

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case Nos.: 2015-CE-014-VIS
	)	2015-CE-007-VIS
Respondent,	)	2015-CE-008-VIS
	)	2013-CE-064-VIS
)	
and,	)	ORDER DENYING GERAWAN
	)	FARMING, INC.'S APPLICATION
	)	FOR SPECIAL PERMISSION TO
	)	APPEAL ALJ'S RULING
)	
JUAN MANUEL JUAREZ	)	Admin. Order No. 2018-06
HERNANDEZ and UNITED)	
FARM WORKERS OF)	
AMERICA,)	
	)	(June 28, 2018)
Charging Parties.)	
)	

An unfair labor practice (ULP) hearing in this case concluded on May 24, 2018. The hearing was on allegations that Gerawan Farming, Inc. (Gerawan) committed ULPs in 2013 and 2015. On May 23, former Gerawan employee Rafael Marquez Amaro (Marquez) testified at the hearing on behalf of the General Counsel. Following direct examination, counsel for Gerawan requested that the General Counsel produce all prior witness statements by Marquez as required by Agricultural Labor Relations Board (ALRB or Board) regulation section 20274, subdivision (a). On May 24, the General Counsel stated on the record that, following a diligent search of her office's files, she had

produced “all witness statements required to be produced under the California Code of Regulations Section 20274.” (Hearing Transcript (TR) 5/24/2018: 59: 20-25.) Gerawan asserted it should not have to proceed with cross-examination of Marquez until it was sure all declarations by Marquez in the ALRB’s possession had been produced. The Administrative Law Judge (ALJ) denied Gerawan’s request to delay cross-examination of Marquez, and stated that she was “going to go ahead with the hearing and call the witness for cross-examination.” (TR: 5/24/2018: 74: 2-3.) In denying Gerawan’s request to delay cross-examination, the ALJ also commented that Marquez was testifying about events that took place in 2013 and 2014, and that even if there were another declaration from 2015, as Gerawan alleges, “it would probably involve events from 2015, rather than 2013 or 2014.” (TR: 5/24/2018:74: 4-14.)

The hearing closed at the end of the day on May 24. On June 1, Gerawan filed an application with the Board for special permission to appeal the ALJ’s May 24 ruling denying the request to delay cross-examination. On June 11, the General Counsel filed an opposition to Gerawan’s application.

For the following reasons, Gerawan’s application is denied.

Section 20242, subdivision (b) of the Board’s regulations provides that rulings and orders of an ALJ are appealable only upon special permission of the Board. In *Premiere Raspberries* (2012) 38 ALRB No. 11, the Board stated that it would only hear interim appeals of interlocutory rulings pursuant to Regulation 20242, subdivision (b) that could not be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370, subdivision (j). The ALJ’s order from which Gerawan seeks to appeal is 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*, *supra*, 38 ALRB No. 11, pp. 8-9.) The ALJ's ruling can be addressed through the exceptions process, should Gerawan decide to file exceptions following the issuance of the ALJ's decision and order.

Gerawan additionally argues the Board cannot decide whether to compel the General Counsel to produce the alleged additional witness statements Gerawan seeks. Gerawan claims that the Board has previously opposed efforts by Gerawan in separate proceedings arising out of a different case to obtain some of the information it now seeks. Gerawan's current demand for witness statements is materially distinguishable from the prior proceedings to which it refers, where it demanded the production of witness statements before any witness had testified in an unfair labor practice hearing. In any event, Gerawan's argument lacks merit even had the Board taken a position as described by Gerawan in its current application. (See *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 880-883.) Ultimately, the Board makes no ruling on the merits of Gerawan's demand for additional witness statements here based on its determination that the issue can be addressed effectively on exceptions, if exceptions are filed.

Finally, Gerawan argues that Board Member Isadore Hall cannot participate in the deliberations in this matter for the same reasons it argued Member Hall should be disqualified from participating in the deliberations in *Gerawan Farming, Inc.* (2018) 44 ALRB No. 1. For the reasons stated by the Board in *Gerawan Farming, Inc.*,

Administrative Order 2017-03, the evidence produced by Gerawan does not establish bias on the part of Member Hall.

CONCLUSION

For the foregoing reasons, Gerawan's application for special permission to appeal the ALJ's May 24, 2018 ruling denying Gerawan's request to delay cross-examination in the above-captioned case is DENIED.

Dated: June 28, 2018

GENEVIEVE A. SHIROMA Chairwoman

CATHRYN RIVERA-HERNANDEZ, Member

ISADORE HALL, III, Member