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**First-Class Mail and Electronic Mail**

September 25, 2013

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**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 was simply written again in the exact same hand writing 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.

### **I. 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



the weight of other independent accounts. Based on our investigation, there is reasonable cause to believe that crew boss Mendez unlawfully supported and encouraged the decertification efforts.

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.

The above is not exhaustive of the evidence that we obtained of possible unlawful employer assistance and sponsorship of the decertification effort. We have not found evidence that there was unlawful assistance in each of the many crews that work for Gerawan. Nonetheless, the employer involvement in the circulation of the decertification petition is significant and, per Board precedent, it must be presumed that the effects of improper employer involvement would not be limited to just the crews identified above. *Gallo Vineyards, supra*, 30 ALRB No.2; *D'Arrigo Bros.* (2013) 39 ALRB No. 4. Other facts revealed during our investigation would further suggest that the employer's support of the decertification effort were disseminated. For example, several witnesses, including a crew boss, explained that Gerawan gives away fruit to employees on Friday afternoons at a central location with shade and *aguas frescas* available to workers and their families. During the height of the decertification effort, owner Dan Gerawan and his wife Norma Gerawan, have attended the events to greet employees, along with significant numbers of signature gatherers who, within just a few feet of the owner and his wife, seek signatures on the decertification petition from workers who are filling their bag of free fruit provided by the company. All witnesses stated that the fruit giveaways are not public events and that the only activity occurring during the giveaways was the signature gathering and the greetings from the owner and/or his wife, depending on the day. Such acts by the employer could easily create the appearance that the employer is approving or sponsoring the decertification effort.

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

Anthony Raimondo is an attorney who specializes in labor relations and employment law. Exh. 20. Mr. Raimondo's concentrations include counter-organizing campaigns, unfair labor practice defense and defending employers in administrative agency proceedings and investigations including the National Labor Relations Board and the Agricultural Labor Relations Board. *Id.* Mr. Raimondo is a member of the Agricultural Personnel Management Association and a member of the Board of Directors of the California Association of Agricultural Labor (CAAL), an organization that represents the interests of farm labor contractors. (See [www.caalag.org](http://www.caalag.org)). Mr. Raimondo has previously worked as an attorney in the law firm of Ron Barsamian (previously, Barsamian, Saqui & Moody), the attorney who represents Gerawan Farming, Inc. Mr. Raimondo is now a partner with McCormick Barstow LLP in Fresno, California whose employment law practices focuses on representing employers.

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,



Silas M. Shawver  
Regional Director

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