STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC., Employer, and SILVIA LOPEZ, Petitioner, and UNITED FARM WORKERS OF AMERICA, Certified Bargaining Representative.	)	Case No. 2013-RD-003-VIS (39 ALRB No. 20) ORDER DENYING RESPONDENT'S REQUEST FOR SPECIAL PERMISSION TO APPEAL THE ADMINISTRATIVE LAW JUDGE'S ORDER RE THE GENERAL COUNSEL'S NOTICE IN LIEU OF SUBPOENA Admin. Order No. 2014-33
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

On September 30, 2014, Gerawan Farming, Inc., ("Respondent") filed a Request for Special Permission to Appeal the Administrative Law Judge's Order re the General Counsel's Notice in Lieu of Subpoena ("Request") in which Respondent seeks

to appeal rulings made by the Administrative Law Judge ("ALJ") on September 23, 2014, and September 26, 2014, during hearings in the above-captioned matter.[1] In its Request, Respondent argues that it was improper for the ALJ to require production of discovery responsive to General Counsel's requests 9, 10, and 11, because having to make these responses would infringe upon the Respondent's rights of freedom of association, expression, and the right to petition the government.[2] Respondent further argues that an interim appeal is appropriate because the production of discovery responses would irreparably violate these rights, and the violation would not be remedied upon an appeal of the final judgment in the case. We find this argument to be unpersuasive in the context of this Request.

Section 20242 (b) of the Board's regulations provides that rulings and orders of an ALJ are only appealable upon special permission of the Board. That section further provides that the moving party must set forth "its position on the necessity for interim relief and on the merits of the appeal." (Cal. Code Regs, tit. 8, § 20242, subd. (b).)

In *Premiere Raspberries, LLC dba Dutra Farms* (2012) 38 ALRB No. 11, at page 11 (*Premiere Raspberries*), the Board announced its standard of "limiting Board

[1] Acting Executive Secretary Paul Starkey issued an order setting time for the parties to file statements of opposition by close of business, October 7, 2014. No statements of opposition were filed.

[2] Requests 9, 10, and 11 requested documents related to the participation of Dan Gerawan and Gerawan employees in lobbying, advocacy, travel, and reimbursement for activities related to SB 25.

review of interlocutory rulings sought pursuant to Regulation 20242(b) to those that cannot be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370(j)" as a means to "strike the proper balance between judicial efficiency and providing an avenue of review of rulings that would otherwise be effectively unreviewable on appeal."

As a threshold consideration, the ALJ's order to allow discovery is an evidentiary ruling. As noted in *Premiere Raspberries*, an interlocutory appeal of an evidentiary ruling is not a collateral order and is effectively reviewable on appeal. (*Premiere Raspberries*, *supra,* at pp. 8-9.) Also, California Code of Civil Procedure section 904.1 excludes evidentiary rulings from matters that may be appealed. (*Id*., at p. 9.) On its face, the request to review the order for discovery does not satisfy the standard set forth in *Premiere Raspberries*. However, our analysis does not stop here.

The Board recognizes that the First Amendment rights raised here are of serious importance. However, the Board must also consider the costs to judicial efficiency and effectiveness associated with interim appeals of discovery rulings. There is a substantial burden imposed by allowing parties to appeal rulings in a piece-meal fashion. Interim appeals inhibit judicial efficiency and administration.[3] Further, we are not persuaded that Respondent at this stage has met its burden to show the need for

[3] In recognition of the burden associated with interim appeals of discovery orders, the Supreme Court of the United States has held that orders regarding claims of attorney-client privilege during the discovery process cannot be subjected to an interlocutory appeal. (*Mohawk Industries v. Carpenter* (2009) 558 U.S. 100, 103 S.Ct. 559.)

interim relief. We note that Respondent has alternative methods to obtain review of the ALJ's orders without disclosing the information at issue in this Request.[4]

We find that the substantial burdens imposed on the hearing process outweigh the stated First Amendment concerns in this matter. Accordingly, the Request is not a proper subject of an interim appeal because it does not meet the standard for interim appeal set forth in *Premiere Raspberries, supra*.

PLEASE TAKE NOTICE that the Respondent's Request is DENIED for the reasons discussed above.

Dated: October 24, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

[4] For example, Respondent has not explained why it could not provide a privilege log for documents at issue or produce such documents in camera to the ALJ for review. Such alternatives provide an opportunity to the ALJ to determine the issue in the first instance and provide for a record on review.