STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

EAT SWEET FARMS, LLC, Respondent, and CELESTINO VILLA HERRERA, Charging Party.	)	Case No. 2016-CE-027-SAL ORDER DENYING APPLICATION FOR SPECIAL PERMISSION TO APPEAL ADMINISTRATIVE LAW JUDGE'S ORDER ON STATUTE OF LIMITATIONS Admin. Order No. 2020-10 (April 27, 2020)

On December 27, 2019, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) issued a complaint in case no. 2016-CE-027-SAL alleging that respondent Eat Sweet Farms, LLC (Respondent) violated the Agricultural Labor Relations Act (ALRA or Act) by suspending and discharging charging party Celestino Villa Herrera (Villa) and other employees. On January 24, 2020, Respondent filed a motion to dismiss the complaint, arguing that the complaint is barred by the six-month statute of limitations stated in Labor Code section 1160.2. Respondent argued that the original charge filed in June 2016 did not name Respondent as the employer, but instead named Durant Harvesting, Inc. (Durant), a farm labor contractor (FLC) providing labor to Respondent. Respondent was not named as the employer until an amended charge was filed in September 2019. On March 23, 2020, Administrative Law Judge Mary Miller Cracraft (ALJ) issued an order denying the motion to dismiss.

The ALJ, construing the allegations of the complaint in the light most favorable to the non-moving party, found that Villa was not actually or constructively aware of Respondent's status as his employer when he filed the original charge in 2016, and, therefore, the running of the limitations period was tolled. According to the complaint, Villa did not discover that Respondent was his employer until September 2019, when he was informed of this fact by the ALRB's Salinas Region. Furthermore, the ALJ found that the 2019 amended charge "related back" to the 2016 charge due to the unique relationship under the Act between growers and their FLCs and due to Villa's good faith mistake concerning the identity of his employer and the lack of prejudice to Respondent. The ALJ stated that Respondent would be able to renew its motion at the hearing after Villa was examined concerning his knowledge of Respondent's status in 2016.

On March 30, 2020, Respondent filed with the ALRB's Executive Secretary an application for special permission to appeal the ALJ's order denying its motion to dismiss (Application). Pursuant to the Executive Secretary's direction, the General Counsel filed an opposition to the Application on April 10, 2020.

Having considered the Application, the record, and the arguments of the parties, we DENY the Application because Respondent has failed to establish that the issue it raises is one that cannot be addressed effectively through the filing of exceptions to the ALJ's final decision in this matter. We make no findings and reach no conclusions as to the merits of Respondent's statute of limitations defense. We merely hold that, under the Board's established standards, review of the ALJ's order is not

warranted at this time.

Board regulation 20242, subdivision (b) states that "[n]o ruling or order [of an administrative law judge] shall be appealable, except upon special permission from the Board . . . ." (Cal. Code Regs., tit. 8, § 20242, subd. (b).) Applications for special permission to appeal must set forth the moving party's "position on the necessity for interim relief and on the merits of the appeal" and shall include declarations if the facts are in dispute. (*Ibid.*)

In *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11, the Board set forth the standard it would apply when evaluating whether to hear special appeals of interim orders. Consistent with the "final judgment" doctrine applied by most appellate bodies, we have recognized that "the Board's ALJs can best exercise their responsibility to issue rulings of law left to their discretion if the Board does not repeatedly intervene to second-guess their prejudgment rulings." (*Id.* at p. 7.) The standard adopted by the Board "limit[s] Board 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) . . . ." (*Id.* at p. 11; *King City Nursery, LLC* (Jan. 9, 2020) ALRB Admin. Order No. 2020-01-P, pp. 3-4.) This standard was intended to "strike the proper balance between judicial efficiency and providing an avenue of review of rulings that would otherwise be effectively unreviewable on appeal." (*Premiere Raspberries, LLC, supra*, 38 ALRB No. 11, p. 11.)

Respondent has not established that its objections to the ALJ's order cannot be addressed effectively through exceptions. Should the issue be raised, the Board can

determine at the exceptions stage whether the allegations of the complaint are barred by the statute of limitations. If the Board concludes that they are time-barred, the relief Respondent seeks — dismissal of the complaint — will still be available.

Respondent argues that all the parties would have to expend resources litigating a case that, if the Board were to reverse the ALJ now, would be dismissed. Such an argument could be made as to any dispositive motion, but the Board's standard provides for interim review of ALJ orders only where the issue is "effectively unreviewable" on appeal. (*Premiere Raspberries, LLC, supra*, 38 ALRB No. 11, p. 11; see *Robinson v. Department of Fair Employment and Housing* (1987) 192 Cal.App.3d 1414, 1417.) Respondent also appears to argue that it should not be forced to defend stale claims where evidence and witnesses may no longer be available. However, if Respondent prevails on the timeliness issue on exceptions, the complaint would be dismissed and Respondent would suffer no harm due to any purported unavailability of evidence.[1]

Finally, the ALJ has stated that Respondent may renew its argument that the allegations of the complaint are time-barred at the hearing stage after Villa is questioned concerning whether he was, or should have been, aware in 2016 that

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[1] Respondent argues that the statute of limitations issue is "jurisdictional" but does not cite any authority that this would establish entitlement to immediate interim review. In any event, decisions concerning the six-month limitations period under ALRA section 1160.2 as well as the analogous limitations period under the National Labor Relations Act (29 U.S.C. § 160(b)) have held that these limitations periods are procedural in nature, not jurisdictional. (*Ruline Nursery* (1982) 8 ALRB No. 105, pp. 9-10; *Chicago Roll Forming Corp.* (1967) 167 NLRB 961, 971; *Shumate v. NLRB* (4th Cir. 1971) 452 F.2d 717, 721.)

Respondent was his employer under the Act. Respondent's opportunity to renew this argument before the ALJ on a developed factual record further weighs against granting interim review.

ORDER

Respondent's application for special permission to appeal is DENIED.

DATED: April 27, 2020

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member