

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,	)	Case Nos. 2019-CL-005-SAL
	)	2019-CL-006-SAL
	)	2019-CL-007-SAL
And	)	2019-CL-008-SAL
	)	2019-CE-044-SAL
MONTEREY MUSHROOMS, LLC,	)	2019-CE-045-SAL
	)	2019-CE-047-SAL
	)	2020-CL-001-SAL
Respondents,	)	2020-CE-002-SAL
	)	2022-CL-003-SAL
And	)	2022-CE-040-SAL
)	
JOSE FLORES, JOEL TAPIA, TERESITA AVILA, HORACIO RAMIREZ, JOSE LUIS SANCHEZ, and KARINA HERNANDEZ BONILLA,	)	ORDER GRANTING MONTEREY MUSHROOMS, LLC'S APPLICATION FOR SPECIAL PERMISSION TO APPEAL ALJ'S ORDER TO HOLD HEARING VIRTUALLY; ORDER DIRECTING
Charging Parties.	)	ALJ TO MODIFY CMC ORDER
)	
	)	Administrative Order No. 2024-13
	)	(May 6, 2024)

A case management conference (CMC) was held in the above-captioned unfair labor practice proceeding on February 26, 2024. On April 9, the administrative law judge (ALJ) issued a CMC order addressing, among other things, the format of the upcoming hearing scheduled to begin May 30, 2024. After considering the positions of the parties, the ALJ determined that there was good cause to hold the hearing via videoconference.

On April 15, 2024, respondent Monterey Mushrooms, LLC filed an application

for special permission to appeal the ALJ’s CMC order. Respondent requests that the Board order an in-person hearing or, in the alternative, a hybrid virtual/in-person hearing with certain modifications, namely that witnesses, the court reporter and the ALJ be in the same room.

DISCUSSION

Board regulation 20242, subdivision (b)¹ provides that “[n]o ruling or order shall be appealable, except upon special permission from the Board.” The Board will consider an application for special permission to appeal only where the challenged ruling or order cannot be addressed effectively through exceptions filed pursuant to Board regulation 20282. “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.’” (*Tri-Fanucchi Farms* (March 27, 2023) ALRB Admin. Order No. 2023-01, p. 3, citing *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11, p. 11.)

On the other hand, interlocutory review is the exception rather than the rule, and “[j]udges, including the Board’s ALJ’s 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, citing *Mohawk Industries v. Carpenter* (2009) 558 U.S. 100, 106-107.)

The Board has considered the respondent’s application for special permission to appeal the ALJ’s CMC order to hold the hearing virtually. ALJs in unfair labor practice

¹ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

cases have broad discretion to regulate the course of the hearing and rule on procedural motions, including motions to conduct hearings virtually either in whole or in part. (Board reg. 20262; *Cinagro Farms, Inc.* (2022) 48 ALRB No. 2, p. 11.) However, we find the ALJ in this case misapplied the “good cause” standard described in *Cinagro Farms, Inc.* for when a hearing may be conducted via videoconference, and thus grant review and direct the ALJ to modify the CMC order consistent with this order.²

In *Cinagro Farms, Inc., supra*, 48 ALRB No. 2, the Board stated that an ALJ’s authority under Board regulation 20262 to conduct and regulate the course of a hearing includes the authority to conduct a hearing by videoconference. (*Cinagro Farms, Inc., supra*, 48 ALRB No. 2, p. 11; Board reg. 20262, subds. (e), (f).) The Board also stated that while parties have the right to appear at a hearing in their own defense or through a representative, Board regulation 20269 does not grant parties a “right to physically appear ‘in person’ at a hearing.” (*Cinagro Farms, Inc., supra*, 48 ALRB No. 2, p. 10.) However, the Board expressed “a strong preference for in-person hearings,” and stated that “videoconferencing should be used as an exception to this general rule only where good cause exists.” (*Id.* at p. 11, citing *William Beaumont Hospital* (2020) 370 NLRB No. 9, *2-4.)

We find that the ALJ misapplied the good cause standard in directing that the

² Although we grant respondent’s application for special permission to appeal the ALJ’s order, we are not persuaded by respondent’s concerns about the potential for misconduct arising from the inability to monitor the environment of witnesses during their testimony if the hearing is held via videoconference. These concerns are speculative and premature. For those witnesses who are out of state and must appear by videoconference, the detailed procedural guidelines regarding witness testimony set forth in the ALJ’s order are appropriate.

entire hearing should be conducted by videoconference. We acknowledge the term “good cause” is a flexible concept depending on the circumstances. (*Cal. Portland Cement Co. v. Cal. Unemp. Ins. Appeals Board* (1960) 178 Cal.App.2d 263, 272 [describing “good cause” as a “flexible phrase[], capable of contraction and expansion ...”]; *Bartlett Hayward Co. v. Indus. Acc. Com.* (1928) 203 Cal. 522, 532 [“What constitutes ‘good cause’ depends largely upon the circumstances of each case. The term is relative”].) For example, when all parties agree or stipulate to conducting a hearing via videoconference, we understand an ALJ to be well-within their authority to give effect to such stipulations. (See Board reg. 20262, subds. (e), (f), and (h).) However, when the parties dispute the propriety of conducting a hearing by videoconference something more is required. We need not endeavor or attempt to provide examples, as the propriety of holding a videoconference hearing will depend on the facts and circumstances of each particular case. Suffice it to say, however, we do not believe the reasons cited by the ALJ here support a finding of good cause requiring the hearing be held entirely virtually.

The general counsel requested virtual proceedings primarily to accommodate its own staff assigned to the case, including the regional director and the hardships specifically described regarding her circumstances. The CMC order also states that there are two to three witnesses located out-of-state for whom in-person appearances would be impractical and burdensome. It appears the other parties and almost all witnesses will be available in-person. We do not second-guess the ALJ’s conclusion that these considerations justify permitting general counsel staff and these out-of-state witnesses to participate via videoconference.

However, the CMC order does not set forth good cause for directing that the entire hearing take place via videoconference. The order cites considerations such as avoiding unnecessary travel costs and logistical difficulties.³ While such matters may appropriately be considered under the good cause standard, the mere generalized citation of such considerations is insufficient to justify a fully virtual hearing, particularly where one or more parties object. Convenience and good cause are not synonymous. Furthermore, when good cause is shown, modifications to alter the forum should be only those that are necessary and that are sufficiently tailored to the specific circumstances a moving party is seeking to address. We are also not persuaded that testifying via videoconference more naturally supports accurate and forthright testimony by witnesses.

In sum, while the ALJ appropriately applied the relevant standard to accommodate the need for the persons specified by the general counsel to appear via videoconference, the order directing the entire hearing be conducted virtually was not supported by a showing of good cause. The showing required to justify virtual proceedings is not necessarily an onerous one, but the generalized considerations cited in the CMC order were not sufficient under these circumstances to justify a fully virtual hearing. Accordingly,

³ We note there are also trade-offs holding hearings virtually. Despite the near ubiquitous use of videoconferencing platforms in professional settings in the Covid era many people, even technologically savvy users, have challenges utilizing the various platforms without hiccup. Bandwidth issues, software updates, unfamiliar platforms, and numerous other factors can pose challenges and frustrations for one or multiple users when using these platforms. We have seen these challenges play out in transcripts of virtual hearings in our own proceedings as well as in our own board meetings. These circumstances can result in negative impacts to the proceedings not least of which is making them lengthier, let alone resulting in general frustration.

we direct the ALJ to modify the CMC order and to consider any further requests for virtual proceedings in this case consistent with the foregoing.

ORDER

PLEASE TAKE NOTICE that Respondent, Monterey Mushrooms, LLC's request for special permission to appeal is GRANTED. The Board ORDERS that the ALJ's April 9, 2024 case management conference order be modified consistent with this order.

IT IS SO ORDERED.

DATED: May 6, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia Flores, Member