

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

TRI-FANUCCHI FARMS,	)	Case No. 2013-CE-008-VIS
	)	2013-CE-014-VIS
Respondent,	)	(40 ALRB No. 4)
)	
and	)	ORDER DENYING REQUEST FOR
	)	SPECIAL PERMISSION TO APPEAL
UNITED FARM WORKERS OF	)	ADMINISTRATIVE LAW JUDGE'S
AMERICA,	)	ORDER DENYING REGIONAL
	)	DIRECTOR'S MOTION TO DEEM
Charging Party.	)	ALLEGATIONS ADMITTED AND
	)	PRECLUDE EVIDNECE
)	
)	
)	
	)	Admin. Order No. 2023-01
)	
	)	(March 27, 2023)
)	

On February 13, 2023, the Regional Director of the Visalia Region (the Region) of the Agricultural Labor Relations Board (ALRB or Board) filed a motion in this compliance case involving respondent Tri-Fanucchi Farms (Tri-Fanucchi). In the motion, the Region argues that allegations in the Region's second amended compliance specification (the specification) relating to the identity of individuals to be included in the bargaining makewhole remedy ordered by the Board¹ should be deemed admitted and any evidence offered for the purpose of excluding any of those individuals should be precluded. The Region contends that Tri-Fanucchi failed to assert in its pleadings that

¹ See *Tri-Fanucchi Farms* (2014) 40 ALRB No. 4.

any of the individuals listed in the specification should have been excluded because they were not Tri-Fanucchi's employees or were supervisors, and Tri-Fanucchi raised the issue for the first time in a communication with the Region shortly before the hearing was scheduled to commence.

On March 2, 2023, administrative law judge Hermine Honavar-Rule (the ALJ) denied the Region's motion without prejudice to it being refiled after the Region had received responses to subpoenas that the Region had served seeking evidence concerning the issue.² On March 8, 2023, the Region filed a request for special permission to appeal the ALJ's order denying the motion pursuant to Board regulation 20242.³ The Board has considered the Region's request to appeal and, for the following reasons, denies the request.

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” 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. (Board reg. 20242, subd. (b).)

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

² The Board takes administrative notice of the ALJ's order dated March 1, 2023 and served the following day. The Board notes that, unlike Board regulation 20280, which provides that a case shall be deemed transferred to the Board upon the filing of an ALJ's decision, including the record of the case, Board regulation 20242 contains no similar provision. Thus, parties applying for special permission for an interim appeal, or other motions with the Board, should include all documents necessary for the Board to rule on the application.

³ The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

orders. Consistent with the “final judgment” doctrine applied by most appellate bodies, the Board has 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.” (*Premiere Raspberries, LLC, supra*, 38 ALRB No. 11, 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.) 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.” (*Ibid.*)

The Region has not shown that the ALJ’s order denying its motion is appropriate for interlocutory review under Board regulation 20242. Initially, the ALJ’s denial of the motion was without prejudice to it being refiled at a later date. Indeed, the ALJ did not even reach the merits of the Region’s motion. That the ALJ may reconsider the motion undermines any argument that immediate review is warranted.

Furthermore, the denial of the relief sought by the Region is a matter that may be addressed effectively through the filing of post-decision exceptions. (*Ace Tomato Co., Inc.* (Feb. 27, 2015) ALRB Admin. Order No. 2015-02, p. 4 [denying application to appeal denial of motion to strike “untimely defense” because the issue could be addressed effectively through exceptions]; *Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1601, fn. 4 [“An order granting or denying a motion to strike out a pleading or a part thereof is nonappealable”]; *Maier Brewing Co. v. Flora Crane Service, Inc.* (1969) 270 Cal.App.2d 873, 876 [trial court order denying motion to strike affirmative defenses “is not appealable until final judgment”]; *Hill v. Wrather*

(1958) 158 Cal.App.2d 818, 821 [order striking affirmative defenses was “reviewable only on an appeal from the final judgment”].) If the ALJ sustains any part of the defense that the Region seeks to preclude, and if the Board agrees on exceptions that the defense was not preserved, the Board may disallow the defense and disregard any evidence that was offered in support of it.

The Region argues that, in the absence of immediate relief, it will be forced to spend time and resources litigating an issue that was not properly raised. However, the Board’s standard presupposes that parties may have to litigate cases under ALJ rulings they believe to be erroneous, and the fact that they must do so does not, standing alone, justify immediate review where the matter can be addressed effectively on exceptions.

The Region’s request for special permission to appeal is DENIED.

DATED: March 27, 2023

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lighstone, Member

Cinthia N. Flores, Member