crew that they could sign  
26 the petition to get rid of the union.

27 13. After explaining the petition and sending the employees to work, Martinez went row  
28 by row to each employee to ask for signatures on the de-certification petition. In approaching at

1 least one worker with the de-certification petition, Martinez interrogated the worker about his  
2 union sympathies by asking him if he supported the union.

3 **FIRST CAUSE OF ACTION**  
4 **California Labor Code § 1153 (a)**  
5 *(Coercion)*

6 14. As set forth in paragraphs 4 through 13 above, Gerawan has committed an unfair  
7 labor practice under Section 1153(a) of the Act by coercing its employees in the exercise of their  
8 rights under Section 1152 of the Act to freely choose whether they support the union or support  
9 the de-certification of the union.

10 15. In providing assistance, instigating and encouraging the gathering of signatures for a  
11 de-certification petition as set forth above, Gerawan has unlawfully coerced, interfered with and  
12 restrained its agricultural employees in the exercise of their collective bargaining and concerted  
13 activity rights under the Act.

14 **SECOND CAUSE OF ACTION**  
15 **California Labor Code § 1153 (a)**  
16 *(Interrogation and Surveillance)*

17 16. As set forth in paragraphs 4 through 13 above, Gerawan has committed an unfair  
18 labor practice by unlawfully interrogating workers about their union activities and support.

19 17. As set forth in paragraphs 4 through 13 above, Gerawan has committed an unfair labor  
20 practice by surveilling its employees' union and de-certification-related activities.

21 18. Through its acts of interrogation and surveillance, Gerawan has unlawfully coerced,  
22 interfered and restrained its agricultural employees in the exercise of their collective bargaining  
23 and concerted activity rights under the Act.

24 **REQUEST FOR RELIEF**

25 As the remedy for the unfair labor practices set forth above, the General Counsel seeks an  
26 order requiring Respondent, its officers, agents, successors and assigns to:

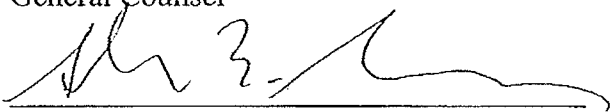
- 27 A. Cease and desist from initiating, sponsoring, supporting, approving,  
28 encouraging and circulating a decertification petition among employees;

- 1 B. Cease and desist from interrogating and surveilling its agricultural  
2 employees with respect to their support or opposition to the union;  
3 C. Cease and desist from, in any like or related manner, interfering with,  
4 restraining or coercing agricultural employees in the exercise of their  
5 rights guaranteed by Labor Code section 1152;  
6 D. Issue a mailing of a Notice of Agricultural Workers' Rights Under the  
7 Act ("Notice") to all of Respondent's agricultural employees and grant  
8 access to ALRB Agents to provide a reading, and to post the Notice at  
9 Respondent's work sites, and to inspect the posting to ensure compliance  
10 for a period of 60 days, where Gerawan's agricultural employees are  
11 employed to inform agricultural employees of their rights under the  
12 Agricultural Labor Relations Act and of their rights as a result of the  
13 decision in this case.

14 FURTHER, the General Counsel seeks any other relief that is just and proper to remedy  
15 the unfair labor practices alleged herein.

16 Dated this 15th of August, 2013 at Visalia, California.

17  
18  
19 AGRICULTURAL LABOR RELATIONS BOARD  
20 SYLVIA TORRES-GUILLÉN,  
General Counsel

21   
22 \_\_\_\_\_  
23 SILAS M. SHAWVER  
24 Acting Regional Director  
25  
26  
27  
28

## EXCERPTS FROM ALRB REGULATIONS

### WHAT TO INCLUDE IN AN ANSWER

#### **Section 20230 – Answer; Time for Filing**

The respondent shall file an answer within 10 days of the service of the complaint or any amendment to the complaint. If a hearing is set sooner than 10 days after the service of the complaint, the answer shall be filed no later than the day of the hearing. All allegations in amended complaints served after an answer is filed are deemed denied except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

#### **Section 20232 – Contents of Answer**

The answer shall state which facts in the complaint are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. The answer may make any appropriate explanation of the circumstances surrounding the facts set forth in the complaint. Any allegation not denied shall be considered admitted.

#### **Section 20234 – Filing**

The answer shall be filed with the Executive Secretary and the regional office that issued the complaint. The answer shall be filed and served as required by sections 20160 and 20166. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240.

### MANNER IN WHICH PAPERS ARE TO BE FILED AND SERVED

#### **Section 20164 – Service of Papers by the Board or on the Board**

All papers filed by the Board or any of its agents shall be served, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party either (i) personally, by leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (ii) by registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served, together with an appropriate proof of service. All papers filed by a party with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, may be filed in accordance with any of the methods prescribed above with a certificate of mailing, or by deposit with a common carrier promising overnight delivery.

Service need only be made at one address of a party, or attorney or representative of a party and only to one attorney or representative of each party. Service shall be established by a written declaration under penalty of perjury, setting forth the

name and address of each party, attorney or representative served and the date and manner of their service. The Board or the party shall retain the original proof of service.

#### **Section 20166 – Service on Others of Papers Filed with the Board**

Whenever a party files papers with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, it shall serve the same, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party in the same manner as set forth in section 20164, with the exception of an unfair labor practice charge, which, in accordance with section 20206, must be served personally or by a method that includes a return receipt. Service need only be made at one address of an unrepresented party or an attorney or representative of a party and to only one attorney or representative of each party.

(a) Service on other parties shall be made prior to, or simultaneously with, the filing with the Board, and proof of such service shall be attached to the papers when filed with the Board. Service shall be proven by means of written declaration signed under penalty of perjury, setting forth the name and address of each unrepresented party, attorney or representative of a party served and the date and manner of service.

(b) No proof of service will be required when papers are served by one party on another at the hearing when the fact of such service is stated on the record and in the presence of the party being served, or his or her attorney or representative of record.

### RIGHTS OF THE PARTIES TO A HEARING

#### **Section 20269 – Rights of Parties to a Hearing**

Any necessary party and any person granted party status pursuant to section 20268 shall have the right to appear at the hearing in person, or by counsel or other representative; to call, examine, and cross-examine witnesses; to introduce all relevant and material evidence, except that the participation of any intervening party may be limited by the administrative law judge.

### HOW HEARINGS ARE SET

#### **Section 20224 – Notice of Hearing**

(a) When a case is ready to proceed to hearing, the general counsel will notify the chief administrative law judge, who will cause a notice of hearing to issue, specifying the time and place of hearing. In the alternative, the general



counsel may arrange with the chief administrative law judge to include the time and place of hearing in the complaint.

(b) Except where circumstances warrant an expedited hearing, no hearing shall be scheduled to commence less than fifteen (15) days after the issuance of the complaint, and no prehearing conference shall be scheduled to commence less than ten (10) days after the issuance of the complaint.

## DISCOVERY RIGHTS

### **Section 20235 – Request for Particulars.**

Where a complaint lacks specificity as to the time, place or nature of the alleged conduct, or the identity of the persons who engaged in it, or fails sufficiently to identify the individual or group against whom the conduct was specifically directed, a written request for particulars may be made by the respondent in accordance with section 20237 to obtain such information; provided, however, that in responding the general counsel need not disclose the identity of any potential witness whose primary source of income is non-supervisory employment in agriculture.

### **Section 20236 – Matters Discoverable**

(a) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the names, addresses and any statements (as defined in section 20274(b)) of all witnesses, other than those whose primary source of income is non-supervisory employment in agriculture; provided, however, that any portion of a statement likely to identify a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised.

(b) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the name, address, field of expertise, qualifications, and a brief description of expected testimony of any expert whom it intends to call as a witness. The responding party shall also make available any report prepared for it by such expert concerning the subject matter of the testimony to be given. The failure, without good cause, to comply with the requirements of this subsection shall be grounds for excluding such expert testimony.

(c) Upon written request, a party to a hearing shall be afforded a reasonable opportunity to examine, inspect and copy, and, where appropriate, to photograph and/or test, any writing or physical evidence in the possession or control of the party to the hearing to whom the request is directed which that party intends to introduce into evidence at hearing; provided, however, that any portion of a writing which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised, except that this proviso shall not apply to otherwise unprotected or unprivileged business records. Where the writing or physical evidence to be introduced is not yet in the

possession or control of the responding party, it shall be identified with reasonable specificity.

(d) Upon written request, general counsel shall disclose to respondent any evidence which is purely and clearly exculpatory.

(e) In compliance proceedings, the general counsel shall, upon written request, make available to the requesting party to the hearing all information in its files, which tends to verify, clarify or contradict the items and amounts alleged in the backuppay or bargaining makewhole specification unless the information is absolutely privileged, e.g., income tax returns, form W-2 (wage and tax statement), . . . etc.

### **Section 20237 – Requests for Discovery**

(a) Requests pursuant to sections 20235 and 20236 shall be in writing and directed to the party from whom the information is sought. Copies need not be served on the Board.

(b) Requests shall be made no later than 15 days following service of the answer, and responses shall be due 15 days after receipt of the request; except that, for good cause shown, the chief administrative law judge or the executive secretary, as appropriate in accordance with sections 20240 and 20241, may extend or shorten the time to request or respond.

(c) Requests shall be deemed continuing. Any requested information which becomes available or is discovered after the initial response is to be provided as soon as reasonably possible.

### **Section 20238 – Order Compelling Discovery Sanctions**

(a) A requesting party who believes that the responding party has failed, in whole or part, to comply with a proper request pursuant to sections 20235, 20236, or 20237 may apply in writing to the chief administrative law judge for an order requiring compliance. No application will be entertained unless the applying party establishes that it first made a reasonable effort to resolve the matter by contacting or attempting to contact the responding party. The application shall include copies of the request and any response received, and shall be served on the responding party. If the responding party desires to oppose the application, he or she shall immediately notify the office of the chief administrative law judge. Depending on the proximity to hearing, the chief administrative law judge shall determine whether the opposition will be written or oral, when it will be due, and whether to assign the matter to an administrative law judge. When the dispute concerns the propriety of excising or failing to turn over a statement containing the name of a potential witness whose primary income is from non-supervisory agricultural employment, the privilege created

by Evidence Code Section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexecuted document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of section 20235, 20236, or 20237, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

### EXTENSIONS OF TIME AND CONTINUANCES

#### **Section 20190 – Continuances of Hearing Dates**

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference will be finalized unless the executive secretary receives a written communication within ten (10) days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or prehearing is mutually agreed to and communicated to the executive secretary within the ten day period, that date will be finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or prehearing, the objecting party may submit a written request to the executive secretary within the ten day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select

other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or prehearing in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing three additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and prehearing and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter

promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to two working days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. Requests for continuances for periods longer than two working days shall be in writing directed to the executive secretary with proof of service on all parties. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for continuance, all matters relevant to a proper determination of the motions will be taken into consideration, including:

- (1) The official case file and any supporting declaration submitted with the motion.
- (2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.
- (3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.
- (4) The proximity of the hearing date.
- (5) The condition of the hearing calendar.
- (6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.
- (7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.
- (8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

- (1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.
- (2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.
- (3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.
- (4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

- (1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which that counsel did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.
- (2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.
- (3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.
- (4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.
- (5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.
- (6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

### **Section 20192 – Extensions of Time**

(a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.

(b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, the grounds for the extension, and the position of the other parties, in the same manner as required for continuances in subsection 20190(c)(2) above.

(c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

### **RIGHT TO APPEAR**

### **Section 20370 – Investigative Hearings--Types of Hearings and Disqualification of IHE's**

#### *Investigative Hearings--Powers of IHE's*

(b) The parties shall have the right to participate in such investigative hearing as set forth in Labor Code Sections 1151, 1151.2, and 1151.3. Any party shall have the right to appear at such investigative hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses and to introduce into the record documentary evidence, except that participation of any party shall be limited to the extent permitted by the investigative hearing examiner, and provided further, that documentary evidence shall be submitted in duplicate. The investigative hearing examiner shall have the duty to inquire fully into all matters in issue and to obtain a full and complete record. In furtherance of this obligation, the investigative hearing examiner shall have all of the powers that an administrative law judge has in an unfair labor practice proceeding as enumerated in section 20262, where applicable.

### **Section 20402 – Evaluation of the Declaration and Answer**

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:

(1) Notice of hearing shall be served in the manner required by Section 20164.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.

(B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 and 20168. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b)

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State Of California

Agricultural Labor Relations Board

PROOF OF SERVICE BY MAIL

(8 Cal.Code Regs. Sec. 20164)

I am a citizen of the United States and a resident of the County of Tulare. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 1642 W. Walnut Avenue, Visalia, California 93277.

On August 15, 2013, I served the within COMPLAINT, GERAWAN FARMING, INC., Case No. 2013-CE-027-VIS and FACT SHEET (re requirements for an Answer, the right to a hearing, and the manner in which hearings are scheduled) and EXCERPTS FROM ALRB REGULATIONS, 8 Cal. Code Regs., Sections 20232, 20166, 20164, 20224, 20235-20238, 20192, 20190, on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Visalia, California, addressed as follows:

CERTIFIED MAIL

Ron Barsamian  
Barsamian and Moody  
1141 W. Shaw Avenue, Suite 104  
Fresno, California 93711-3704  
Facsimile: (559) 248-2370

Mario Martinez  
United Farm Workers of America  
Legal Department  
1227 California Avenue  
Bakersfield, California 93304  
Facsimile: (661) 324-8103

FILED AND


CERTIFIED MAIL

Antonio Barbosa, Executive Secretary  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900  
Sacramento, California 95814-2944  
Facsimile: (916) 653-8730

ELECTRONIC DELIVERY

Sylvia Torrez-Guillén, General Counsel  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900  
Sacramento, California 95814-2944

Executed on August 15, 2013, at Visalia, California. I declare under penalty of perjury that the foregoing is true and correct.

  
Laura Camero



1 Sylvia Torres-Guillén, General Counsel, SBN 164835  
2 Eduardo Blanco, Assistant General Counsel, SBN 95591  
3 AGRICULTURAL LABOR RELATIONS BOARD  
4 1325 J Street, Suite 1900  
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6 Tel: (916) 653-2690  
7 storres@alrb.ca.gov  
8 eblanco@alrb.ca.gov

9 Vivian Velasco Paz, Assistant General Counsel, SBN 256583  
10 Abdel Nassar, Legal Counsel, SBN 275712  
11 Silas Shawver, Acting Regional Director, SBN 241532  
12 AGRICULTURAL LABOR RELATIONS BOARD  
13 1642 W. Walnut Ave.  
14 Visalia, CA 93291  
15 Tel: (559) 627-0995  
16 vvelasco@alrb.ca.gov  
17 sshawver@alrb.ca.gov

18 Attorneys for Petitioner

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 COUNTY OF FRESNO

21 STATE OF CALIFORNIA,  
22 AGRICULTURAL LABOR RELATIONS  
23 BOARD,

24 Petitioner,

25 v.

26 GERAWAN FARMING, INC.

27 Respondents.

) Case No.:

)

)

) ~~REDACTED~~ TEMPORARY RESTRAINING  
) ORDER AFTER HEARING

)

) DATE: August 20, 2013

) TIME: 3:30 p.m.

) DEPARTMENT: ~~402~~ 402

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FILED

AUG 21 2013

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPT. 402

13 DE CG 02594

501

1 On August 21, 2013, the General Counsel of the State of California Agricultural Labor  
2 Relations Board, and Respondents' Counsel appeared before me and presented argument to the  
3 Court on the above-mentioned matter set for hearing the same day.  
4

5 It appearing to the Court, upon reading the Petition, the Declarations, the Memorandum  
6 of Points and Authorities and all other pleadings filed in support thereof, that this is a proper  
7 instance for the issuance of a Temporary Restraining Order and that Petitioner has properly given  
8 notice to Gerawan Farming, Inc. ("Respondent") of its intent to seek such injunctive relief, and  
9 good cause appearing, a Hearing is set for an Order to Show Cause on the Petitioner's  
10 Application on 9/11/2013 at 3:30 pm in Department 402.

11  
12 UPON GOOD CAUSE SHOWING, IT IS HEREBY ORDERED that pending the  
13 Court's ruling on the Petitioner's request for a preliminary injunction, Respondent, its partners,  
14 officers, agents, representatives, ~~attorneys~~, and all other persons acting under the direction of or  
15 in concert with Respondents, *with the understanding that this does not enjoin non-*  
16 ~~shall cease and desist from initiating, sponsoring, supporting,~~ *supervisory*  
17 ~~approving, encouraging and circulating a decertification petition among its employees; shall~~ *employees*  
18 ~~cease and desist from, in any like or related manner, interfering with, restraining or coercing~~  
19 ~~agricultural employees in the exercise of their rights guaranteed by Labor Code section 1152;~~  
20 shall cease and desist from interrogating employees about their union sympathies; and shall  
21 cease and desist from threatening employees with job loss for supporting the Union.  
22

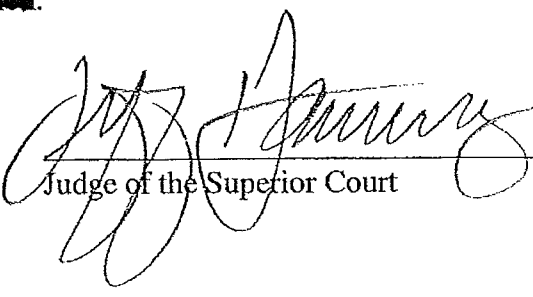
23 ~~UPON GOOD SHOWING, IT IS HEREBY FURTHER ORDERED that within thirty~~  
24 ~~(30) days, the Respondent shall grant access to agents of the ALRB to all of its employees on its~~  
25 ~~ranch properties during regularly scheduled work hours during which time ALRB agents shall be~~  
26



1 ~~allowed a thirty (30) minute period to provide information to Respondents' employees regarding~~  
2 ~~their rights under the Act to engage in protected concerted activity, union activities, and to freely~~  
3 ~~participate in ALRB proceedings without retaliation or discrimination from their employer. The~~  
4 ~~Respondent will compensate its employees at their regular rate of pay for their participation in~~  
5 ~~such presentation by the ALRB. Management and supervisory employees will not be allowed~~  
6 ~~to be present or participate during such presentation.~~

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10 DATE:

8/21/2013

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Judge of the Superior Court