

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,)	Case No. 2024-RM-002
)	
)	ORDER GRANTING PROPOSED
Petitioner Labor)	INTERVENORS' APPLICATION FOR
Organization,)	SPECIAL PERMISSION TO APPEAL;
)	DENYING APPEAL FROM ORDER
and,)	DENYING MOTION TO INTERVENE
)	
WONDERFUL NURSERIES,)	
LLC,)	
)	Administrative Order No. 2024-12
Employer.)	(May 6, 2024)
)	

On February 23, 2024,¹ petitioner labor organization United Farm Workers of America (UFW) filed a majority support petition pursuant to section 1156.37 of the Agricultural Labor Relations Act (ALRA or Act).² Following a determination of majority support and the issuance of a certification by the executive secretary of the Agricultural Labor Relations Board (ALRB or Board), employer Wonderful Nurseries, LLC (Wonderful) timely filed objections to the certification pursuant to subdivision (f)(1) of section 1156.37. In *Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB Administrative Order No. 2024-04, we set for hearing Wonderful's objection nos. 1, 2, 3, 7, 8, and 13, and dismissed the remaining objections.

¹ All dates are in 2024 unless otherwise indicated.

² The ALRA is codified at Labor Code section 1140 et seq. Subsequent statutory citations are to the Labor Code unless otherwise indicated.

The matter was assigned to an independent hearing examiner (IHE) and set for hearing on March 25. The IHE issued an order on March 27 staying the hearing on all objections for 30 days to allow the general counsel additional time to conduct its investigation of unfair labor practice charges involving Wonderful and the UFW. Wonderful appealed, and on April 12 the Board issued an order reversing the IHE's stay order and directing the objections hearing recommence without delay, among other things. (*Wonderful Nurseries, LLC* (Apr. 12, 2024) ALRB Admin. Order No. 2024-08; see *Wonderful Nurseries, LLC* (Apr. 18, 2024) ALRB Admin. Order No. 2024-10, p. 2.)

One day after the IHE ordered the objections hearing stayed, on March 28 a group of Wonderful's agricultural employees represented by the National Right to Work Legal Defense Foundation, Inc. (Foundation) filed a motion to intervene in the objections hearing.³ After the Board lifted the stay and ordered the hearing to recommence, the IHE denied that motion in an order dated April 22. The proposed intervenor-employees timely filed the underlying application for special permission to appeal that order. (See Board regs. 20242, subd. (b), 20370, subd. (s).)⁴ The UFW filed an opposition to the application on April 29.

For the following reasons, the Board GRANTS the proposed intervenors

³ The proposed intervenors are Claudia Chavez, Domatila Vasquez, Maria Ester Gutierrez, Maria Chacon, Erik Ferrer Chacon, Gloria Gonzalez, Etelverto Torres, Florentina Torres Cruz, Maria C. Pedro, Francisco Antonio, Ines Cruz, Angelina Torres, and Selene Lizzaraga.

⁴ The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

special permission to appeal the IHE's order denying their intervention motion. Having considered the application, the Board DENIES the appeal on the merits.⁵

DISCUSSION

I. Propriety of Interlocutory Review

Under Board regulation 20242, subdivision (b), interlocutory appeals are not allowed except upon special permission from the Board. As a general rule, the Board will entertain an interlocutory appeal only when the issues raised cannot be addressed effectively through exceptions pursuant to regulations 20282 or 20370, subdivision (j). (Board reg. 20242, subd. (b); *Premiere Raspberries, LLC* (2012) 38 ALRB No. 11, pp. 2-3; *King City Nursery, LLC* (Jan. 9, 2020) ALRB Admin. Order No. 2020-01-P, pp. 3-4.)

A party applying for special permission to appeal an interlocutory ruling must "set[] forth its position on the necessity for interim relief." (Board reg. 20242, subd. (b).) The proposed intervenors fail to do so. However, it is evident the proposed intervenors' request to participate with full party status in the objections hearing cannot be effectively remedied on exceptions pursuant to regulation 20370, subdivision (j). Therefore, we will grant the application for special permission to appeal the IHE's order

⁵ The filings before us include ad hominem and personal attacks directed towards the IHE and between counsel. Suffice it to say, this type of conduct directed towards ALRB staff, including our IHEs, administrative law judges, and counsel, as well as other counsel, parties, or witnesses in a proceeding is inappropriate and will not be tolerated. Counsel are admonished to conform their conduct and behavior consistent with professional norms and to treat all other counsel, witnesses, or other staff or individuals participating in our proceedings with dignity and respect. (Bus. & Prof. Code, § 6068, subd. (b); see Board reg. 20800; *State of California (Department of Corrections)* (2001) PERB Dec. No. 1435-S, p. 2, fn. 2; see also *National Association of Government Employees* (1999) 327 NLRB 676; *In re: Joel I. Keiler* (1995) 316 NLRB 763.)

denying the intervention motion.

Accordingly, we turn now to the merits of the appeal.

II. The Proposed Intervenors Lack Standing to Intervene

According party status to individual employees or a group of employees in a representation proceeding is contrary to our regulations and precedent. Board regulation 20370, subdivision (c) clearly states: “The necessary parties to an investigative hearing are the petitioner, the employer, and any other labor organization which has intervened pursuant to section 20325.” Thus, the proper parties in the underlying objections hearing are the petitioner (UFW) and employer (Wonderful).⁶

In *Coastal Berry Farms, LLC* (1998) 24 ALRB No. 4, the Board addressed a similar situation involving a group of employees who attempted to file objections to a secret ballot election conducted pursuant to section 1156.3. The Board held under the facts of that case the individual employees lacked standing to file objections. (*Id.* at p. 8.) In doing so, the Board interpreted the language in section 1156.3 stating “any person” may file objections as limited to those parties possessing an “interest in the outcome of the proceeding,” which in the context of an election means only the “actual parties to the election.” (*Id.* at p. 7; § 1140.4, subd. (d).)

Although *Coastal Berry Farms* involved a secret ballot election conducted pursuant to section 1156.3, we find the underlying rationale adopted by the Board in that

⁶ No other labor organization intervened in this proceeding, nor does section 1156.37 contemplate intervention in a majority support proceeding by a separate labor organization.

case applicable here. In the context of a majority support proceeding, section 1156.37, subdivision (f)(1) allows “any person” to file objections to a labor organization’s certification. As noted, section 1156.3, subdivision (e)(1), includes identical language purporting to allow “any person” to file objections after a secret ballot election. It is presumed the Legislature was aware of the Board’s prior interpretation of this language under section 1156.3 when it adopted identical language in the context of section 1156.37. (*Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118, 1155-1156.)

Accordingly, it necessarily follows the proposed intervenors here lacked standing to file objections in this matter because they are not parties to the majority support proceeding, which is limited to the petitioning labor organization and subject employer whose employees the labor organization seeks to represent. The proposed intervenors’ lack of standing to file objections is consistent with the identification in Board regulation 20370, subdivision (c) of those parties deemed necessary to an objections proceeding such as this one. Neither the regulation nor our precedent contemplates individual employees or groups of employees participating as separate parties in such matters. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 11, pp. 3-4.) This approach is consistent with applicable precedent under the National Labor Relations Act (NLRA).⁷ (§ 1148; *Gerawan Farming, Inc., supra*, 39 ALRB No. 11, p. 3 [“the Board and the National Labor Relations Board (the ‘NLRB’) have generally rejected attempts by individual employees to intervene in representation and unfair labor practice cases”];

⁷ The NLRA is codified at 29 U.S.C. § 151 et seq.

Coastal Berry Farms, LLC, supra, 24 ALRB No. 4, pp. 6-7; see NLRB Casehandling Manual, Part 2, Representation Proceedings, § 11194.4; *Affinity Medical Center* (Jan. 11, 2013) 2013 NLRB LEXIS 13, *1; *Affinity Medical Center* (Apr. 30, 2013) 2013 NLRB LEXIS 292, *1.)

Proposed intervenors allege they will be deprived due process if not allowed to participate at the objections hearing. Not so. At least one federal court has rejected this argument. (*Ashley v. NLRB* (M.D.N.C. 2006) 454 F.Supp.2d 441, *affd.* (4th Cir. Nov. 20, 2007) 255 Fed. Appx. 707 [2007 U.S. App. LEXIS 26928].) In *Ashley* a group of employees sought to intervene in a representation proceeding before the NLRB, which the NLRB denied. The employees filed a lawsuit asserting the denial of their intervention motion deprived them due process. The court held they lacked standing to pursue their due process claims in court after looking to the “entire panoply” of processes provided by the NLRB. (*Id.* at p. 445.) The court found “[a] plain reading of the NLRB’s regulations confirms that Plaintiffs utilized the wrong procedures.” (*Id.* at p. 446.) The court acknowledged the NLRB’s rules against allowing employee intervention in representation proceedings, and proceeded to note that although “the NLRB does not allow individual employees to participate in the representation proceedings as an intervenor, it allows ‘any person’ to file an unfair labor practice claim.” (*Ibid.*) The court then concluded the unfair labor practice process available to the employees provided “adequate procedural protections” for them to present their claims to the NLRB, and they thus suffered no due process deprivation. (*Ibid.*)

The proposed intervenors in this case appear to contend their signatures on

authorization cards procured by the UFW were obtained through fraud or misrepresentation. At this time, four unfair labor practice charges have been filed against the UFW by agricultural employees of Wonderful asserting these types of claims, among others: unfair labor practice charge nos. 2024-CL-002 (filed Mar. 13), 2024-CL-003 (filed Mar. 14), 2024-CL-004 (filed Apr. 18), and 2024-CL-005 (filed Apr. 18). Two of those charges (nos. 2024-CL-004 and 2024-CL-005) were filed by employees included amongst the proposed intervenors here. Those charges are pending investigation by the general counsel, and the general counsel will determine whether reasonable cause exists to believe an unfair labor practice has been committed sufficient to warrant issuance of a complaint. (§ 1149; Board regs. 20216-20220.) Therefore, as in *Ashley*, adequate procedures exist by which the proposed intervenors may present their claims to the ALRB, and no due process deprivation is incurred by virtue of their inability to participate in the objections hearing.

Finally, intervention by the employees here is inappropriate for an additional reason: they are members of the bargaining unit the UFW now is certified to represent as their exclusive collective bargaining representative. (§ 1156.37, subds. (e)(3), (f)(3).) Intervention by bargaining unit employees, whether in support of or in opposition to, their exclusive bargaining representative is improper. As noted, the employees have available to them other avenues by which to pursue claims against the UFW, but intervention in an objections hearing is not an appropriate forum by which to do so. (*Gerawan Farming, Inc., supra*, 39 ALRB No. 11, p. 8 [allowing intervention by employees would be “unworkable and it would be fundamentally inconsistent with the

union’s status as bargaining representative”]; see *Gerawan Farming, Inc. v. ALRB* (2019) 40 Cal.App.5th 241, 274-275; *Petaluma City Elementary School Dist./Joint Union High School Dist.* (2016) PERB Dec. No. 2485-E, p. 30.)

In sum, intervention by the employees here is inappropriate, contrary to precedent and our own regulations, and appropriately was denied by the IHE.

ORDER

For the foregoing reasons, the Agricultural Labor Relations Board GRANTS the proposed intervenor-employees special permission to appeal the investigate hearing examiner’s order denying their motion to intervene in the objections hearing. Having considered the appeal, the Board DENIES the appeal on the merits.

IT IS SO ORDERED.

DATED: May 6, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member