Fresno, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No. 2013-MMC-003
	)	
Employer,	)	
	)	
and	)	
	)	39 ALRB No. 11
UNITED FARM WORKERS OF AMERICA,	)	
	)	(July 29, 2013)
	)	
Petitioner.	)	

DECISION AND ORDER

On July 10, 2013, Lupe Garcia ("Garcia") filed a "Petition for Intervention" with the Agricultural Labor Relations Board (the "ALRB" or "Board") in the above-captioned case. Pursuant to the Board's July 12, 2013 Administrative Order 2013-26, Gerawan Farming, Inc. ("Gerawan") and the United Farm Workers of America (the "UFW") filed responses to the petition on July 19, 2013. The Board has considered the petition, the evidence, and arguments of counsel, and has determined that the petition for intervention should be DISMISSED.

On March 29, 2013, the UFW filed a declaration requesting Mandatory Mediation and Conciliation ("MMC") with Gerawan. The Board referred the UFW and Gerawan (hereinafter collectively the "Parties") to MMC on April 16, 2013. (*Gerawan Farming, Inc*. (2013) 39 ALRB No. 5.) The Parties are currently engaged in MMC proceedings before mediator Matthew Goldberg (the "Mediator").

On June 11, 2013, Garcia, his attorney, and approximately 15 other Gerawan employees attempted to attend a mediation session between the Parties that was held that day. [Declaration of Paul J. Bauer In Support of Petition to Intervene ("Baur Decl.") ¶ 5-8.] The Mediator informed Garcia that he would not be permitted to attend because the mediation was confidential and open only to parties. [Bauer Decl. ¶ 7.] The instant Petition for Intervention followed.

The statutes and regulations governing MMC do not provide any mechanism for third parties to "intervene" in MMC proceedings.[1] The issue of whether an individual bargaining unit employee may intervene as a party in an MMC case appears to be one of first impression. Many of the arguments made by Garcia and Gerawan are analogies to intervention in judicial fora where intervention is a well-established procedure. MMC, however, is quasi-legislative, rather than quasi-judicial in nature. (*Hess Collection Winery v. ALRB* (2006) 140 Cal.App.4th 1584, 1597-1598.) While we may look to authorities concerning intervention in the judicial arena for guidance, we will follow those authorities only insofar as they are consistent with the purpose and structure of MMC. In this case, as discussed in detail below, we find that intervention is not appropriate.

[1] The statutes governing MMC appear at Labor Code section 1164 et seq. and the corresponding regulations appear at California Code of Regulations., title 8, section 20400 et seq.

1. Intervention In Representation and Unfair Labor Practice Cases Under the ALRA and NLRA

While there are no cases dealing with intervention in the context of MMC, we find it significant that the Board and the National Labor Relations Board (the "NLRB") have generally rejected attempts by individual employees to intervene in representation and unfair labor practice cases.

In *Coastal Berry Farms*, LLC (1998) 24 ALRB No. 4, the ALRB considered whether a union that was not included on the ballot in an election along with six individual employees had standing to file objections to that election. The Board ruled that, in accordance with the prevailing rule under the National Labor Relations Act (the "NLRA"), only "the actual parties to the election" had a sufficient "interest in the outcome of the proceeding" to confer standing to file objections. (*Coastal Berry*, *supra*, 24 ALRB No. 4, p. 6-7 (overruling *Herbert Buck Ranches, Inc*. (1975) 1 ALRB No. 6).)

The NLRB generally does not permit individual employees to intervene in representation and unfair labor practice cases. For example, in *Manor Research, Inc*. (1967) 165 NLRB 909, the NLRB denied intervention to a group of individual employees seeking to forestall the issuance of a bargaining order without affording the employees opportunity to express their desires in an election, finding that "there is no provision in the [NLRA] for individual employees to intervene as parties under these circumstances." (*Id*. at 910 (bracketed material supplied).) Likewise, in *Carpinteria Lemon Association* (1955) 112 NLRB 121, the NLRB refused to allow the intervention in a refusal to bargain

case of a group of employees claiming that their "employees' committee," and not the certified union, represented the employees.[2]

2. Intervention Under Board Regulation 20130

Garcia argues that "the Board may grant special leave for [Garcia] to intervene for the limited purposes of the MMC on grounds [Garcia] has an interest in the outcome of the MMC." [Petition for Intervention p. 4-5.] Garcia cites as authority Board Regulation 20130. That regulation sets forth the definition of the term "party" and states as follows:

> The term "party" as used herein shall mean any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the Act, any person named as respondent, as employer, or as party to a contract in any proceeding under the Act, and any labor organization alleged to be dominated, assisted, or supported in violation of Labor Code Section 1153(a) or (b); but nothing herein shall be construed to prevent the Board or its designated agent from limiting any party's participation in the proceedings to the extent of its interest only.
>
> (Cal. Code Regs., tit. 8 § 20130.)

The plain language of the regulation does not support Garcia's argument. To the contrary, Garcia does not fall within any of the categories of persons defined as

[2] See also *Shell Oil Company, Inc*. (1946) 66 NLRB 510, 511 fn. 1 (Motion filed by committee representing individual employees seeking to intervene in representation case denied because committee did not purport to be a labor organization and therefore was not a necessary party); *Consolidated Papers, Inc*. (1985) 274 NLRB 1356, 1356 fn. 1 (Motion to intervene filed by individual employees in unit clarification case denied as employees lacked standing and employer adequately represented their position); *Tenneco Automotive, Inc*. (2011) 357 NLRB No. 84, p. 64, fn 1 (individual employees were not permitted to intervene in unfair labor practice case but were permitted to file briefs as amici curiae.).

"parties" by Board Regulation 20130. Furthermore, Board Regulation 20130 is definitional in nature. It does not purport to set forth the criteria for persons to intervene in Board proceedings in general or in MMC proceedings in particular.

3. Intervention Under Code of Civil Procedure Section 387

Garcia next argues that he should be granted leave to intervene under Code of Civil Procedure section 387 ("CCP § 387"). CCP § 387 governs intervention in California civil court cases and provides in relevant part:

> (a) Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant . . .
>
> (b) If any provision of law confers an unconditional right to intervene or if the person seeking intervention claims an interest relating to the property or transaction which is the subject of the action and that person is so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by existing parties, the court shall, upon timely application, permit that person to intervene.
>
> (CCP § 387.)

Clearly, CCP § 387 does not apply directly to MMC. The Board has looked to CCP § 387 in the past for guidance when deciding whether intervention was appropriate in a representation case. (*Herbert Buck, supra*, 1 ALRB No. 6 (overruled by

Coastal Berry, supra, 24 ALRB No. 4.)[3]) CCP § 387 was, however, developed in the context of civil litigation. As discussed previously, it serves as guidance in MMC cases only insofar as it is consistent with the purpose and structure of MMC. In any event, we find that, even if we were to apply the CCP § 387 standard, intervention would not be appropriate.

Garcia claims that he has an interest in the MMC process because his employment will be governed by any eventual contract. However, in *Coastal Berry*, the Board found that employees seeking to object to an election "could have no special interest in the outcome that differentiates them from the interest possessed by any other voter and thus are not entitled to assert an interest sufficient to challenge the conduct of the election." (*Coastal Berry, supra*, 24 ALRB No. 4, p. 8.) We find that the same reasoning applies here.

Furthermore, even assuming that Garcia had "an interest" in the outcome of MMC, the granting of intervention in a case is discretionary and Garcia's interest in the matter would be weighed against countervailing factors. (*Hausmann v. Farmers Insurance Exchange* (1963) 213 Cal.App.2d 611, 614.) First and foremost, it has been recognized that intervention may be denied where the interests of the person seeking to intervene are already adequately represented. (*Hausmann, supra*, 213 Cal.App.2d at 614;

[3] In *Herbert Buck*, the Board applied the CCP § 387 standard to decide that a non-party union could intervene in a representation case for the purpose of filing election objections. In *Coastal Berry*, the Board reversed *Herbert Buck*, finding that subsequent cases and the adoption of regulation had overruled both its holding and its reasoning. (*Coastal Berry, supra*, 24 ALRB No. 4, p. 4.)

Consolidated Papers, Inc. (1985) 274 NLRB 1356, 1356 fn. 1.) In this case the UFW has been certified as the bargaining representative of Gerawan's agricultural employees after a Board-conducted election and owes a duty of fair representation to Garcia and his fellow employees. (*Vaca v. Sipes* (1967) 386 U.S. 171, 177; *United Farm Workers of America* (2011) 37 ALRB No. 3.) A union's authority to bargain and enter into binding agreements on behalf of the members of the bargaining unit within the bounds of the duty of fair representation is well-established. (*United Farm Workers, supra*, 37 ALRB No. 3.)[4]

Additionally, the intervention of Garcia would be inconsistent with the structure of MMC and would undermine its functioning. The language of the statutes governing MMC indicate that MMC was intended to be between the certified union and the employer. Thus, only "[a]n agricultural employer or a labor organization certified as the exclusive bargaining agent" have the authority to initiate MMC. (Lab. Code § 1164 subd. (a).) The Board is authorized to direct "the parties" to MMC (Lab. Code § 1164 subd. (b)) and the statutes consistently refer to "the parties" as the relevant actors in the MMC process. Although intervention is specifically allowed in representation and unfair

[4] In its response, Gerawan argues that the UFW is not an adequate representative of Garcia's interests. However, the principal case it cites is a federal court decision holding that individual employees had standing to intervene in a case involving their employer because the employer was not an adequate representative of its employees' interests in litigation as its interests might diverge from those of its employees. (*Brennan v. NYC Board of Education* (2d Cir. 2001) 260 F.3d 123, 132-133.) However, an employer is not the legally certified representative of its employees, nor does it owe any duty of fair representation to them. The cases cited by Gerawan, therefore, are clearly distinguishable.

labor practice cases, there is no statutory or regulatory authorization for intervention in MMC cases.[5] As noted previously, the Board has denied individual employees the right to file objections in election cases, and the NLRB has generally declined to permit individual employees to intervene in its proceedings. Finally, if any employee who wished to do so could intervene in an MMC case, the process could quickly become unworkable and it would be fundamentally inconsistent with the union's status as bargaining representative.

4. Public Access to "On the Record" MMC Proceedings

In its response in support of Garcia's petition, Gerawan argues that individual employees and other members of the public have a right to attend "on the record" MMC proceedings under the First Amendment to the United States Constitution. This was not an issue that was raised by Garcia in his motion, in which Garcia seeks intervention as a party, not access as a member of the public. We decline to reach this issue as Gerawan lacks standing to assert the legal rights of Garcia and other members of the public (see generally *Elk Grove Unified School District v. Newdow* (2004) 542 U.S. 1, (noting the prudential dimensions of the standing doctrine as encompassing the general prohibition on a litigant's raising another person's legal rights)), and does not argue any applicable exceptions to the standing doctrine (See *Powers v. Ohio* (1991) 499 U.S. 400, 411; *Matrixx Initiatives, Inc. v. Doe* (2006) 138 Cal.App.4th 872, 877-878).

[5] See Labor Code section 1156.3(d) and California Code of Regulations, title 8, section 20325 (a labor organization may intervene in a representation case by filing a petition with evidence of employee support); California Code of Regulations, title 8, section 20268 (allowing for discretionary intervention in unfair labor practice cases.

ORDER

Lupe Garcia's petition for intervention is DISMISSED.

DATED: July 29, 2013

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

GERAWAN FARMING, INC. Case No. 2013-MMC-003
(United Farm Workers of America) 39 ALRB No. 11

On July 10, 2013, Lupe Garcia ("Garcia"), an employee of Gerawan Farming, Inc. ("Gerawan"), filed a "petition for intervention" with the Agricultural Labor Relations Board (the "ALRB" or "Board") seeking to intervene as a party in Mandatory Mediation and Conciliation ("MMC") proceedings between Gerawan and the United Farm Workers of America (the "UFW"). Garcia argued that he should be permitted to intervene under Board Regulation 20130, which defines the term "party" under the Agricultural Labor Relations Act (the "ALRA" or "Act") as, inter alia, someone properly seeking or entitled as of right, to be admitted as a party, or, alternatively, that he should be permitted to intervene pursuant to Code of Civil Procedure section 387 ("CCP § 387"), which governs intervention in civil court cases. Additionally, Gerawan argued that Garcia had a First Amendment right to attend MMC proceedings as a member of the public.

The Board dismissed Garcia's petition for intervention. The statutes and regulations governing MMC provided no mechanism for third party intervention. The issue of whether an individual employee could intervene in MMC proceedings was one of first impression. While the Board found that it may look to authorities governing intervention in other contexts for guidance, because MMC is quasi-legislative rather than quasi-judicial in nature, it would follow those authorities only insofar as they were consistent with the purpose and structure of MMC.

The Board noted that in representation and unfair labor practice cases under the ALRA and National Labor Relations Act (the "NLRA"), the ALRB and National Labor Relations Board (the "NLRB") generally declined to permit intervention by individual employees. With respect to Board Regulation 20130, the Board found that Garcia did not meet the definition of a "party" under that regulation and, in any event, the regulation was definitional in nature and did not purport to set forth rules for intervention. The Board also found that, even if it were to apply the CCP § 387 standard, intervention would not be appropriate. Garcia did not have a special interest in the outcome of the MMC proceedings that differentiated him from any other bargaining unit member. Even if he did have "an interest" in the case, granting intervention is discretionary and Garcia's interest was represented by the UFW, which was certified as bargaining representative and owed a duty of fair representation to Garcia and his fellow employees. Intervention would also be inconsistent with the structure and functioning of MMC. The statutes and regulations governing MMC consistently refer to "the parties" as the relevant actors in the process. If any employee could intervene in MMC, the process could become unworkable and it would be inconsistent with the union's status as bargaining representative.

The Board rejected the constitutional claim argued by Gerawan because the issue had not been raised by Garcia and Gerawan lacked standing to raise the issue.

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