

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,)	Case Nos. 2015-CE-011-VIS
)	2015-CE-012-VIS
Respondent,)	
)	
and)	ORDER DENYING
)	APPLICATION FOR SPECIAL
RAFAEL MARQUEZ,)	PERMISSION TO APPEAL
)	ORDER GRANTING PETITIONS
)	TO REVOKE SUBPOENAS
Charging Party,)	
)	
and)	Admin. Order No. 2015-19
)	
UNITED FARM WORKERS OF)	(December 22, 2015)
AMERICA,)	
)	
Charging Party.)	

On November 24, 2015, Administrative Law Judge William L. Schmidt (the “ALJ”) issued an order revoking two subpoenas duces tecum (the “Subpoenas”), which had been served by Respondent Gerawan Farming, Inc. (“Respondent”) on the Agricultural Labor Relations Board (the “ALRB” or the “Board”) and the ALRB’s General Counsel. On December 4, 2015, Respondent filed with the Board an Application for Special Permission to Appeal the ALJ’s ruling on the petitions to revoke (the “Application”). On December 16, 2015, the ALRB’s General Counsel filed

an opposition to the Application.¹ Charging Party United Farm Workers of America also filed an opposition.

Despite having filed the Application with the Board, Respondent contends that the Board is precluded from ruling on the Application because an attorney representing the Board filed papers with the ALJ asserting that the documents subpoenaed from the Board are privileged and/or otherwise exempt from disclosure. Respondent cites no authority to support its argument. In fact, arguments similar to Respondent's have been rejected by the California Supreme Court. In *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, the California Supreme Court held that an agency's role as litigation adversary against an individual challenging one of the agency's preliminary rulings did not preclude the agency from adjudicating a claim against that same individual in the underlying administrative proceeding. (*Id.* at 880-883.) The Court stated that a contrary holding would effectively preclude agencies from carrying out many of the functions for which they are responsible and rejected as "absurd" the proposition that "an administrative agency charged with adjudication of a claim in an administrative proceeding would be disqualified from performing its function whenever it was required to assert or defend its position against the claimant in a matter preliminary to a final determination of the

¹ On November 17, 2015, Respondent filed a request for leave to reply to the General Counsel's opposition. Board regulation 20242 states that, apart from the application and the opposition, "no further pleadings shall be filed in support of or in opposition to the appeal unless requested by the Board." Respondent's request is denied.

merits of the claim.” (*Id.* at 883.) Accordingly, this Board is not precluded from ruling on Respondent’s Application.²

Turning to the merits of the Application, section 20242, subsection (b) of the Board’s regulations provides that rulings and orders of an ALJ are only appealable upon special permission of the Board. In *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11, the Board stated that it would only hear interim appeals of interlocutory rulings pursuant to Regulation 20242, subsection (b) that could not be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370(j). The Board noted the need to strike the proper balance between judicial efficiency and providing an avenue for review of rulings that would otherwise be effectively immunized from appeal. The Board, however, emphasized that interlocutory review is the exception rather than the rule, noting that “[j]udges, including the Board’s ALJs, can best exercise their responsibility to issue rulings of law left to their discretion if the Board does not repeatedly intervene to second-guess their prejudgment rulings.” (*Id.* at p. 7 (citing *Mohawk Industries v. Carpenter* (2009) 558 U.S. 100, 130).)

² Relatedly, it is firmly established that the statutory framework under which the Board makes a determination as to whether there is reasonable cause to believe that an unfair labor practice has been committed such that interim injunctive relief should be sought and also adjudicates the merits of the underlying unfair labor practice allegations fully comports with the requirements of due process. The substantially similar federal statutes on which the ALRA framework is modeled have been repeatedly upheld against due process challenge. (See e.g. *Flamingo Hilton-Laughlin v. NLRB* (D.C. Cir. 1998) 148 F.3d. 1166, 1174 and *Kessel Food Markets, Inc. v. NLRB* (6th Cir. 1989) 868 F.2d 881, 887-888.)

The ALJ's order granting the petitions to revoke the Subpoenas was an evidentiary ruling. As noted in *Premiere Raspberries*, an appeal of an evidentiary ruling is not a collateral order subject to interlocutory review. (*Premiere Raspberries, LLC, supra*, 38 ALRB No. 11 pp. 8-9.) Additionally, California Code of Civil Procedure section 904.1 excludes evidentiary rulings from matters that may be appealed. (*Premiere Raspberries, LLC, supra*, 38 ALRB No. 11 p. 9.)

Accordingly, the Application is not a proper subject of an interim appeal because it does not meet the standard for interim appeal set for the in *Premiere Raspberries*. The issues asserted by Respondent may be raised at the exceptions stage. Respondent's Application for Special Permission to Appeal is DENIED.

DATED: December 22, 2015

WILLIAM B. GOULD IV, Chairman

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member