STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

T. T. MIYASAKA, INC.,	)	Case No. 2016-CE-011-SAL
Respondent,	)	
and	)	
ALFONSO MAGANA,	)	ORDER DENYING RESPONDENT'S APPLICATION FOR SPECIAL PERMISSION TO APPEAL EXECUTIVE SECRETARY'S ORDER DATED APRIL 6, 2016
Charging Party.	)	
	)	Admin. Order No. 2016-08
	)	(April 27, 2016)

On April 11, 2016, T.T. Miyasaka ("Respondent") filed an application for special permission to appeal an order issued on April 6, 2016 by the Executive Secretary of the Agricultural Labor Relations Board (the "ALRB" or "Board"). The Executive Secretary's order denied a continuance of the hearing in this case, which Respondent and Charging Party Alfonso Magana ("Charging Party") sought in order to permit Respondent and Charging Party to attempt to reach a "global" settlement agreement of the disputes

between the parties. The General Counsel of the ALRB opposed the continuance and filed an opposition to the application.[1] For reasons stated below, the application is DENIED.

Background

The General Counsel of the ALRB has issued a complaint alleging that Respondent required Charging Party, as a condition of employment, to sign an arbitration agreement purporting to require Charging Party to submit employment-related disputes to binding arbitration. Charging Party later filed suit against Respondent in Santa Cruz County Superior Court asserting wage and hour violations on a class-wide basis (the "Class Action") Respondent filed a petition to compel arbitration in the Class Action seeking to enforce the arbitration agreement. The General Counsel alleges that both the requirement that Charging Party agree to arbitration and Respondent's efforts to enforce the arbitration agreement violate the Agricultural Labor Relations Act (the "ALRA" or "Act").

Respondent represents that Respondent and Charging Party have agreed to attempt to reach a settlement of the unfair labor practice case and the Class Action and have agreed to use the services of a mediator toward that end. Respondent argues that the allegations relating to the signing of the arbitration agreement are untimely and, therefore, the allegations relating to Respondent's attempt to enforce the agreement are the "main issue" in the case. That issue, argues Respondent, is not ripe for adjudication. Respondent also argues that allowing the parties to potentially settle the case before a hearing would promote administrative efficiency and would not prejudice any party. The General Counsel

[1] Charging Party, which has been granted intervenor status in this case, did not join in the application and did not file a response to the application.

disputes Respondent's arguments and asserts that the Executive Secretary's order is not appealable under the standard set forth in *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11 (the "*Premiere Raspberries* standard").

Analysis

Application of the *Premiere Raspberries* Standard

Under the *Premiere Raspberries* standard, the Board will accept interlocutory review only where the issue "cannot be addressed effectively through exceptions." The *Premiere Raspberries* decision dealt with Board review of interlocutory evidentiary rulings made by an administrative law judge. Even if the *Premiere Raspberries* standard applies to an Executive Secretary order denying a continuance, we would find that the standard would not preclude review under the circumstances of the instant case. The issue of whether the continuance was properly denied cannot be addressed effectively through exceptions because, once the hearing goes forward, the purpose of granting the continuance (allowing the parties to resolve their dispute prior to the hearing) could not be achieved.

The Merits of Respondent's Application

Board policy favors the voluntary settlement of disputes arising under the Act. (*Hess Collection Winery* (2009) 35 ALRB No. 3 p. 13; see also *Independent Stave Co., Inc.* (1987) 287 NLRB 740, 741 ["The NLRB has long had a policy of encouraging the peaceful, nonlitigious resolution of disputes" and "has reiterated its commitment to private negotiated settlement agreements and its policy of 'encouraging parties to resolve disputes without resort to [NLRB] processes.'"].) Nevertheless, in adjudicating and remedying unfair labor practices, the ALRB seeks to advance the public interest, not private rights. (See *NLRB v.*

Fant Milling Co. (1959) 360 U.S. 301, 308 ["The [NLRB] was created not to adjudicate private controversies but to advance the public interest . . .."]; *ADP Transport Corp*. (1980) 253 NLRB 468 ["once a charge is filed, the General Counsel proceeds, not in vindication of private rights, but as the representative of an agency entrusted with the power and the duty of enforcing the Act in which the public has an interest."].)

Under the Board's regulations, an unfair labor practice charge, once filed, may only be withdrawn "with the written consent of the regional director . . ." (Cal. Code Regs., tit. 8, § 20212.) Additionally, while a charge or a complaint may be settled through an informal settlement agreement, such an agreement "must be approved by the Regional Director." (Cal. Code Regs., tit. 8, § 20298, subd. (b).) Though parties may enter into "private party" settlement agreements without the involvement of the Board, the General Counsel may reject such a settlement agreement and continue to prosecute the case. (See *Fairmont Hotel* (1994) 314 NLRB 534, fn. 4.) Should the General Counsel choose to prosecute a case notwithstanding a private party settlement agreement, "the Board will be called upon to exercise its adjudicatory function" and, "[i]n that connection the Board may rule on the adequacy of the proffered settlement, pursuant to a respondent motion to dismiss." (*Ibid*.) An "administrative law judge's approval of the settlement agreement entered into between the Respondent and Charging Party Union is appropriate and [can] be approved by the Board." (*Flint Iceland Arenas (1998)* 325 NLRB 318, 321 (Chairman Gould dissenting on other grounds).) Here, there is only the possibility of a settlement agreement and the General Counsel believes that a settlement that left intact Respondent's arbitration agreement requirement would not adequately remedy the alleged unfair labor practices.

Respondent stated during the pre-hearing conference that it had no intention of rescinding the arbitration agreements. (See *Flyte Tyme Worldwide* (2015) 362 NLRB No. 46 [Denying motion to withdraw charge based upon private party settlement of related class action where settlement, among other things, did not require the employer to rescind class action waivers found by an ALJ to be unlawful.].)

Respondent argues that the issue of whether its effort to enforce the arbitration agreement violated the Act is not ripe because it is not known at this time whether the agreement will actually be enforced. The General Counsel, however, alleges that the filing of the petition to compel arbitration itself constituted a violation of the Act. It would not be appropriate at this time for the Board to consider the merits of the General Counsel's theory, however, if that theory is correct, then an unfair labor practice has already occurred, and the matter is ripe for adjudication.

Furthermore, the General Counsel asserts that Respondent violated the Act both by establishing and maintaining the agreement. Respondent argues that, because the agreement was signed more than six months prior to the filing of the charge, the allegations are untimely and need not be considered. The General Counsel, however, argues that the violations were continuing in nature. The ALJ stated during the pre-hearing conference that Respondent may litigate the timeliness issue as an affirmative defense at the hearing. Thus, it would be inappropriate for the Board to rule on this issue.

We find that Respondent has not presented compelling reasons for the Board to reverse the Executive Secretary's determination that the hearing in this case should proceed as scheduled. Respondent does not contend that it would be prejudiced

if the hearing goes forward. Respondent's application for special permission to appeal the Executive Secretary's April 6, 2016 order is DENIED.

DATED: April 27, 2016

WILLIAM B. GOULD IV, Chairman

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member