

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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|---------------------------|---|--------------------------|-----------------|
| D'ARRIGO BROS. CO. of |) | Case No. | 2012-CE-005-VIS |
| CALIFORNIA, |) | | |
| |) | | |
| Respondent, |) | | |
| |) | | |
| and |) | ORDER DENYING | |
| |) | RESPONDENT'S APPLICATION | |
| GREGORIO HERNANDEZ, |) | FOR PERMISSION TO APPEAL | |
| |) | RULING OF ADMINISTRATIVE | |
| Charging Party, |) | LAW JUDGE | |
| |) | | |
| and |) | Admin. Order No. 2014-13 | |
| |) | | |
| UNITED FARM WORKERS OF |) | | |
| AMERICA, |) | | |
| |) | | |
| <u>Intervening Party.</u> |) | | |

On May 8, 2014, the Administrative Law Judge (ALJ) in the above matter conducted a prehearing conference call regarding a request made by the Intervening Party, the United Farm Workers of America (UFW), for enforcement of discovery to the Respondent, D'Arrigo Bros. Co. of California (D'Arrigo). On May 20, 2014, the ALJ issued an order which, inter alia, recommended that the Agricultural Labor Relations Board (ALRB or Board) seek enforcement in the appropriate superior court

of two requests for discovery made by the UFW to D'Arrigo. Such enforcement would be made pursuant to section 20250(k) of the Board's regulations¹.

On May 28, 2014, D'Arrigo filed an application for permission to appeal the ALJ's May 20, 2014 order, pursuant to section 20242 of the Board's regulations (Application). D'Arrigo alleged in its Application that it should be granted permission to appeal the ALJ's order, stating that it had already provided the requested discovery, that the matters forming the basis for the discovery requests were not in dispute, that it did not possess documentation responsive to some of the information sought, and that it was incapable of obtaining such documentation. D'Arrigo's Application in this matter is DENIED for the reasons discussed below.

Section 20242, subdivision (b) of the Board's regulations provides that rulings and orders of an ALJ are only appealable upon special permission of the Board. The standard of review for such appeals (of ALJ rulings during an evidentiary hearing) was set forth in *Premiere Raspberries* (2012) 38 ALRB No. 11 (*Premiere*), as limited to issues that could not be resolved pursuant to the exceptions process outlined elsewhere in the Board's regulations. *Premiere* spoke to striking the proper balance between judicial efficiency and providing an avenue for review of rulings that would otherwise be effectively immunized from appeal. Although no standard exists for appeal of ALJ rulings made before hearing, the Board believes that the standard

¹ The Board's regulations are codified in the California Code of Regulations, title 8, section 20100 et seq.

described in *Premiere* should also be applied to applications made before evidentiary hearings as well.

In the instant matter, D'Arrigo has had multiple opportunities to contest the UFW's discovery requests, and has done so via petitions to revoke the UFW's notices in lieu of subpoena – the vehicle by which said discovery requests were made. The ALJ's May 20, 2014 order was made after due consideration of D'Arrigo's petitions. D'Arrigo will be afforded the opportunity, pursuant to section 20282 of the Board's regulations, to file exceptions to the ALJ's decision after hearing. The Board has reviewed the Application in the instant matter and finds it to be unnecessary. It is thus DENIED.

Dated: June 3, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member